

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004 00/2

10934 HOUSE LABOR & COMMERCE

# ALASKA EQUINE RESCUE

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Anchorage, Alaska 99511-3265

## *Read Inside ...*

- Update on cruelty case
- Horses for adoption
- Steamer's story
- New legislation
- New website
- The PMU issue
- The Auction
- Pictures, pictures, pictures !

## BASICS OF WINTER CARE

**Vet Care** - We recommend that you consult your veterinarian for a nutritional and winter care program appropriate for your horse. The following are some time-honored guidelines, but are not intended as a substitute for proper veterinary advice.

**Water** - Plenty of fresh, warm, clean water at all times. Horses may drink 10 gallons/day or more to digest their extra hay.

**Hay** - Plenty of wholesome hay, no dust or mold. Grass hays such as timothy and brome are ideal for feeding lots of hay in cold weather. (Alfalfa hay is an excellent hay but should be fed in more moderate and consistent amounts - no big variations according to the weather - because of its relatively high protein and rich nutritional contents.) General rule of thumb is that horses need 2% of their body weight per day in good quality roughage for maintenance. Thus, a 1000 lb horse would need 20 lbs. of hay per day minimum, more in cold weather. Remember, cold weather is not "maintenance" and horses need much more roughage in winter to generate internal body heat.

**Grain** - Grain as needed, in consistent quantities, (no wild fluctuations according to the weather), appropriate for the age, size, and work requirements of the horse. The type and quantity of grain you select may also depend on the quality of hay that you feed. If you feed a lower quality, lower nutrition hay, then a good quality complete feed pellet might be appropriate for your horse. If you feed a high quality, high nutrition hay, then a more natural grain, such as barley or corn-oats-barley mix might be appropriate.

**Vitamin** - a good quality commercial vitamin that provides adequate amounts of vitamins A and E

**Shelter** - all horses should be able to get in from the wind and wet weather.

**Blankets** - as needed for the underweight, the very old, very young, sick, or thin-skinned horses

**Regular Farrier Care** - feet should be trimmed and, if shod, re-set at regular intervals, usually 6 to 10 weeks, depending on how much they have grown



# Animals In Print The On-Line Newsletter



24 September 2002  
Issue

## The Animal Tour Bus From Hell

Commentary by Margery Glickman  
Margery Glickman is the director of the Sled Dog  
Action Coalition.



Beyond the borders of Alaska's large cities, acts of barbarism against animals can easily happen.

Alaska, without a statewide humane officer to enforce animal cruelty laws, leaves animal control up to over-burdened state troopers who do not adequately understand the animal cruelty laws.

The saga of how the Alaska SPCA saved 66 animals from brutal treatment in Sterling, Alaska shows why a statewide humane officer, with an adequate support staff, is desperately needed to prevent atrocities in the future.

Here's what happened. With each advancing step, Alaska SPCA volunteer Nancy Wall's flashlight illuminated scenes of devastation and misery on a dark bitterly cold winter afternoon in Sterling when she went to check on Carolyn Boughton's animals. "The snow was littered with the bodies of Boughton's dead cats. There were legs and skulls from cats who had been torn apart and eaten," Wall said.

Each time Wall moved her flashlight along the ground she found more horrors. "I tripped over dead dogs," she said. One Bouvier des Flandres, a large black herding and guard dog, died tethered to a tree on a short chain when his legs became entangled in the wire from a fallen tarp. Two other dogs choked to death trying to free themselves from their tethers, their collars pulled back on their eyes. A pinch collar (a collar with blunt prongs that pinch the dog's skin when the collar is tightened) dug deep into one dog's neck.

In the dark, Wall could smell the stench long before she saw its source -- an old Greyhound tour bus. "I looked in the window and nausea almost overwhelmed me," Wall said. Through the windows she could hear the plaintive cries of the animals Boughton kept captive inside.

Wall brought in state troopers, who instead of removing Boughton's animals from their hellish conditions, told Boughton she had several days to make improvements. Determined to help the animals, Wall convinced Boughton to transfer their ownership to the Alaska SPCA. Diane Zarfoss and her team of one veterinarian and six Alaska SPCA rescuers then drove 2 1/2 hours from Anchorage to save the remaining dogs from

their agony.

"The situation was devastating," Zarfoss said.

"We had to wear gas masks to go inside, because the smell of urine and feces was so strong." The bus was stripped on the inside and plywood boxes with dogs were stacked along the walls. Each box had two to four holes the size of a quarter, but otherwise the dogs were enclosed in solid plywood. Some boxes held two dogs.

Zarfoss explained that the boxes were filled with urine and feces piled six to eight inches thick and that the dogs' fur was matted with excrement.

Their eyes were weepy from living in their own feces and urine, and with the -20 degree temperature, their eyes froze shut. One Kerry blue terrier's eye was so damaged that it was later removed and all the dogs received eye medication."

Food bowls weren't placed in the wooden crates, Zarfoss said. The dogs were on the brink of starvation and dehydration. Some Kerry Blue Terriers tried to chew their way out but died when their legs were wedged into the cracks in the plywood. "Other dogs froze to death. With their food bowls just out of reach," Zarfoss said, "the dogs tethered outside died lunging to get at them. In desperation, some had dug holes to get at tree roots to eat."

### **Domestic animals get little protection from abuse**

The Alaska SPCA warned state troopers about the animals' steadily deteriorating situation months before, but the troopers would not intervene.

Alaska has more protection for wild animals than for domestic ones, particularly dogs, cats and horses. "It is a disgrace that the laws and big budgets for domestic animals are frowned upon by the politicians," Alaska SPCA Executive Director Ethel Christensen said.

Christensen says that for decades the Alaska SPCA has had complaints from tourists and others asking it to do something about the atrocities in the areas of the State where there are no local laws. The Alaska SPCA has begged for help from the State to tighten laws and for a statewide humane officer to enforce them. Now is an ideal time to create this position.

### **Animals get a new start in life**

The Alaska SPCA rescued 66 dogs including Bouvier des Flandres, Kerry blue terriers, malamutes and Australian shepherd-husky mix dogs and brought them to Anchorage in airline kennels which the people of Anchorage had donated. There the Alaska SPCA set up triage for the dogs in a rented warehouse where the dogs were medicated, groomed and fed. A group of Alaska SPCA volunteers worked long and hard to give these dogs a new start in life. A malamute named Stormy was the last of the 66 dogs to be adopted; he left for a new home several weeks ago with a wagging tail and a bounce in his step.

### **Cost of rescue puts Alaska SPCA in dire financial straits**

The cost of the rescue exceeded \$30,000, forcing the Alaska SPCA to take out a mortgage on its shelter property. The Alaska SPCA is maxed out

financially as it has never received help from any governmental source. "These are the very people that support the sled dogs for economic reasons," Christensen said. "And, little do they realize the picture they have painted to those outside Alaska."

The Alaska SPCA is a non-profit, privately funded organization with no affiliation with the government or any other organization. The organization's founder and Executive Director, Ethel Christensen, has not taken a salary since she began the organization in 1966.

### **How you can help:**

Please send your tax-deductible donations to the Alaska SPCA:

Alaska SPCA  
549 W. International Airport Road, Ste B2  
Anchorage, AK 99518

Write to Alaska Governor Tony Knowles to ask that a statewide humane officer, with an adequate support staff, be hired immediately.

Email:

<http://www.gov.state.ak.us/emailform.html>.

Visit the Alaska SPCA website page [www.alaskasPCA.org/gmshelter.html](http://www.alaskasPCA.org/gmshelter.html) to view pictures of Boughton's property and to see the welcome the dogs received in Anchorage.

Margery Glickman is the director of the Sled Dog Action Coalition.

STAFF: [GLICKMAN37@AOL.COM](mailto:GLICKMAN37@AOL.COM)

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Please send comments and submittals to the Editor: Linda Beane [Ljbeane1@aol.com](mailto:Ljbeane1@aol.com)



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## Animal Abuse Cases - Details

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### Hoarding 45 dogs - (Sterling, AK - US)

Crime Date: 10/07/2001  
 Case Status: Alleged  
 Case Updates: [Available - Click Here](#)  
 Case Photos: [Available - Click Here](#)

Accused Abuser(s):  
[Caroline Boughton](#)

### Case Report

Alaska State Troopers are threatening to seize at least 45 dogs owned by a Sterling woman who has been accused of animal abuse for the last year.

Troopers said they found four dead dogs, two dead cats and scores of dogs needing basic care during a tour on Monday of a wooded lot where Sterling resident Caroline Boughton keeps her animals. They set an ultimatum.

As many as 20 dogs, purebred bouvier des Flandres and Kerry blue terriers, were kenneled in double-decker plywood pens inside a ramshackle Greyhound-style bus that was so fouled by urine and feces that the ammonia-like stench nearly brought tears to the eyes of veterinarian Jerry Nybakken, who assisted troopers serving a search warrant.

Two of the terriers had been killed by a bouvier, which gnawed through the plywood roof of its crate to get at the smaller dogs housed overhead. The body of one of the terriers was firmly wedged in a hole and its legs had been chewed from below, Nybakken said.

The rest of the dogs -- which included a mix of mutts and huskies -- were chained, cabled and roped to trees, trucks and other objects. Some were in much better shape than others.

Few of the dogs had shelter. Food and water bowls were overturned and appeared unattended, Nybakken said. Warm bedding such as straw was absent. Inside the bus, the dogs' fur was matted and covered with feces and every pen was wet with urine, he said.

"I think we have a case here of neglect, bordering on cruelty," Nybakken said on Tuesday. "My personal opinion is, Caroline should never have this many dogs," he said. "If she wants dogs, she's going to have to keep them within her economic means to support them."

Boughton said she still enjoys her dogs, has done nothing wrong and is struggling to juggle the demands of her landlords, whom she said insisted she kennel her dogs in the bus.

Her landlords, Milton and Lee Ross, say Boughton owes them \$1,350 in back rent and pay for helping to feed the dogs. The Rosses live on the lot and agreed to let

Boughton pay them to keep her dogs there, but now say they want her out.

Boughton, who lives nearby, said she has nowhere to go. It's hard finding a rental when you've got dozens of dogs, she said.

The Texas transplant first got into trouble last fall after a Kenai Peninsula animal cruelty organization accused her of neglect for keeping her dogs in a Sterling junkyard. She quickly hired some helpers who got straw for the dogs and began feeding them. At the time, troopers deemed her care adequate.

But after Boughton moved her animals to a 2.6-acre wooded property on Spruce Lane outside Sterling, the barking, fighting and loose dogs soon prompted angry calls from her new neighbors.

Two chapters of the Society for the Prevention of Cruelty to Animals, the Alaska chapter based in Anchorage and a newly formed Kenai Peninsula group, have been struggling to help Boughton's dogs, with different tactics.

The Alaska chapter has been working with Boughton for months, helping her reduce her kennel size a few dogs at a time, said Nancy Wall, the chapter's Peninsula volunteer.

The Kenai organization has been more direct. It was the group that first demanded action last fall, and it also called in the troopers this week.

Its founder, Michele DeMilla, accepted four or five of Boughton's sickest dogs. Those dogs were to be taken to a veterinarian for treatment and documentation, Nybakken said. DeMilla declined to comment until the situation is resolved.

Troopers said they would like to come back Friday and see that Boughton is providing adequate care for her animals. But Tressler said that if they get another complaint about her, they will seize her dogs.

Just what would happen with the dogs if they are seized isn't clear. Even the official number of dogs is vague. Troopers estimated that about 45 dogs were on the property. Boughton said she had many more than that. And Nybakken guessed the number might be closer to 100.

"What a mess, huh?," said Judy McConnell of Anchorage, the American Bouvier des Flandres Club's designated rescue person for the region. "This whole thing has been a nightmare for a year, as far as I'm concerned."

If a court were to make a final ruling, McConnell said, the nationwide club has the finances, expertise and contacts to place whatever dogs were deemed suitable.

Alaskans are accustomed to sled dog yards, and while that sort of kennel works with active teams of huskies, it isn't appropriate for bouviers, she said. The independent breed has a tough side and needs a lot of one-on-one love, she said.

McConnell and other bouvier fanciers describe Boughton as a "collector," a person with a good heart who wants to protect animals but lets them breed and gets overwhelmed when their numbers swell.

Two of Boughton's dead dogs are bouviers. One was found at the end of its cable tether wearing a spiked choke collar, but Nybakken said he was unsure what caused the death. The other was found with three of its paws tangled in nylon rope, he said.

Boughton, feeding Atta Boy to her dogs Tuesday evening, said she suspected foul play in both cases and wanted an autopsy on the dogs' frozen carcasses, still laying on the ice. "Both of those dogs were very active the day before yesterday," she said.

"All of a sudden they're dead, overnight. I'd like to learn why."

Troopers said a report would be forwarded to the Kenai district attorney's office for consideration of possible charges of animal cruelty, a misdemeanor. Boughton said she has tried to give away her dogs, but had no luck.

She said she refuses to take them to the pound because some would inevitably be put down. I've got too big of a heart," Boughton said. "All I want for them is a home."

### Case Updates

Posted: Apr 22, 2003 - 5:49 PM

The Boughton trial has once again been postponed. The Judge did give admonishment that Ms. Boughton needs to work with her doctors so that she can be lucid even if in some discomfort by the new trial call date of 7/25 and trial set for 8/5.

Posted: Feb 5, 2003 - 9:49 AM

Boughton rescue trial has been postponed until 4/22/03

### References

- [Anchorage Daily News](#)

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# Alaska King Crab

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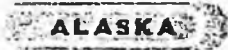


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## Owner again accused of neglect

### DOGS: Sterling woman has until Friday to improve living conditions for pets.

By Jon Little  
Anchorage Daily News  
(Published: November 7, 2001)

Sterling -- Alaska State Troopers are threatening to seize at least 45 dogs owned by a Sterling woman who has been accused of animal abuse for the last year.

Troopers said they found four dead dogs, two dead cats and scores of dogs needing basic care during a tour on Monday of a wooded lot where Sterling resident Caroline Boughton keeps her animals. They set an ultimatum.

"She's got till Friday to make living conditions for those dogs better, or we will seize the dogs," said Trooper 1st Sgt. Charles Tressler.

As many as 20 dogs, purebred bouvier des Flandres and Kerry blue terriers, were kenneled in double-decker plywood pens inside a ramshackle Greyhound-style bus that was so fouled by urine and feces that the ammonia-like stench nearly brought tears to the eyes of veterinarian Jerry Nybakken, who assisted troopers serving a search warrant.

Two of the terriers had been killed by a bouvier, which gnawed through the plywood roof of its crate to get at the smaller dogs housed overhead. The body of one of the terriers was firmly wedged in a hole and its legs had been chewed from



A bouvier des Flandres, a shaggy herding and cattle dog, is among dozens of dogs tied outside without bedding in a Sterling area yard on Tuesday. Alaska State Troopers have told the dogs' owner, Caroline Boughton, to improve the conditions or risk the seizure of her animals.

(Photo by Jon Little / Anchorage Daily News)

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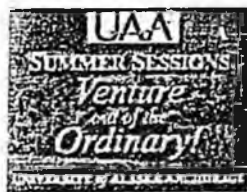
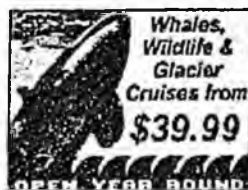
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below, Nybakken said.

The rest of the dogs -- which included a mix of mutts and huskies -- were chained, cabled and roped to trees, trucks and other objects. Some were in much better shape than others.

Few of the dogs had shelter. Food and water bowls were overturned and appeared unattended, Nybakken said. Warm bedding such as straw was absent.

Inside the bus, the dogs' fur was matted and covered with feces and every pen was wet with urine, he said.

"I think we have a case here of neglect, bordering on cruelty," Nybakken said on Tuesday.

"My personal opinion is, Caroline should never have this many dogs," he said. "If she wants dogs, she's going to have to keep them within her economic means to support them."

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Her landlords, Milton and Lee Ross, say Boughton owes them \$1,350 in back rent and pay for helping to feed the dogs. The Rosses live on the lot and agreed to let Boughton pay them to keep her dogs there, but now say they want her out.

Boughton, who lives nearby, said she has nowhere to go. It's hard finding a rental when you've got dozens of dogs, she said.

The Texas transplant first got into trouble last fall after a Kenai Peninsula animal cruelty organization accused her of neglect for keeping her dogs in a Sterling junkyard. She quickly hired some helpers who got straw for the dogs and began feeding them. At the time, troopers deemed her care adequate.

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Troopers said they would like to come back Friday and see that Boughton is providing adequate care for her animals. But Tressler said that if they get another complaint about her, they will seize her dogs.

Just what would happen with the dogs if they are seized isn't clear. Would they go to an animal shelter until the courts make a final ruling? Would they be sent one or two at a time to rescue homes? Troopers aren't certain.

Even the official number of dogs is vague. Troopers estimated that about 45 dogs were on the property. Boughton said she had many more than that. And Nybakken guessed the number might be closer to 100.

"What a mess, huh?," said Judy McConneil of Anchorage, the American Bouvier des Flandres Club's designated rescue person for the region. "This whole thing has been a nightmare for a year, as far as I'm concerned."

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"I've got too big of a heart," Boughton said. "All I want for them is a home."

Reporter Jon Little can be reached at [jlittle@adn.com](mailto:jlittle@adn.com) or at 907-260-5248.

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## Animal cruelty case points need for tougher laws

Montana volunteers are caring for the collies and other animals found in the Harmans' truck, and the effort is straining local resources.

Lynn Melling

Anchorage, Alaska, Nov. 8 - John and Athena Harman of Nikiski are awaiting trial in Montana, charged with animal cruelty after being arrested at the Canadian border last week.

The SPCA says, as the Harmans were heading out of town, they were stopped by Animal Control and told to clean things up. They left town anyway, only to be stopped at the border.

Volunteers in Montana are now nursing the Harmans' dogs back to health -- nearly 200 of them. The effort is taking a toll on financial and emotional resources there.

Alaska animal advocates are appalled by the Harmans' story, and say the warning signs were sitting in Nikiski for years. They also say it's time to strengthen Alaska's animal cruelty laws.

At the end of a narrow dirt road in the woods outside Nikiski sits the Harman place -- a plot of land littered with

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everything from crates and rugs to old cars. It's the remains of a now defunct dog breeding kennel known as Valiant Collies.

"Like a pigpen, there was just muck everywhere," says Stephanie Batchelder, a dog groomer who worked for the Harmans about 10 years ago.

Batchelder says the dogs were in such bad condition, she lasted only a day.

"They had to have been unhealthy, being that wet and having feces on them all the time. They're going to get sores," she said.

There's little evidence now, but pictures show several dogs at a time crammed into small fenced-in areas.

Concerned neighbors only add to the picture. One woman says the place appeared to have been hot-wired -- with jumper cables hung from wire kennels. She suspects they were hooked to a battery and used to jolt the animals, to keep them under control.

It came as no surprise to some in the Nikiski area that the Harmans were arrested for animal cruelty in Sweet Grass, Montana, last week. U.S. Customs officials caught them at the Canadian border on a trip from Alaska to Arizona, with more than 170 dogs and 11 cats packed from top to bottom in a semi-trailer -- sick and living in their own waste.



Courtesy Photo / KTUU

A volunteer in Montana makes a friend.

"I could've seen it coming, definitely," says Batchelder.

The Harmans face more than 180 misdemeanor counts of animal cruelty, a situation animal advocates say could have been prevented.

"It's just not right," says Diane Zarfoss of the Alaska Society for the Prevention of Cruelty to Animals. Zarfoss says the SPCA has dealt with complaints about the Harmans for years, but Alaska's laws made it nearly impossible to do anything to stop the neglect.

According to Alaska State Troopers, the law on animal cruelty states: A person cannot "intentionally inflict pain or cause prolonged suffering on an animal," nor can someone fail to care for an animal to the extent it results in the animal's death or suffering.

Violation of this law is a class A misdemeanor offense. Animal advocates say the statute doesn't do animals justice.

"They really can't do a whole lot unless they can prove that they were doing the neglect on purpose," says Batchelder.

Advocates also say the weak law is not the only problem. State enforcement should be stepped up, too.

"We can't rely on troopers to provide this service," says

Zarfoss.

Troopers are responsible for inspecting complaints of animal neglect outside the limits of a city with an animal control operation. Both advocates and troopers themselves say this puts a strain on already thin resources.

"We're short of people and, obviously, the population in this neck of the woods is growing," says First Sgt. Chuck Bartolini of the Soldotna trooper detachment.

Bartolini says they do the best they can to respond to calls of animal cruelty. Fortunately, he says, few such calls are received. He says a trooper inspected the Harmans' kennel almost two years ago, and, in the officer's opinion, the dogs were adequately cared for. Bartolini says that if there appears to be abuse, troopers will call in an animal expert. He'd like to see such a person on the borough's staff.

"It would help us greatly if the borough had some sort of enforcement power, and an animal control officer that could actually investigate these cases and take the time," Bartolini says.

Zarfoss wants to take that idea even further and hire a state humane officer, someone to deal strictly with animal cruelty cases, and who is authorized to step on private property and stop neglect as soon as complaints come in. She says lawmakers could complete the package with more clearly defined laws to support that person.

"It's getting worse. It's getting larger numbers and it's getting way out of hand," says Zarfoss.

She recalls the Carolyn Boughton case, in which a Sterling woman was charged with neglecting 66 dogs and some other animals. The animals were rescued by the SPCA a year ago this month, but the cruelty case has yet to go to trial.

"It's still in the courts. Nothing has been done," says Zarfoss. She fears the Harman case will drag on for a long time, as well.

Meanwhile, the dogs being cared for in Montana still belong to the Harmans unless they're proved guilty in court. In the meantime, the dogs -- now recovering from a traumatic trip across the border -- will have to wait to go home, wherever that turns out to be.

Currently, the Harmans are out on bond. People in the Nikiski area say John Harman may be back in Alaska, but he wasn't at his property when Channel 2 News stopped by, and the couple could not be reached for comment on this story.

To outsiders, the Harmans' breeding operation seemed to be quite professional. The couple has won competitions, and their Web site tells others how to care for dogs.

Some neighbors say they believe the Harmans had good intentions but the operation just spun out of control. Others say, quite frankly, they think the couple was running a puppy mill, breeding huge numbers of dogs to sell. The Harmans' Web site lists prices of up to \$2,000 per dog, or more.

Animal advocates say puppy mills are not unusual in Alaska and the only way they're going to be stopped is if people stop buying puppies from pet stores. Pet stores disagree that the puppies they buy are raised in inhumane conditions.

Another question to be investigated is whether the Harmans' Nikiski operation was cruel, or whether it was simply a matter of how the Harmans chose to transport the dogs as they were moving out of state.

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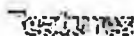
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ALASKA AP

## Neighbors say charged couple kept flawed kennel

The Associated Press

ANCHORAGE AP) - Neighbors of two Nikiski collie breeders facing 182 counts of misdemeanor animal abuse say the operation had a notorious reputation in the rural subdivision near Island Lake Road.

But at least two people who bought dogs from Vallant Collies said the animals arrived in fine shape and that they have no complaints.

The kennel was loud and smelled and groups of collies would occasionally escape to roam, according to neighbors interviewed by the Anchorage Daily News.

"I've never, ever, ever seen any one of those dogs in good condition," said Missy Batty, who until recently lived next door to the kennels.

Batty is moving out of the area in part, she said, because of the hassle of living next door to the collie breeders.

The owners, Jonathan Harman, 49, and Athena Ann Lethcoe-Harman, 40, are awaiting a jury trial in Shelby, Mont. They were stopped Oct. 31 at the U.S.-Canada border in Montana while driving from Alaska to Arizona with a semi loaded with 171 dogs and 11 cats.

Authorities say the animals were in bad condition inside the poorly ventilated 40-foot trailer. Many could not walk and some were thin and dirty. One dog was dead.

The Harmans had received a written warning about the condition of their dogs a week earlier while their tractor trailer rig was parked at an Anchorage store, according to Anchorage Animal Control.

The dogs and cats are being fed and walked by residents of Shelby until a trial determines whether the animals can be returned to their owners.

Batty and other neighbors of the Harmans said they didn't like going up to what many call "the collie house" because of its odor, but

their friends.

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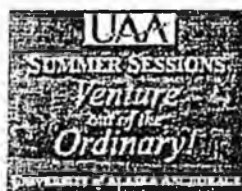
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sometimes they had to visit to return escaped collies.

"Those dogs, you could hear them all the time. Several would escape from time to time. They were always really stinky," said Patty Gallien, who lives about half a mile away. "In the summer, when you open a window, you can hear the dogs barking half the night."

Nikiski has no local government and the Kenai Peninsula Borough does not have animal control powers.

Gallien said she has lived there for 12 years and the collies have been there the entire time.

Despite citing frustrations over dealing with the nuisance, neighbors of the Harmans expressed empathy for Athena Harman, describing her as a person who loved her dogs but who was so disabled by chronic diabetes that she may not have been able to cope with the responsibility.

A former kennel employee told the Great Falls, Mont. Tribune said he worked for the Harmans for 10 years, until he was 18, but quit in disgust.

Brett Encelewski, 21, said kennel conditions were decent when he started, but worsened over the years. Toward the end, he said, Lethcoe-Harman took special care of about a dozen of her favorite dogs, but kept the rest in overcrowded and filthy pens.

However, collie breeders Darlene Kerr of Regina, Sask., and Dana Giles of Nova Scotia told the Montana newspaper that dogs they acquired from Lethcoe-Harman were healthy, well-cared for and arrived in fine shape. Both said they had not visited her breeding business in Alaska.

"To say her dogs are abused, I'm sorry, I can only speak from what I've seen, but Shiloh (the first dog she got from Lethcoe (Harman)- was in excellent condition," she said.

Lethcoe-Harman is a member of the Normal Eyed Network and has been breeding her dogs to eliminate genetic problems such as Collie Eye Anomaly, an eye disorder that can cause blindness.

Kerr said Shiloh has produced five normal-eyed collies, four of which are champions. She said some breeders are criticizing Lethcoe-Harman harshly on Internet chat rooms.

"This woman is not what they're saying she is," Kerr said. "They're crucifying her. For years, Athena has been outspoken about the thing you can defeat, Collie Eye Anomaly. She has been very vocal about breeding for health."

Giles said she bought three collie puppies from Lethcoe-Harman in 1997 and 1998 and the puppies arrived in excellent shape. She said canine ophthalmologists raved about the dogs and the condition of

their eyes.



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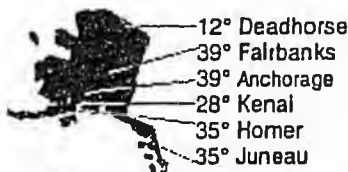
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Web posted Monday, March 3, 2003

## Arizona residents scout out Harmans' new property

By **CAROL BRADLEY**  
*Special to the Peninsula Clarion*

Upset by the saga of the collies in Montana, Diane Troxell of Arizona wondered what type of facility dog owners Jon Harman and Athena Lethcoe-Harman had in mind if and when they relocated their dogs to her part of the world.

To find out, Troxell recently chartered a small airplane. Together with her husband and a friend, she flew over the Harmans' property.

On a flat, barren stretch of high desert south of the tiny town of Woodruff, Ariz., Troxell spied a Quonset hut-style metal building and, adjacent to it, four fenced dog runs.

It's what she didn't see that concerned her.

No source of power. No sign of water. And no shade.

"The metal building doesn't look large enough" to house the dogs, Troxell said in a phone interview with the Great Falls Tribune in Great Falls, Mont. And "if the dogs are outside in the desert sun and it's 100 degrees in the summer, they're going to bake."

The Harmans were moving from Nikiski to Woodruff when U.S. Customs inspectors stopped their tractor trailer late last Halloween night as the couple approached the Canada-Sweet Grass, Mont., border stop.

By morning, the Harmans had been charged with animal cruelty, and by the following night, authorities had removed 166 collies, five other dogs and 10 cats from the tractor trailer.

The dogs were thin, dehydrated, wet, cold and stressed, veterinarians testified during the first trial. A number of the

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dogs were emaciated.

One dog was dead.

The seven-day trial in January resulted in a deadlocked jury and a mistrial. Teton County Justice of the Peace Pete Howard will decide today whether to retry the Harmans on 181 counts of misdemeanor animal abuse.

The Harmans' attorney is asking Howard to dismiss the case and let his clients carry forward with plans to move their large kennel to Arizona.

The collies have been housed at the Marias Fairgrounds outside Shelby, Mont., for the last four months.

But Troxell worries that returning the dogs to the Harmans would only invite more headaches.

"It becomes Arizona's problem if she repeats that pattern of behavior," she said of Lethcoe-Harman.

Neighbors of the Harmans in Nikiski have described their kennel here as a maze of rundown pens and outbuildings, known for its pungent odor and filthy dogs.

Defense attorney Scott Albers portrayed Lethcoe-Harman as a champion dog breeder who let her Valiant Collies kennel swell in size because she was trying to breed out collie eye anomaly, a condition that causes blindness in 2 to 5 percent of collies.

If the Harmans simply had been allowed to drive on through to Arizona, the dogs would have been fine, Albers argued. At one point during the trial he held up a photo of the newly constructed 40-foot-by-40-foot metal building to demonstrate the degree of planning that had gone into the move.

That's not much bigger than the 45-foot-by-8-foot tractor trailer the dogs were driven in the 2,240 miles from Alaska to Montana.

When the mistrial was declared, Troxell tracked down the coordinates of the Harmans' property, which is south of the Navajo Nation and west of the Zuni Indian Reservation in the northeastern section of the state.

It runs along a private dirt road a mile or two off a public dirt road, Troxell said -- impossible to reach by ground without trespassing.

From her seat in the Cessna 172, she snapped photos of the site and mailed copies to Toole County Attorney Merle Raph in hopes he'll use them during the second trial, if one is held.

Two weeks ago, Troxell also e-mailed one of the photos to a collie chat room on the Internet, where the picture generated considerable buzz.

A supporter of the Harmans identified on the chat site as Pennsylvania collie breeder Lauren Wolfe responded that the metal building is insulated and "will or does have" air conditioning. Solar panels will provide electricity, she wrote.

She said the dogs would be let out in groups into the pens, which measure 48-feet by 196-feet, "and will come in to their own private kennels."

Contacted Friday, Wolfe declined to discuss the matter further.

A veterinarian at the Flagstaff Animal Hospital in Flagstaff, Ariz., which is about 100 miles west of Woodruff, said he didn't think the high desert climate would pose a hardship to the long-haired collies.

The Woodruff area is above 5,000 feet, Dr. Fred Bush said.

"It doesn't get too hot and it's real windy," he said. "It would be parasite-free -- like Flagstaff. We don't have ticks, fleas, any of that stuff."

He added that northeastern Arizona escapes terrible winters. "Maybe a little snow. Not much," Bush said. "Six inches would be a lot."

It's uncertain how many collies the Harmans would house at the kennel. After the mistrial was declared, Albers said Lethcoe-Harman was willing to adopt out some 70 of the dogs. She wanted to keep the remaining 100, he said.

Troxell said people can judge for themselves if the Arizona facility looks adequate. A collie owner, she said her own dog can stand "about 20 minutes out on the patio in the summertime" before wanting to come inside.

"I wish I didn't have to take the picture. I'm the kind of person that minds my own business," Troxell said. But "it looks like there were some really abhorrent conditions in Alaska. I don't want that to happen here."

Carol Bradley is a reporter for the Great Falls Tribune.

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**UPDATE 1/22/03 on the Montana Collies**  
**Statement by AWCA President Jean Levitt, from Shelby, MT**  
**\*Permission to crosspost\***

**Trial**

At 9 AM opening arguments began. Athena Lethcoe-Harman and John Harman were charged with 181 counts of animal cruelty. The original charge of 182 counts was changed because authorities originally thought there were 11 cats instead of 10.

Defense attorney Scott Albers stressed the importance of the Valiant kennel because of the genetic work Ms. Harman was doing over the past 20 years with collie eye anomaly. He explained she needed a large amount of dogs to carry out her work. He explained the Harmans were moving to Arizona: 1, because of the weather; 2, larger population to sell unneeded dogs to keep number of dogs down. He explained the normal practice in Alaska was to just shoot all dogs no longer needed in a kennel. She chose to truck the excess dogs to Arizona rather than shoot them; 3, more stud dogs available; 4, many Europeans are interested in her dogs. In Arizona she can ship more dogs to Europe; 5, she is diabetic and needed a warmer climate.

Albers stressed how carefully the Harmans planned the trip to ensure it would go well because of the importance of AKC registration.

Prosecutor Merle Raph, assisted by Teton County attorney Joe Coble, called U.S. Customs Inspector Russell Hancock of the Port of Sweetgrass. Hancock testified the Harmans said they were transporting 105 dogs, and that each dog had its own kennel except for a few puppies. Concerned that the dogs needed food and water, he stated he discussed this with Ms. Harman. She replied they didn't have any food. The defense pointed out it had only been 12 hours since they had been last fed and watered. He stated she wanted to buy food, but that it was 10:30 at night and the nearest open store was about 60 miles away. They had some water in a blue plastic barrel. According to the inspector at Sweetgrass, the only food on the truck was in the bottom of the crates soaked in urine and fecal material. Inspector Hancock testified he detained the Harmans to get a veterinarian to check the overall health of the animals. He said it was an unusual case.

Deputy Sheriff Mike Lamie described inching his way to the back of the truck sideways along the filthy narrow aisle after the chainlink fencing panels were removed. He described the urine and fecal material that dripped onto his uniform from the crates piled up on both sides of the truck. He looked into the pens with his flashlight and saw the collies wet with the urine and fecal material. He described the foul smell, the 0 degree temperature, and the frozen condensation on the ceiling of the poorly ventilated truck. He called the Toole County Sheriff's Office in Shelby and reported his findings to then-Undersheriff Donna Matoon. He also called in Dr. Hardee Clark, Shelby veterinarian, to assess the condition of the dogs. The portable fence panels from the truck were set up outside, and about 20 dogs were offloaded. He testified Ms. Harman began giving the dogs water, and attempted to scoop out filth in the bottom of some crates. He described two collies separated from the others, not drinking water, and appearing listless. Deputy Lamie testified Dr. Clark asked Ms. Harman why the two dogs appeared unwell, and were separated. She said they were separated because they were recovering from parvo. Deputy Lamie explained he felt a crime was being committed.

Defense attorney Albers pointed out Ms. Harman was diligently watering the 15-20 dogs in the pen, and cleaning their empty crates. He reviewed Deputy Lamie's written report and asked him about his statement, "Frozen particles of liquid in the dogs' fur." Albers explained there had been a flood in Alaska before the Harmans began their trip.

Prosecutor Merle Raph called Dr. James Becker, DVM, the Port of Sweetgrass veterinarian. He described the sanitation - "Very filthy, filthy cages, filthy animals, and some cleaning had taken place before I got there." He assessed the overall condition of the dogs, "saw one dog basically OUT, couldn't get up, died shortly." His decision: "Must clean up situation as soon as possible and get those dogs treated." He further stated, "Dogs were definitely on the thin side. I wanted to see if these critters were able to stand." He testified he asked Ms. Harman, "What happened?" She explained, "Fire." He testified he asked if she had considered aborting the mission. He testified that she said she didn't think they would make it through the winter in Alaska.

Court was then adjourned until 9 AM Thursday. The trial is expected to last through Friday.

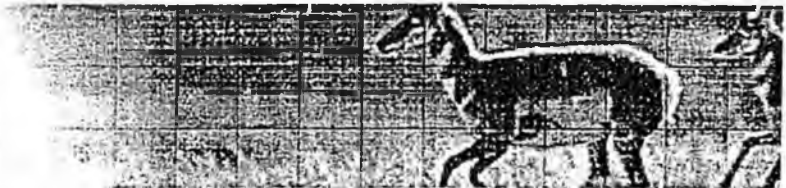
Thea Sperline, professional groomer Kay Bullard, and I drove out to Camp Collie today to see the dogs at lunchtime. They are clean, well fed, and of course continuing to receive veterinary care. The dog with the most serious hernia has had surgery and is recovering nicely. AWCA is proud to be able to pay his bill, and we thank the animal community for making that possible.

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Alaska.

Call it the tale of two trials.

On January 30, a Toole County, Montana, jury could not reach an unanimous decision in the misdemeanor trial of Jonathan Lewis Harman and Athena Lethcoe-Harman; the Alaskan couple was charged with 180 counts of animal cruelty for transporting 169 dogs and 11 cats in an unventilated tractor-trailer while apparently providing little food, water or veterinary care. Many of the animals suffered from one malady or another, from dehydration to malnutrition, and before the Harmans were finally stopped at the U.S.-Canadian border, one dog had died during the couple's 2,000-mile-plus trip from

The six deadlocked jurors forced Toole County Justice of the Peace Janice Freeland to declare a hung jury after the seven-day trial. The decision was "initially devastating," remembers Dave Pauli, director of the Northern Rockies Regional Office, who helped coordinate the rescue and sheltering of the animals and who testified at the trial. "We couldn't understand why the jury let them off the hook."

Fast-forward to late May in the Anaconda-Deer Lodge County courthouse, where the Harmans' second trial was moved due to the huge amount of publicity in Toole County. The prosecutors' incomprehension following the hung jury in January was now supplanted with a renewed focus on how to convince a six-person jury that the Harmans were guilty.

Five days later, on May 31, a Deer Lodge County jury deliberated less than two hours and unanimously convicted the Harmans on 180 counts each of animal cruelty. The shock of January had turned into jubilation. A small courtroom audience reportedly erupted into cheers and applause.

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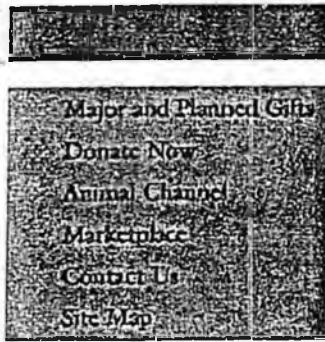


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So why the drastic difference between the two trials? According to Pauli and a published report in the *Great Falls Tribune*, it probably boiled down to a few things: the evidence introduced (or not introduced), the witnesses called, the length of trial, the jury instructions, a different judge, and possibly a more receptive political environment thanks in part to The HSUS's help in advancing a tougher animal cruelty bill through the Montana legislature.

In the original trial, Pauli noted, the prosecution focused almost exclusively on a 48-hour window when the animals were confiscated at the border and then treated for a variety of ills. The approach proved to be too limiting when the defense team introduced witnesses who testified about Lethcoe-Harman's "show-dog record" and efforts to "weed out" a disease called Collie Eye Anomaly; the defense even took the jury to "Camp Collie," a temporary shelter in Shelby, where the dogs, after several months of care by rescue volunteers, "looked like Lassie," Pauli said.

In the second trial, the prosecution successfully filed motions to block much of the defense team's tactics, including a jury visit to "Camp Collie II," where the animals had been transferred since the first trial. (Read "Camp Collie II: Great Falls, Montana, New Home to Rescued Animals" below.) Perhaps more important, Pauli added, was the fact that the prosecution expanded its case to present witnesses who encountered the Harmans earlier in their trip, well before the couple was stopped at the border.

These witnesses proved crucial, Pauli said. One witness, an animal control officer, approached the Harmans in a Wal-Mart parking lot in Anchorage, less than three hours into their trip. When the couple allegedly couldn't present the correct paperwork, including rabies and health certificates, the officer gave the Harmans a 24-hour warning to secure the documents. When he returned, Pauli said, the Harmans were long gone. Another prosecution witness testified to the poor conditions of their rig, long before the Harmans approached U.S. territory.

Pauli's own testimony focused primarily on the transport of these animals. He believed that the sheer act of transporting 180 animals for many days in an unventilated tractor-trailer—one in which many of the animal carriers were not affixed to the walls or floor—constituted animal cruelty. But under the state's misdemeanor animal cruelty law, Pauli said, the Harmans had to be convicted of only one of several possible cruelties. One of those is inhumane transport.

Unfortunately, the Harmans could not be tried under Montana's new felony-level animal cruelty law, which Governor Judy Martz signed into law in April. The law won't become effective until July 1, so its tougher penalties couldn't apply to the Harmans. At their June 6 sentencing the Harmans were each given a ten-year suspended jail term in exchange for relinquishing all but three of their 191 animals and waiving their right to an appeal, a process that could have further prolonged the case (Under Montana law, justice court misdemeanor cases can be immediately appealed to state District Court.)

While the Harmans could have been required to pay up to \$500 for each misdemeanor count, the couple was not fined or told to repay thousands of dollars to Toole County to cover the costs—estimated at \$1,000 a day—of caring for the animals (although the county apparently covered only part of those costs; the rest have been paid by animal groups or through private donations).

Perhaps most important however, the sentencing agreement prohibits the Harmans from owning any other animal other than the two dogs and one cat that will be returned to them for the next ten years. They are also forbidden to breed any animal during that period.

Even though the Harmans won't suffer the stiffer penalties, the couple's case did help instigate the tougher animal cruelty law, Pauli noted. The original bill, he said, was stalled in a House subcommittee when the hung jury was announced in January. The public outrage was palpable.

The HSUS and other animal organizations pounced on that public sentiment and coordinated an e-mail and letter-writing campaign targeting the tougher cruelty bill. The lobbying pressure worked: Despite the current conservative nature of the Montana legislature, not to mention the conservative nature of the specific agriculture subcommittee where the bill was stalled, the proposed legislation made its way through the full House and to the Senate. It didn't make it out of the legislature, Pauli noted, until the last day of the session, an indication of the political resistance toward the bill.

The law not only calls for tougher penalties—it also allows the legislation to be applied to those with ten or more animals in their possession. "This will be huge in helping us deal with animal hoarder cases in the future," Pauli added.

But as for the present, prospects for the dogs and cats have already improved. The HSUS, the American Working Collie Association and other groups are helping to coordinate adoption clinics to handle the thousands of offers to adopt the Harmans' former charges. With the possibility of an appeals trial removed, the animals can now be adopted out into loving homes.

That might be the ultimate sign of justice.

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## ALASKA

### Collector gets doggone overhaul

**POOCHES:** Volunteers help Richard Hall spay, neuter, adopt out some of his 400 dogs.

The Associated Press  
(Published: May 5, 2003)

FAIRBANKS -- Richard Hall's dog yard became more manageable this week after about 100 local volunteers set up an assembly line to spay, neuter, euthanize or adopt out many of the nearly 400 dogs he was keeping.

The volunteers spayed or neutered 70 to 100 dogs a day at a makeshift clinic in the Goldstream Valley.

Hall has roughly 200 dogs left. But he's still mourning the dogs that were put down or released for adoption. Volunteers are caring for the dozens of dogs as they wait for permanent homes.

"There's been a tear or two. It's just kind of sad to walk around and realize ... there's some I shouldn't have parted with," Hall said. "Anyhow, it will get better. I hope."

The endeavor to help Hall downsize and get his dogs physically fit -- some dogs suffered from malnutrition, dehydration and other ailments -- came after Hall told a couple of local veterinarians he was worried about his ability to maintain all his dogs.

The volunteer effort took months to plan. It involved an outpouring of donations from community groups, veterinarians and local businesses.

Animal control officials say there were regular complaints against Hall, but each time he responded. Over the years, the borough has regularly cited Hall for offenses such as dogs that weren't immunized or were running loose.

"Mr. Hall was basically trying to do things to the best of his abilities. He had no malicious intent," said Tim Blqqane, who oversees animal control for the



Richard Hall had almost 400 dogs on his property in Fairbanks. A community effort spearheaded by the Humane Society of the United States helped spay, neuter or euthanize them. Some were adopted. (Photo by John Hagen / Fairbanks Daily News-Miner)

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**Fairbanks North Star Borough.**

"He's guilty of having a caring heart," Biggane says, and cracking down didn't seem right.

"When we get into the judiciary process, it's a slow process. It's not beneficial to either party. It takes a lot of time and a lot of money."

Dave Pauli, regional director for the Humane Society of the United States, said the effort involving Hall is a unique one.

Pauli travels the country handling animal crises. He doesn't often respond to multi-animal cases involving a single owner, especially without impetus from the courts.

"Any legal recourse would have been a long, dragged-out affair, and somebody would have had to care for those 400 animals," Pauli said.

"I think Mr. Hall is making great efforts in trying to (compromise). He was wonderful. He made many, many tough decisions each day."

Half of Hall's dogs were euthanized, adopted or put in foster care. Dogs were put down for reasons such as ill temperament or bad health.

A borough animal-control officer is looking after 74 dogs on her property in Colina. Those dogs are available for adoption.

Hall says he misses the dogs that are gone. He was reached by cell phone at a grocery store, where he had stopped to buy hot dogs to use to administer medicine to some of his remaining animals.

Hall doesn't believe in euthanizing dogs, but he's had to compromise that philosophy.

"I was warehousing some man-eaters, some really bad characters," he said. The Humane Society "kind of got me to change the philosophy on some of that stuff."

Hall appreciates the effort to help him: "A bunch of good people volunteered."

Jeanne Olson, a borough veterinarian who helped organize the effort, said volunteers are working to help Hall reorganize his yard and come up with a plan to care for the remaining dogs.

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## Animal Cruelty and Family Violence: Making the Connection



Pets are part of the family in the majority of American households, where nearly three-quarters of families with school-age children have at least one companion animal. These animals are often treated like members of the family,

but if the family is experiencing violence they can become targets as well. Pets are often an important source of comfort and stability to the victims of abuse, particularly children. But abusive family members may threaten, injure, or kill pets, often as a way of threatening or controlling others in the family.

A 1997 survey of 50 of the largest shelters for battered women in the United States found that 85% of women and 63% of children entering shelters discussed incidents of pet abuse in the family. Children who have witnessed domestic violence or who have been the victims of physical or sexual abuse may also become animal abusers themselves, imitating the violence they have seen or experienced. A study conducted in 1995 noted that 32% of the pet-owning victims of domestic abuse reported that one or more of their children had hurt or killed a pet. Similarly, a 1983 study noted that children were reported to be abusive to animals in more than a third of a sample of pet-owning families referred to New Jersey's Division of Youth and Family Services for suspected child abuse.

It is essential for those who respond to family violence to be alert to this connection. Professionals in domestic violence intervention, law enforcement, child protection, human and veterinary medicine, education, and animal care and control should get to know their counterparts in other professions and work together to establish strategies for a coordinated response to these needs.

In fact, professionals who help families in crisis are increasingly recognizing the role that animals play in the dynamics of family violence. Many law enforcement agencies are training officers who respond to domestic violence calls to be alert for signs that a situation is life-threatening. These include situations where the batterer has threatened suicide, is displaying a firearm, or has hurt or killed a family pet.

In addition, local domestic violence shelters and animal protection organizations

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have begun partnering to develop "safe havens" for the pets of domestic violence victims because many victims delay leaving the abusive batterer out of fear for their pets' safety. All too often, batterers punish victims for leaving by abusing or killing the pets. Yet, with the help of over 100 safe haven programs, currently operating around the United States, many domestic violence victims no longer have to choose between their safety and their pets.

The First Strike® campaign can help in the process of bringing professionals together from a variety of agencies. We facilitate workshops and provide educational materials specifically for various professionals working to prevent family violence. For more information, please call our First Strike toll free line at 1-888-213-0956.

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Animal Cruelty/Domestic Violence Fact Sheet

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# Animal Cruelty/Domestic Violence Fact Sheet

### Why do batterers threaten, abuse, or kill animals?

- To demonstrate and confirm power and control over the family.
- To isolate the victim and children.
- To eliminate competition for attention.
- To force the family to keep violer secret.
- To teach submission.
- To retaliate for acts of independence and self-determination.
- To perpetuate the context of terror.
- To prevent the victim from leaving or coerce her/him to return.
- To punish the victim for leaving.
- To degrade the victim through involvement in the abuse.

### Why should we recognize animal abuse as a form of battering?

- Animal abuse exposes the deliberateness of battering rather than loss of control.
- Animal abuse and child abuse are closely related.
- Animal abuse is often a tool used by batterers to emotionally control or coerce victims.
- Threatening, injuring, or killing animals can indicate the potential for increased violence or lethality.
- Victims may postpone leaving out of fear for their pets' safety.
- Identifying animal abusers can help identify other victims of violence within the family.

### What can victims of domestic violence do to protect their pets?

- Develop an emergency plan for sheltering the pets, themselves, and their children (Review a copy of the First Strike® planning guide, *Making the Connection: Protecting Your Pet From Domestic Violence.*)
- Establish ownership of the pets (obtain an animal license, proof of

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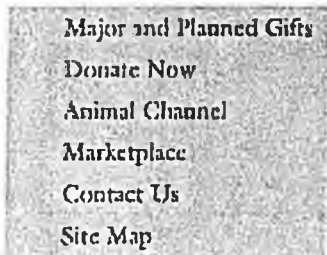


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vaccinations or veterinary receipts in victim's name to help prove they own the pets).

- Prepare the pets for departure (collect vaccination and medical records, collar and identification, medication, bowls, bedding, etc.).
- Ask for assistance from law enforcement or animal care and control officers to reclaim the pets if left behind.



**What are suggested intake questions regarding pets that should be asked by a domestic violence shelter?**

- Do you now have a pet? If yes, how many and what kinds?
- Have you had a pet in the past 12 months? If yes, what kinds?
- Has your partner ever hurt or killed a family pet? If yes, describe.
- Has your partner ever threatened to hurt or kill a family pet? If yes, describe.
- Have you ever hurt or killed a family pet? If yes, describe.
- Have any of your children ever hurt or killed a family pet? If yes, describe.
- Was the animal considered the child's, yours, your partner's or the family's pet?
- Did your concern for a pet's welfare keep you from coming to a shelter sooner than now? If yes, explain.
- Did you leave the abusive partner because of the abuse of a pet? If yes, describe.

**What can advocates do to raise awareness about the connection between animal cruelty and domestic violence in their communities?**

- Take animal abuse seriously.
- Contact their counterparts in other agencies.
- Develop cross-training and cross-reporting among animal welfare, domestic violence, child abuse and other related agencies.
- Support strong anticruelty laws.
- Develop community anti-violence coalitions.
- Develop community based programs to promote empathy and humane education.
- Encourage research on the connection.

- Work with local animal shelters, veterinarians, veterinary schools and boarding kennels to develop emergency housing programs for pets.
- Collect data in their own agencies.
- Add questions to intake forms about animal cruelty.

**What does The HSUS's First Strike campaign do to help other organizations?**

- Provide First Strike materials and related information.
- Assist with outreach efforts (e.g., workshops, contacts, etc.).
- Provide information and contacts for model programs across the country.
- Provide advice, support, and technical assistance.
- Provide assistance on cases involving animal cruelty.
- Assist with legislative efforts.
- Help raise awareness of domestic violence, child abuse and other forms of human violence among animal protection organizations and activists.

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## Elder Abuse and Animal Cruelty



J.A. Hallett

On January 20, 2001, an anonymous caller to the Washington, D.C. Humane Society reported that her neighbor's daughter had thrown a dead dog into the trash dumpster. Animal control officers arrived at the scene to discover that the dead dog was only the tip of the iceberg. They also found an emaciated and disoriented 90-year-old woman. The floor of the house was covered with trash and dog feces, parts of the ceiling had caved in, and mildew covered the walls.

Reports indicated that the daughter often left her elderly mother alone for several weeks at a time. The animal control officers rescued the remaining dogs and contacted adult protective services, which

arranged to have the woman transported to a hospital. The two agencies coordinated their actions to meet the needs of victims of two different types of abuse—yet all of whom required emergency care. If it hadn't been for the report of a dead dog, the suffering of both human and animal victims would have continued unnoticed.

Animal cruelty or neglect can often be a warning sign of other forms of abuse, including elder abuse. That's why The HSUS has joined forces with the Department of Health and Human Services' Administration on Aging to share information on the animal cruelty/elder abuse connection. We're coordinating our efforts around Older Americans Month, the period set aside each May to honor the country's senior citizens.

The informational campaign is clearly needed. According to the National Elder Abuse Incidence Study\*, "approximately 450,000 elderly persons in domestic settings were abused and/or neglected during 1996." When the cases of elderly self-neglect were added, the numbers rose to more than 550,000.

What's more, according to the study, "data show that family members were the perpetrators in nine out of ten (89.7 percent) substantiated incidents of

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domestic elder abuse and neglect. Adult children of elder abuse victims were the most likely perpetrators of substantiated maltreatment (47.3 percent). Spouses represented the second largest group of perpetrators (19.3 percent)."

When a family member abuses an elderly relative's pet, the motivations may be complex. The perpetrator may neglect or abuse an elder's pet as a form of control or retaliation, out of frustration over their caretaking responsibilities, or as a way to extract financial assets.

Many older adults are particularly attached to their pets. Companion animals not only play a vital role in the lives of older adults, they also represent important links to the past. Pets provide comfort and stress relief, humor, attention, protection, and they foster social interaction between older adults and others. This special relationship, however, also makes pets vulnerable to abuse by those who want to exert power and control over an elderly person.

Cases of extreme animal neglect may also reflect an older adult's inability to provide adequate care for him or herself, and thus indicate the need for assistance.

The good news is that domestic elder abuse and animal cruelty can be investigated and stopped—if these actions are brought to the attention of authorities such as adult protective services, animal care and control, the local humane society, or law enforcement. All of these agencies can also help prevent violence by working together cooperatively and forming inter-agency collaborations or partnerships.

Cross-reporting suspected abuse of animals or elders is crucial, too. Two states have already made cross-reporting a requirement: A California law requires animal control officers to report suspected elder abuse, and Illinois requires the same of veterinarians.

The information below was included in our promotional packet for Older Americans Month, which reached hundreds of people who provide services to the elderly.

There are ways that all of us can help prevent animal cruelty and elder abuse. They include:

- **Become familiar with the signs of elder abuse.** These include physical abuse, sexual abuse, emotional abuse, neglect, abandonment, and financial or material exploitation.
- **Check the physical condition of pets.** Ask about any recent health problems or injuries. Pets are often malnourished in abusive homes; their ribs may be visible, and their food bowls may be empty.
- **Examine the animals' behavior.** Pets in abusive homes are often frightened, withdrawn, aggressive, or overly protective.
- **Ask questions.** If a pet is suddenly missing or has been moved outside, ask why. Responses to these questions may lead you to discover animal cruelty, and give the older person a chance to share concerns or report abuse.

- Find out who to call in your community if you suspect animal cruelty or elder abuse. The blue pages in your phone book will include numbers for local social service and animal protection agencies.
- Support legislation to improve animal cruelty and elder abuse laws.

The First Strike® campaign can help in the process of bringing professionals together from a variety of agencies. We facilitate workshops and provide educational materials specifically for various professionals working to prevent family violence. For more information, please call our First Strike toll free line at 1-888-213-0956. For a free brochure on the connection between elder abuse and animal cruelty, please e-mail [firststrike@hsus.org](mailto:firststrike@hsus.org).

*\*The study was conducted by the National Center on Elder Abuse at the American Public Human Services Association (formally known as the American Public Welfare Association) and the Maryland-based social science and survey research firm, Westat.*

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 Survey of Professionals in Adult Protective Services

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- Older Americans Month
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HB

326

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### House of Representatives Sponsor Statement HB 326

**"An Act relating to tax credits for taxes related to certain business losses."**

House Bill 326 will provide assistance to small retail business owners in Alaska. Presently, a retail business must pay taxes to either the state or the local community based on sales. Unfortunately not all of those gross receipts means the business owner received the money.

While Alaska has some of the toughest bad-check laws in the country, enforcement of those laws is far from being a priority. Many of those checks end up in the loss column on a businesses' ledger. Government does not consider those losses when figuring out taxes. As an example in a community that charges sales tax a bad check ends up costing the business the loss of the amount of the check, a fee from the bank, and then they must pay the sales tax, and any state tax, even though the money was not collected.

HB 326 will change at least on part of this situation. If a business does not succeed in collecting the tax, then it should not have to pay the tax. This does not mean a free ride for the business, as the tax return comes in the form of a credit only after collecting efforts have failed. The business must actively pursue collection through all legal channels.

The impact of this bill on government is negligible. The impact on a small business could mean the difference between success and failure. Another positive effect is that those who intentionally write bad checks may think twice if they know they are going to be prosecuted.

Passage of HB 326 is another means of showing that Alaska is opened for business to everyone, and that the laws already in place against bad-checks will finally have some teeth.

**HB**

**330**



# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB330CS(L&C)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Decrease Time to Claim Unclaimed Property RDU Revenue Programs & Services  
 Component Treasury Management  
 Sponsor House Rules  
 Requester Governor Component No. 121

**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	50.0					
Travel						
Contractual	10.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>60.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>3,500.0</b>					
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF	60.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>60.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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	0.75					

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends AS 34.45, the Uniform Unclaimed Property Act, to shorten the time periods after which certain unclaimed property is presumed to be abandoned and must be transferred to the state. Generally those properties presumed abandoned after five years will, under this bill, be presumed abandoned after three years. Those properties presumed abandoned after seven years will be presumed abandoned after five years. The first year will see a strong increase in property reported due to the changes in dormancy requiring additional personal and contractual services. Subsequent years should not see major impacts. Abandoned property transferred to the state averages around \$2.5 million per year. Changing the abandonment time by two years could increase revenue to the general fund for one to two years for a total of \$3 to \$4 million. This bill will have no effect on revenue in subsequent years.

Prepared by: Betty Martin, State Comptroller Phone 465-2352  
 Division Treasury Date/Time 12/22/03 10:15 AM  
 Approved by: Steve Porter, Deputy Commissioner Date 12/22/2003  
 Agency Department of Revenue

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: HB 330  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title Decrease Time to Report Unclaimed Property RDU Revenue Programs & Services  
Component Treasury Management  
Sponsor House Rules  
Requester Governor Component No. 121

**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	50.0					
Travel						
Contractual	10.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>60.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>3,500.0</b>					
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	60.0					
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>60.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2004) cost: 0.0

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Prepared by: Betty Martin, State Comptroller Phone 465-2352  
Division Treasury Date/Time 3/24/04 10:44 AM  
Approved by: Steve Porter, Deputy Commissioner Date 3/24/2004  
Agency Department of Revenue

## Comparison Original Bill to Committee Substitute

### HB 330 to CS HB 330 (L&C)

The main purpose for the CS is to bring Alaska's unclaimed property law more in conformity with the most current Uniform Unclaimed Property Act, which has been adopted by 13 states to date. The original bill addressed time periods for presumption of abandoned and did not address other Uniform Act language.

The CS deletes Section 2 AS 34.45.140(b) which had a proposed time period change from seven years to five years for money payable on a money order or similar written instrument. The CS revises Section 3 by deleting subsections (4) and (5) of AS 34.45.160(a). This change ensures that all property of an owner covered by the section, whether known or unknown by the owner, will fall under the protection of the Act. The CS revises Section 4 AS 34.45.170 (a) by deleting the second sentence. The first sentence covers the property referred to in the second sentence.

The CS adds a new section. AS 34.45.175 which deals with demutualization proceeds. This type of property interest was not addressed in the prior Uniform Acts and is a relatively new type of property.

The original bill made changes to AS 34.45.200(a), (b), (c) and (e) in Sections 6 – 9. However, the CS repeals and readopts AS 34.45.200 so that it more closely mirrors the Uniform Unclaimed Property Act dealing with stock and other intangible interests in business associations and financial organizations.

AS 34.45.270 which deals with burden of proof, is added for conformity to the Uniform Act.

Other statutes which are affected by the CS are AS 34.45.280(f) making the reporting requirement only applicable to holders of abandoned intangible property which has a total accumulative value in excess of \$750, AS 34.45.290 changes requests for reports and examination of records, AS 34.45.300(a) changes the retention of records, and AS 34.45.310 changes the notice and publication requirements. The CS makes changes to definitions listed under AS 34.45.760.

All other sections of the bills remain the same except for the effective date section which now provides that the Act becomes effectively immediately in accordance with AS 01.10.070(c).



**Reasons for Proposed Unclaimed Property Legislative Changes  
CS HB 330 (L&C)**

1. This change to section AS 34.45.110(a) will make the general abandoned period for property not defined in other parts of the Act three years instead of five years.
2. This change will make section AS 34.45.150(a) consistent with the Uniform Unclaimed Property Act. Time period for money payable on a negotiable instrument is changed from seven years to five years.
3. The change will make section AS 34.45.160(a) consistent with the Uniform Unclaimed Property Act. Ensures all property regardless of known or unknown by the owner will fall under the protection of the Act.
4. This change will make section AS 34.45.170(a) consistent with the Uniform Unclaimed Property Act. When life endowment and annuity contracts do not mature by actual proof of death, but the insured or annuitant has reached the limiting age of mortality, they should be reported consistent with other forms of life and endowment insurance.
5. Adds a new section AS 34.45.175 for distributions in insurance company reorganizations. Mutual companies are owned by their policyholders. In order to create capital or enhance financial strength mutual companies demutualize and convert to a stock form of ownership. Policyholders are entitled to receive compensation in the form of cash or stock.

Mutual companies do not have reoccurring contact with fully paid policyholders. Contact only occurs when a policyholder's estate files a claim for benefits. Alaska's current statutes do not take into consideration the fact that virtually all policyholders were lost as of the date of the demutualization and have in fact been lost for decades prior.

6. Deleting AS 34.45.200 (b) allows companies to report unclaimed property based on inactivity or lack of owner contact. Alaska's current language requires the company to make seven distributions before property is considered unclaimed. E.g. a company may issue stock splits every two or three years. In that case, it could take fourteen to twenty-one years before it would become reportable as unclaimed property.
7. This change will make section AS 34.45.220(a) consistent with the Uniform Unclaimed Property Act by shortening the dormancy period from five years to three years.
8. This change will make section AS 34.45.240(a) consistent with the Uniform Unclaimed Property Act by shortening the dormancy period from five years to three years.

9. Adds a new section, AS 34.45.270 Burden of Proof consistent with the Uniform Unclaimed Property Act. This language clearly specifies an obligation exists between a Holder and an Owner as evidenced by a check or draft. The Holder must defend satisfaction, discharge or want by the owner of the consideration in order to exclude the item as an outstanding obligation.
10. This change to AS 34.45.280(f) allows holders of unclaimed property to aggregate and report property with a value greater than \$750.
11. This change makes AS 34.45.290 consistent with the Uniform Unclaimed Property Act. The new language allows the department to examine company records to verify compliance. Current statute allows examination if there is a reason to believe based on reporting discrepancies.
12. AS 34.45.300 (a) increases the record retention period to 10 years. Holder's records are vital to verifying an owner's claim.
13. Replacing AS 34.45.310 allows the department to evaluate technological advancements, promotional resources and cost effective methods to notify owners of unclaimed property. Current statute mandates publishing a notice in newspapers throughout the state. Last year's publication cost was \$30,000. Publication costs are expected to continually increase in the future.
14. AS 34.45.760 (10) Alaska has natural resources yet the unclaimed property statute does not clearly define mineral and mineral proceeds. These types of property are often missed during a Holder's reporting process. These definitions are consistent with the Uniform Unclaimed Property Act (UUPA).
15. AS 34.45.760(11) Current last known address definition limits the identification of owners located in Alaska. Holders may have had addresses for owners and destroyed them or replaced them with comments such as "bad address." Many types of information can help determine an owner's reporting state, such as computer codes, branch locations, agent sales codes, etc.
16. AS 34.45.760 (18) Gift certificates are no longer just a piece of paper. Gift obligations are in many forms such as electronic cards, on-line gift accounts, stored-value cards, etc This description helps define a gift obligation as any commitment between a holder and a purchaser where an exchange of money for future goods or services has transpired. (18) adds definition for mineral, section (19) adds definition for mineral proceeds consistent with Uniform Act.
17. Standard transition language
18. Effective date

**CS FOR HOUSE BILL NO. 330 (L&C)**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY THE HOUSE LABOR & COMMERCE COMMITTEE**

Introduced: 5/21/03

Referred:

Sponsor: HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to unclaimed property; and providing for an effective date."**

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

3 **\* Section 1.** AS 34.45.110(a) is amended to read:

4 (a) Except as otherwise provided in AS 34.45.120 - 34.45.780, all intangible  
5 property, including income or increment derived from the property, less lawful  
6 charges, that is held, issued, or owing in the ordinary course of a holder's business and  
7 has remained unclaimed by the owner for more than three [FIVE] years after  
8 becoming payable or distributable is presumed abandoned.

9 **\* Sec. 2.** AS 34.45.150(a) is amended to read:

10 (a) Other than money payable on an instrument that is subject to  
11 AS 34.45.140, money payable on a check, draft, or similar instrument on which a  
12 banking or financial organization is directly liable, including a cashier's check and a  
13 certified check, that has been outstanding for more than five [SEVEN] years after it  
14 was payable or after its issuance if payable on demand, is presumed abandoned. This  
15 presumption does not apply if the owner, within the preceding five [SEVEN] years,

1 has communicated in writing with the banking or financial organization concerning  
2 the instrument or has otherwise indicated an interest as evidenced by a memorandum  
3 or other record, on file, prepared by an employee of the organization.

4 \* Sec. 3. AS 34.45.160(a) is amended to read:

5 (a) A demand, savings, or matured time deposit with a banking or financial  
6 organization, including a deposit that is automatically renewable, and money paid  
7 toward the purchase of a share, a mutual investment certificate, or other intangible  
8 property interest in a banking or financial organization is presumed abandoned unless  
9 the owner, within the preceding five [SEVEN] years, has

10 (1) in the case of a deposit, increased or decreased its amount or  
11 presented the passbook or other similar evidence of the deposit for the crediting of  
12 interest;

13 (2) communicated in writing with the banking or financial organization  
14 concerning the property; or

15 (3) otherwise indicated an interest in the property as evidenced by a  
16 memorandum or other record, on file, prepared by an employee of the banking or  
17 financial organization [;

18 (4) OWNED OTHER PROPERTY TO WHICH (1), (2), OR (3) OF  
19 THIS SUBSECTION APPLIES AND THE BANKING OR FINANCIAL  
20 ORGANIZATION HAS COMMUNICATED IN WRITING WITH THE OWNER  
21 WITH REGARD TO THE PROPERTY THAT WOULD OTHERWISE BE  
22 PRESUMED ABANDONED UNDER THIS SUBSECTION AT THE ADDRESS TO  
23 WHICH COMMUNICATIONS REGARDING THE OTHER PROPERTY ARE  
24 REGULARLY SENT; OR

25 (5) HAD ANOTHER RELATIONSHIP WITH THE BANKING OR  
26 FINANCIAL ORGANIZATION CONCERNING WHICH THE OWNER HAS

27 (A) COMMUNICATED IN WRITING WITH THE  
28 BANKING OR FINANCIAL ORGANIZATION OR OTHERWISE  
29 INDICATED AN INTEREST AS EVIDENCED BY A MEMORANDUM OR  
30 OTHER RECORD, ON FILE, PREPARED BY AN EMPLOYEE OF THE  
31 BANKING OR FINANCIAL ORGANIZATION; AND

1 (B) THE BANKING OR FINANCIAL ORGANIZATION  
2 COMMUNICATES IN WRITING WITH THE OWNER WITH REGARD TO  
3 THE PROPERTY THAT WOULD OTHERWISE BE ABANDONED  
4 UNDER THIS SUBSECTION AT THE ADDRESS TO WHICH  
5 COMMUNICATIONS REGARDING THE OTHER RELATIONSHIP  
6 REGULARLY ARE SENT].

7 \* Sec. 4. AS 34.45.170(a) is amended to read:

8 (a) Money held or owing under a life or endowment insurance policy or  
9 annuity contract that has matured or terminated is presumed abandoned if unclaimed  
10 for more than three [FIVE] years after the money became due and payable as  
11 established from the records of the insurance company holding or owing the money.  
12 [HOWEVER, PROPERTY DESCRIBED IN (c)(2) OF THIS SECTION IS  
13 PRESUMED ABANDONED IF UNCLAIMED FOR MORE THAN TWO YEARS.]

14 \* Sec. 5. AS 34.45 is amended by adding a new section to read:

15 **Sec. 34.45.175. Certain property distributed in insurance company**  
16 **reorganizations.** (a) Property distributed in the course of a demutualization,  
17 rehabilitation, or related reorganization of an insurance company is presumed  
18 abandoned two years after the date of the demutualization, rehabilitation, or related  
19 reorganization if, at the time of the demutualization, rehabilitation, or related  
20 reorganization, the last known address of the owner on the books and records of the  
21 holder is known to be incorrect, or a distribution or statement is returned by the post  
22 office as undeliverable, and the owner has not

23 (1) communicated in writing with the holder or its agent regarding the  
24 property; or

25 (2) otherwise communicated with the holder regarding the property as  
26 evidenced by a memorandum on file with the holder or its agent.

27 (b) The conditions raising a presumption of abandonment for property  
28 distributable in the course of a demutualization, rehabilitation, or related  
29 reorganization of a mutual insurance company that is not subject to (a) of this section  
30 are as otherwise provided in this chapter.

31 \* Sec. 6. AS 34.45.200 is repealed and reenacted to read:

1           **Sec. 34.45.200. Stock and other intangible interests in business**  
2           **associations or financial organizations.** (a) Stock or other equity interest in a  
3           business association or financial organization is presumed abandoned five years after  
4           the earliest of

5                   (1) the date of the most recent dividend, stock split, or other  
6                   distribution unclaimed by the owner;

7                   (2) the date that a statement of account or other notification or  
8                   communication concerning the stock or other equity interest was returned as  
9                   undeliverable; or

10                  (3) the date that the holder of the stock or other equity interest  
11                  discontinued mailings, notifications, or communications to the owner.

12                  (b) Unmatured or unredeemed debt of a business association or financial  
13                  organization, other than a bearer bond or an original issue discount bond, is presumed  
14                  abandoned five years after the date of the most recent interest payment unclaimed by  
15                  the owner.

16                  (c) Matured or redeemed debt, including bearer bonds and original issue  
17                  discount bonds, is presumed abandoned five years after the date of maturity or  
18                  redemption.

19                  (d) At the time property is presumed abandoned under this section, any other  
20                  property right accrued or accruing to the owner as a result of the property interest, and  
21                  not previously presumed abandoned, is also presumed abandoned.

22                  (e) A distribution of net margins by a cooperative incorporated under  
23                  AS 10.25 is presumed abandoned if the distribution remains unclaimed by the owner  
24                  for more than one year after the date authorized for the distribution. The distribution  
25                  presumed abandoned under this subsection reverts to the cooperative if the cooperative  
26                  has, at least six months before the proposed date that the distribution reverts to the  
27                  cooperative, both

28                          (1) mailed a notice of the proposed reversion to the last known address  
29                          of the owner as shown on the cooperative records; and

30                          (2) published notice of the proposed reversion in the manner provided  
31                          by law or court rule for service of a summons by publications.

1 \* **Sec. 7.** AS 34.45.220(a) is amended to read:

2 (a) Intangible property and income or increment derived from the intangible  
3 property held in a fiduciary capacity for the benefit of another person is presumed  
4 abandoned unless the owner, within three [FIVE] years after it has become payable or  
5 distributable, has increased or decreased the principal, accepted payment of principal  
6 or income, communicated concerning the property, or otherwise indicated an interest  
7 as evidenced by a memorandum or other record, on file, prepared by the fiduciary.

8 \* **Sec. 8.** AS 34.45.240(a) is amended to read:

9 (a) A gift certificate or a credit memo, issued in the ordinary course of an  
10 issuer's business, that remains unclaimed by the owner for more than three [FIVE]  
11 years after becoming payable or distributable is presumed abandoned.

12 \* **Sec. 9.** AS 34.45 is amended by adding a section to article 3 to read:

13 **Sec. 34.45.270. Burden of proof as to property evidenced by record of**  
14 **check, draft, or similar instrument.** A record of the issuance of a check, draft, or  
15 similar instrument is prima facie evidence of an obligation. In claiming property from  
16 a holder who is also the issuer, the department's burden of proof as to the existence  
17 and amount of the property and its abandonment is satisfied by showing issuance of  
18 the instrument and passage of the requisite period of abandonment. Defenses of  
19 payment, satisfaction, discharge, and want of consideration are affirmative defenses  
20 that must be established by the holder.

21 \* **Sec. 10.** AS 34.45.280(f) is repealed and reenacted to read:

22 (f) The requirements of this section apply to the holder of intangible property  
23 with a total aggregate value greater than \$750 that is presumed abandoned under  
24 AS 34.45.110 - 34.45.780 during the year preceding June 30 of each year. For  
25 purposes of determining total aggregate value under this subsection, the holder shall  
26 include all intangible property from prior years that was not reported under this  
27 chapter.

28 \* **Sec. 11.** AS 34.45.290 is repealed and reenacted to read:

29 **Sec. 34.45.290. Requests for reports and examination of records.** (a) The  
30 department may require a person who has not filed a report under AS 34.45.280 or a  
31 person who the department believes has filed an inaccurate, incomplete, or false

1 report, to file a verified report in a form specified by the department. The report must  
2 state whether the person is holding property reportable under this chapter, describe  
3 property not previously reported or as to which the department has made inquiry, and  
4 specifically identify and state the amounts of the property that may be in issue.

5 (b) The department, at reasonable times and upon reasonable notice, may  
6 examine the records of any person to determine whether the person has complied with  
7 this chapter. The department may conduct the examination even if the person believes  
8 it is not in possession of any property that must be reported, paid, or delivered under  
9 this chapter. The department may contract with any other person to conduct the  
10 examination on behalf of the department.

11 (c) The department at reasonable times may examine the records of an agent,  
12 including a dividend disbursing agent or transfer agent, of a business association or  
13 financial organization that is the holder of property presumed abandoned if the  
14 department has given the notice required by (b) of this section to both the association  
15 or organization and the agent at least 90 days before the examination.

16 (d) Documents and working papers obtained or compiled by the department,  
17 or the department's agents, employees, contractors, or designated representatives, in  
18 the course of conducting an examination under this chapter are confidential and are  
19 not public records, but the documents and papers may be

20 (1) used by the department in the course of an action to collect  
21 unclaimed property or otherwise enforce this chapter;

22 (2) used in joint examinations conducted with or under an agreement  
23 with another state, the federal government, or any other governmental subdivision,  
24 agency, or instrumentality;

25 (3) produced under subpoena or court order; or

26 (4) disclosed to the unclaimed property office of another state for that  
27 state's use in circumstances equivalent to those described in this subsection, if the  
28 other state is bound to keep the documents and papers confidential.

29 (e) If an examination of the records of a person results in the disclosure of  
30 property reportable under this chapter, the department may assess the cost of the  
31 examination against the holder at the rate of \$200 a day for each examiner, or a greater

1 amount that is reasonable and was incurred, but the assessment may not exceed the  
2 value of the property found to be reportable under this chapter. The cost of an  
3 examination made under (c) of this section may be assessed only against the business  
4 association or financial organization.

5 (f) If a holder does not maintain the records required by AS 34.45.300 and the  
6 records of the holder available for the periods subject to this chapter are insufficient to  
7 permit the preparation of a report, the department may require the holder to report and  
8 pay to the department the amount the department reasonably estimates, on the basis of  
9 any available records of the holder or by any other reasonable method of estimation,  
10 should have been but was not reported.

11 \* Sec. 12. AS 34.45.300(a) is repealed and reenacted to read:

12 (a) Except as otherwise provided in (b) of this section, a holder required to file  
13 a report under AS 34.45.280 shall maintain the records containing the information  
14 required to be included in the report for 10 years after the holder files the report,  
15 unless a shorter period is provided by regulations adopted by the department.

16 \* Sec. 13. AS 34.45.310 is repealed and reenacted to read:

17 **Sec. 34.45.310. Notice and publication of lists of unclaimed property. (a)**

18 The department shall notify apparent owners of unclaimed property under this chapter  
19 in the manner and method set out in (b) of this section. In deciding whether to use an  
20 additional method specified in (b)(2) of this section, and which of those methods to  
21 use, the department shall employ the most cost-effective method available within its  
22 appropriations.

23 (b) The department

24 (1) shall notify all apparent owners of the unclaimed property in  
25 accordance with this section by means of posting on the department's website on the  
26 Internet;

27 (2) may use any of the following to provide additional notice to the  
28 apparent owners:

29 (A) publication in a newspaper of general circulation in the  
30 area of the state in which the last known address of a person to be named in the  
31 notice is located, or if the address is unknown, in the area in which the holder

1 has its principal place of business in the state;

2 (B) individual contact by regular or electronic mail, or by  
3 telephone, if the department has current contact information on file under this  
4 chapter;

5 (C) any other manner and method that the department considers  
6 effective for providing notice and publication under this chapter.

7 (c) In its notice and publication under (b) of this section, the department shall  
8 provide the names of the apparent owners of the property and information regarding  
9 recovery of the unclaimed property

10 (d) The department is not required to publish in the notice an item of less than  
11 \$100 in value.

12 (e) This section does not apply to money payable on traveler's checks, money  
13 orders, and other written instruments presumed abandoned under AS 34.45.140.

14 \* Sec. 14. AS 34.45.760(10) is amended to read:

15 (10) "intangible property"

16 (A) includes

17 (i) money, checks, drafts, warrants, deposits, interest,  
18 dividends, and income;

19 (ii) credit balances, customer overpayments, gift  
20 certificates, security deposits, refunds, credit memos, unpaid wages,  
21 and unidentified remittances;

22 (iii) stocks and other intangible ownership interests in  
23 business associations or financial organizations;

24 (iv) money deposited to redeem stocks, bonds, coupons,  
25 and other securities, or to make distributions;

26 (v) amounts due and payable under the terms of  
27 insurance policies; [AND]

28 (vi) amounts distributable from a trust or custodial fund  
29 established under a plan to provide health, welfare, pension, vacation,  
30 severance, retirement, death, stock purchase, profit-sharing, employee  
31 savings, supplemental unemployment insurance, or similar benefits;

1                   and

2                                   (vii) amounts due and payable as mineral proceeds;

3                                   (B) does not include

4   (i) unused airline tickets;

5   (ii) shares of stock issued by a corporation organized  
6                                   under 43 U.S.C. 1601 - 1629a (Alaska Native Claims Settlement Act)  
7                                   or unclaimed dividends payable on the shares of stock; or

8   (iii) overpaid contributions by employers to the  
9                                   unemployment compensation fund under AS 23.20.130;

10       \* Sec. 15. AS 34.45.760(11) is repealed and reenacted to read:

11                                   (11) "last known address" means

12   (A) if the address is sufficient to direct the delivery of mail or  
13                                   receipt of a communication by the means known to the holder, a description of  
14                                   the location of the apparent owner's residence or business;

15   (B) if the address is not sufficient as described in (A) of this  
16                                   paragraph, a description indicating that the apparent owner was located within  
17                                   this state;

18       \* Sec. 16. AS 34.45.760 is amended by adding new paragraphs to read:

19                                   (18) "gift certificate" means an obligation of a business association  
20                                   arising from a transaction between the business association and a consumer to provide  
21                                   goods or services at a future date; "gift certificate" includes a gift certificate, stored  
22                                   value card, gift card, on-line gift account, or other representation or evidence of the  
23                                   obligation of a business association;

24                                   (19) "mineral" means gas; oil; other gaseous, liquid, and solid  
25                                   hydrocarbons; oil shale; cement material; sand and gravel; road material; building  
26                                   stone; chemical raw material; gemstone; fissionable and non fissionable ores; colloidal  
27                                   and other clay; steam and other geothermal resource; or any other substance defined as  
28                                   mineral by other state law;

29                                   (20) "mineral proceeds" means amounts payable for the extraction,  
30                                   production, or sale of minerals, or, upon the abandonment of those payments, all  
31                                   payments that become payable after the abandonment; "mineral proceeds" includes

1 amounts payable for the following:

2 (A) for the acquisition and retention of a mineral lease,  
3 including bonuses, royalties, compensatory royalties, shut-in royalties,  
4 minimum royalties, and delay rentals;

5 (B) for the extraction, production, or sale of minerals, including  
6 net revenue interests, royalties, overriding royalties, extraction payments, and  
7 production payments;

8 (C) under an agreement or option, including a joint operating  
9 agreement, unit agreement, pooling agreement, and farm-out agreement.

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

12 APPLICABILITY. The changes made by this Act apply to property that meets either  
13 of the following:

14 (1) property that, on the effective date of this Act, already was subject to a  
15 statutory provision amended by this Act;

16 (2) property that, on or after the effective date of this Act, becomes subject to  
17 a statutory provision amended by this Act.

18 \* Sec. 18. This Act takes effect immediately under AS 01.10.070(c).

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1  
Bill Version: HB330CS(L&C)  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
Title Decrease Time to Claim Unclaimed Property RDU Revenue Programs & Services  
Component Treasury Management  
Sponsor House Rules  
Requester Governor Component No. 121

**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	50.0					
Travel						
Contractual	10.0					
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>60.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>	<b>3,500.0</b>					
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF	60.0					
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>60.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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	0.75					

**ANALYSIS:** (Attach a separate page if necessary)

This bill amends AS 34.45, the Uniform Unclaimed Property Act, to shorten the time periods after which certain unclaimed property is presumed to be abandoned and must be transferred to the state. Generally those properties presumed abandoned after five years will, under this bill, be presumed abandoned after three years. Those properties presumed abandoned after seven years will be presumed abandoned after five years. The first year will see a strong increase in property reported due to the changes in dormancy requiring additional personal and contractual services. Subsequent years should not see major impacts. Abandoned property transferred to the state averages around \$2.5 million per year. Changing the abandonment time by two years could increase revenue to the general fund for one to two years for a total of \$3 to \$4 million. This bill will have no effect on revenue in subsequent years.

Prepared by: Betty Martin, State Comptroller Phone 465-2352  
Division Treasury Date/Time 12/22/03 10:15 AM  
Approved by: Steve Porter, Deputy Commissioner Date 12/22/2003  
Agency Department of Revenue

# FISCAL NOTE

**STATE OF ALASKA**  
**2003 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 330  
 (H) Publish Date: 5/21/03

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Revenue  
 Title Unclaimed Property Time Periods BRU Revenue Operations  
 Component Treasury Division  
 Sponsor House Rules  
 Requester Governor Component No. 121

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
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<b>CHANGE IN REVENUES ( )</b>		<b>2,000.0</b>	<b>2,000.0</b>			
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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 amends AS 34.45, the Uniform Unclaimed Property Act, to shorten the time periods after which certain unclaimed property is presumed to be abandoned and must be transferred to the state. Generally those properties presumed abandoned after five years will, under this bill, be presumed abandoned after three years. Those properties presumed abandoned after seven years will be presumed abandoned after five years.

Abandoned property transferred to the state averages around \$2 million per year. Changing the abandonment time two years could increase revenue to the general fund for one to two years for a total of \$4 million. This bill will have no effect on revenue in subsequent years.

Prepared by: Betty Martin, State Comptroller Phone 465-2352  
 Division Treasury Date/Time 5/20/03 12:07 PM  
 Approved by: Steve Porter, Deputy Commissioner Date 5/20/2003  
 Agency Department of Revenue

HB

339

Amendment #1

Page 2, line 5

Remove "promoting and advertising"

Passed

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Amendment #2

Page 1, line 9

Remove "promoting and advertising"

Discussed  
Not offered

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Amendment #3

Page 1, line 9 and Page 2, line 5

Change "Before" to "When"

Passed

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Amendment #4

Page 2, line 2

Change "postage" to "shipping and handling"

Passed

Statutes Pertaining to Negative Option Marketing Legislation  
September 18, 2003

**AS 45.02 Sales**

- 45.02.101 This chapter shall be known as Uniform Commercial Code
- 45.02.102 Scope; certain security and other transactions excluded
- 45.02.103 Definitions and index of definitions
- 45.02.104 Definitions: "merchant"; "between merchants"; "financing agency;"
- 45.02.105 Definitions: transferability; "goods"; "future" goods; "lot"; "commercial unit"
- 45.02.106 Definitions: "contract"; "agreement"; contract for sale"; "present sale"; "conforming"; "cancellation"
- 45.02.107. Goods to be severed from realty; recording
- 45.02.201 Formal requirements; statute of frauds
- 45.02.202 Final written expression; parol or extrinsic evidence
- 45.02.203 Seals inoperative
- 45.02.204 Formation in general
- 45.02.205 Firm offers
- 45.02.206 Offer and acceptance in formation of contract
- 45.02.207 Additional terms in acceptance or confirmation
- 45.02.208 Course of performance or practical construction
- 45.02.209 Modification, rescission, and waiver
- 45.02.210 Delegation of performance; assignment of rights
- 45.02.301 General obligations of parties
- 45.02.302 Unconscionable contract or clause
- 45.02.303 Allocation or division of risks
- 45.02.304 Price payable in money, goods, realty, or otherwise
- 45.02.305 Open price term
- 45.02.306 Output, requirements, and exclusive dealings
- 45.02.307 Delivery in single lot or several lots
- 45.02.308 Absence of specified place for delivery
- 45.02.309 Absence of specific time provisions; notice of termination
- 45.02.310 Open time for payment or running of credit; authority to ship under reservation
- 45.02.311 Options and cooperation respecting performance
- 45.02.312 Warranty of title and against infringement; buyer's obligation
- 45.02.313 Express warranties by affirmation, promise, description, sample
- 45.02.314 Implied warranty: Merchantability; usage of trade
- 45.02.315 Implied warranty: Fitness for particular purpose
- 45.02.316 Exclusion or modification of warranties
- 45.02.317 Cumulation and conflict of warranties express or implied
- 45.02.318 Third-party beneficiaries of warranties express or implied
- 45.02.319 F.O.B and F.A.S terms
- 45.02.320 C.I.F and C&F terms
- 45.02.321 C.I.F. and C&F : "Net landed weights"; "payment on arrival"; warranty of conditions on arrival
- 45.02.322 Delivery "ex-ship"
- 45.02.323 Form of bill of lading required in overseas shipment; "overseas"
- 45.02.324 "No arrival, no sale" term
- 45.02.325 "Letter of credit" term; "confirmed credit"
- 45.02.326 Sale on approval and sale of return; rights of creditors
- 45.02.327 Special incidents of sale on approval and sale or return
- 45.02.328 Sale by auction

Statutes Pertaining to Negative Option Marketing Legislation  
September 18, 2003

- 45.02.350 Sale by door-to-door solicitation
- 45.02.401 Passing of title; reservation for security; limited application of this section
- 45.02.402 Rights of seller's creditors against sold goods
- 45.02.403 Power to transfer; good faith purchase of goods; "entrusting"
- 45.02.501 Insurable interest in goods; manner of identification of goods
- 45.02.502 Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency
- 45.02.503 Manner of seller's tender of delivery
- 45.02.504 Shipment by seller
- 45.02.505 Seller's shipment under reservation
- 45.02.506 Rights of financing agency
- 45.02.507 Effect of seller's tender; delivery on condition
- 45.02.508 Cure by seller of improper tender or delivery; replacement
- 45.02.509 Risk of loss in the absence of breach
- 45.02.510 Effect of breach on risk of loss
- 45.02.511 Tender of payment by buyer; payment by check
- 45.02.512 Payment by buyer before inspection
- 45.02.513 Buyer's right to inspection of goods
- 45.02.514 When documents deliverable on acceptance; when on payment
- 45.02.515 Preserving evidence of goods in dispute
- 45.02.601 Buyer's rights on improper delivery
- 45.02.602 Manner and effect of rightful rejection
- 45.02.603 Merchant buyer's duties as to rightfully rejected goods
- 45.02.604 Buyer's options as to salvage of rightfully rejected goods
- 45.02.605 Waiver of buyer's objections by failure to participate
- 45.02.606 What constitutes acceptance of goods
- 45.02.607 Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over
- 45.02.608 Revocation of acceptance in whole or in part
- 45.02.609 Right to adequate assurance of performance
- 45.02.610 Anticipatory repudiation
- 45.02.611 Retraction of anticipatory repudiation
- 45.02.612 "Installment contract"; breach
- 45.02.613 Casualty to identified goods
- 45.02.614 Substituted performance
- 45.02.615 Excuse by failure of presupposed conditions
- 45.02.616 Procedure on notice claiming excuse
- 45.02.701 Remedies for breach of collateral contracts not impaired
- 45.02.702 Seller's remedies on discovery of buyer's insolvency
- 45.02.703 Seller's remedies in general
- 45.02.704 Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods
- 45.02.705 Seller's stoppage of delivery in transit or otherwise
- 45.02.706 Seller's resale including contract for resale
- 45.02.707 Person in the position of seller
- 45.02.708 Seller's damages for nonacceptance or repudiation
- 45.02.709 Action for price
- 45.02.710 Seller's incidental damages
- 45.02.711 Buyer's remedies in general; buyer's securities interest in rejected goods

Statutes Pertaining to Negative Option Marketing Legislation  
September 18, 2003

- 45.02.712 "Cover"; buyer's procurement of substitute goods
- 45.02.713 Buyer's damages for nondelivery or repudiation
- 45.02.714 Buyer's damages for breach in regard to accepted goods
- 45.02.715 Buyer's incidental and consequential damages
- 45.02.716 Buyer's right to specific performance or replevin
- 45.02.717 Deduction of damages from price
- 45.02.718 Liquidation or limitation of damages; deposits
- 45.02.719 Contractual modification or limitation of remedy
- 45.02.720 Effect of cancellation or rescission on claims for antecedent
- 45.02.721 Remedies for fraud
- 45.02.722 Who can sue third parties for injury to goods
- 45.02.723 Proof of market price; time and place
- 45.02.724 Admissibility of market quotations
- 45.02.725 Statute of limitations in contracts for sale

### **Sec. 45.50.495. Investigative power of attorney general**

(a) If the attorney general has cause to believe that a person has engaged in, is engaging in, or is about to engage in a deceptive trade practice under AS 45.50.471 , the attorney general may

(1) request the person to file a statement or report in writing, under oath, on forms prescribed by the attorney general, setting out all facts and circumstances concerning the sale or advertisement of property by the person, and other information considered necessary;

(2) examine under oath any person in connection with the sale or advertisement of property;

(3) examine property or sample of the property, record, book, document, account, or paper that the attorney general considers necessary;

(4) make true copies of records, books, documents, accounts, or papers examined under (3) of this subsection, which may be offered in evidence in place of the originals in actions brought under AS 45.50.471 - 45.50.561; and

(5) under an order of the superior court, impound samples of property that are material to the investigation and retain the sample until proceedings undertaken under AS 45.50.471 - 45.50.561 are completed.

(b) The attorney general, in addition to other powers conferred by this section, may issue subpoenas to require the attendance of witnesses or the production of documents or other physical evidence, administer oaths, and conduct hearings to aid an investigation or inquiry. Service of an order or subpoena shall be made in the same manner as a summons in a civil action in the superior court.

### **Sec. 45.50.501. Restraining prohibited acts**

(a) When the attorney general has reason to believe that a person has used, is using, or is about to use an act or practice declared unlawful in AS 45.50.471 , and that proceedings would be in the public interest, the attorney general may bring an action in the name of the state against the person to restrain by injunction the use of the act or practice. The action may be brought in the superior court in the judicial district in which the person resides or is doing business or has the person's principal place of business in the state, or, with the consent of the parties, in any other judicial district in the state.

(b) The court may make additional orders or judgments that are necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of an act or practice declared to be unlawful by AS 45.50.471 .

### **Sec. 45.50.511. Assurances of voluntary compliance**

In the administration of AS 45.50.471 - 45.50.561, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice considered to be

violative of AS 45.50.471 - 45.50.561 from a person who has engaged or was about to engage in such an act or practice. The assurance shall be in writing and shall be filed with and is subject to the approval of the superior court in the judicial district in which the alleged violator resides or is doing business or has the principal place of business in the state. The assurance of voluntary compliance is not considered an admission of violation for any purpose. Matters closed in this way may at any time be reopened by the attorney general for further proceedings in the public interest, under AS 45.50.501 .

**Sec. 45.50.521. When information and evidence confidential and nonadmissible**

(a) [Repealed by Sec. 6 ch 53 SLA 1974].

(b) Subject to the provisions of AS 45.50.501 (a), the attorney general may not make public the name of a person alleged to have committed an act or practice declared unlawful in AS 45.50.471 during an investigation conducted by the attorney general under AS 45.50.471 - 45.50.561, nor are the records of investigation or intelligence information of the attorney general obtained under AS 45.50.471 - 45.50.561 considered public records available for inspection by the general public. However, the attorney general is not prevented from issuing public statements describing or warning of a course of conduct or a conspiracy that constitutes or will constitute an unlawful act or practice, whether on a local, state, regional, or national basis.

**Sec. 45.50.531. Private and class actions**

(a) A person who suffers an ascertainable loss of money or property as a result of another person's act or practice declared unlawful by AS 45.50.471 may bring a civil action to recover for each unlawful act or practice three times the actual damages or \$500, whichever is greater. The court may provide other relief it considers necessary and proper. Nothing in this subsection prevents a person who brings an action under this subsection from pursuing other remedies available under other law, including common law.

(b) [Repealed, Sec. 4 ch 31 SLA 1987].

(c) Upon commencement of an action brought under this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of an order or judgment in the action, shall mail a copy of the order or judgment to the attorney general.

(d) [Repealed, Sec. 4 ch 31 SLA 1987].

(e) A permanent injunction or final judgment against a person against whom an action was initiated under AS 45.50.501 is prima facie evidence in an action brought under this section that the person used or employed an act or practice declared unlawful by AS 45.50.471 .

(f) A person may not commence an action under this section more than two years after the person discovers or reasonably should have discovered that the loss resulted from an act or practice declared unlawful by AS 45.50.471 .

(g) [Repealed, Sec. 6 ch 96 SLA 1998].

(h) If the basis for the action is the fault of the manufacturer or supplier of the merchandise, the manufacturer or supplier who is at fault is liable for the damages awarded against the retailer under this section.

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

**Sec. 45.50.535. Private injunctive relief**

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

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

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

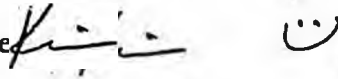
(2) the seller or lessor fails to promptly stop the unlawful act or practice after receiving the notice.



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## MEMORANDUM

**DATE:** January 30, 2004  
**TO:** House Labor and Commerce Committee Members  
**FROM:** Representative Kevin Meyer   
**RE:** Blank Committee Substitute for HB 339 Trade Practices

I have been working with the Department of Law, Commercial and Fair Business Section on HB 339 Trade Practices. The division has suggested the following clarifying changes be made to HB 339 in the form of a blank committee substitute.

### Title Change

Following: "plans for sale"

Delete: "to charges for goods or services after a trial period"

Insert: "to free trial periods before sales of goods or services"

Explanation: Under Section 1 of the bill, the title of the section was changed to Free Trial Period.

### Section 1: AS 45.45.920

The title of the section is changed to "Free Trial Period".

The changes incorporated into this section clarify the requirements of disclosure that a seller must make to a buyer before offering, promoting, or advertising a free trial period. This section also clarifies the form of written consent that a seller must receive from a buyer before offering, promoting, or advertising a free trial period. Section 1 also provides that the requirements set forth in this section do not apply to a seller who offers a free trial period that does not impose any obligations on a consumer.

### Section 1: AS 45.45.930

The changes clarify the disclosures that are necessary for a seller to make to a potential buyer, if the seller is using a negative option marketing plan. Also, a subsection is added that defines "seller" under this section.

### Section 2: AS 45.540.471(b)

The name of AS 45.45.920 is changed to "Free Trial Period".

I am in full support of these changes and would like the committee to adopt the blank committee substitute for HB 339.

Thank you for your time and consideration in this matter.

23-LS1265U  
Bannister  
1/29/04

**CS FOR HOUSE BILL NO. 339( )**

**IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-THIRD LEGISLATURE - SECOND SESSION**

**BY**

**Offered:  
Referred:**

**Sponsor(s): REPRESENTATIVE MEYER**

**A BILL**

**FOR AN ACT ENTITLED**

1 **"An Act relating to negative option plans for sales, to free trial periods before sales of**  
2 **goods or services, and to acts that are unlawful as unfair trade practices."**

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

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

5 **Sec. 45.45.920. Free trial period. (a) Notwithstanding a provision in**  
6 **AS 45.02 to the contrary, a seller may not offer, promote, advertise, or otherwise give**  
7 **a consumer goods or services for a free trial period unless the seller complies with all**  
8 **the conditions of this section.**

9 **(b) Before offering, promoting, advertising, or otherwise giving a consumer**  
10 **goods or services for a free trial period, a seller shall clearly and conspicuously**  
11 **disclose all material terms and conditions of the free trial period, including**

12 **(1) any obligation by the consumer to purchase a minimum quantity of**  
13 **goods or services after the free trial period ends;**

14 **(2) a description of all charges that will be made after the free trial**

1 period ends and how those charges will be calculated;

2 (3) whether any charges for goods or services will include postage;

3 (4) any other obligations the consumer assumes by accepting or using  
4 the goods or services within the free trial period.

5 (c) Before offering, promoting, advertising, or otherwise giving a consumer  
6 goods or services for a free trial period, a seller shall obtain express written consent  
7 from the consumer to the free trial period. The form for the written consent must be  
8 prepared by the seller and must include the consumer's acknowledgment that the  
9 consumer has received and understands the disclosures required by (b) of this section.

10 (d) At the end of the free trial period, a seller may not charge a consumer for  
11 the goods and services that were the subject of the free trial period unless the seller has  
12 complied with (b) and (c) of this section.

13 (e) This section does not apply to a seller who offers, promotes, advertises, or  
14 otherwise gives a consumer goods or services for free if the seller does not impose any  
15 obligations on a consumer who accepts the free goods or services.

16 (f) In this section, "free trial period" means a period of time that a seller  
17 provides to a consumer goods or services to sample or use without charge.

18 **Sec. 45.45.930. Negative option plans.** (a) Notwithstanding a provision in  
19 AS 45.02 to the contrary, a seller may not use a negative option plan to sell goods or  
20 services unless the seller complies with all provisions of this section.

21 (b) Before using a negative option plan, a seller must clearly and  
22 conspicuously disclose in writing to the prospective buyer before the goods or services  
23 are provided

24 (1) the material terms of the plan, including a description of the goods  
25 or services being sold;

26 (2) a statement of the price the seller will charge for the goods or  
27 services, and the date when the price will be charged if the prospective buyer does not  
28 cancel the sale by using the steps identified under (e) of this section; and

29 (3) the specific steps that the buyer must take by telephone, regular  
30 mail, or electronic mail to cancel the sale.

31 (c) Before using a negative option plan, a seller shall obtain express written

1 authorization from the buyer to use the negative option plan.

2 (d) At least 15 days before a seller may charge a buyer for goods or services  
3 provided under a negative option plan, the seller shall provide the buyer with a notice  
4 that contains

5 (1) a clearly written description of the negative option plan, including a  
6 description of the goods or services being sold;

7 (2) a statement of the amount that will be charged and the date when  
8 the charge will be imposed if the buyer does not cancel the sale; and

9 (3) the specific steps that the buyer is required to take to cancel the  
10 charge by telephone, by regular mail, or by electronic mail.

11 (e) A seller who charges a buyer for goods or services under a negative option  
12 plan has the burden of proving that the seller provided with the buyer the notice  
13 required by (d) of this section and that the buyer expressly agreed to be charged for the  
14 goods or services.

15 (f) In this section,

16 (1) "negative option plan" means an arrangement under which a seller  
17 provides goods or services to a person and charges the person for the goods or services  
18 unless the person notifies the seller that the person does not want to buy the goods or  
19 services;

20 (2) "seller" means a person who engages in the business of selling  
21 goods or services.

22 \* **Sec. 2.** AS 45.50.471(b) is amended by adding new paragraphs to read:

23 (47) violating AS 45.45.920 (free trial period);

24 (48) violating AS 45.45.930 (negative option plans).



# FISCAL NOTE

**STATE OF ALASKA**  
**2004 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 339  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: DCED  
 Title Trade Practices RDU Banking, Securities & Corp (115)  
 Component Banking, Securities & Corp  
 Sponsor Representative Meyer  
 Requester Labor & Commerce Component No. 1233

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)

This legislation has no impact on the operations of the Department.

Prepared by: Mark Davis, Director Phone (907) 465-2521  
 Division Banking, Securities & Corporations Date/Time 2/2/04 1:56 PM  
 Approved by: Edgar Blatchford, Commissioner Date 2/2/2004  
 Agency Department of Community & Economic Development

# FISCAL NOTE

STATE OF ALASKA  
2004 LEGISLATIVE SESSION

Fiscal Note Number: HB339-Law-C&FB-1-30-2  
Bill Version: HB339  
( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: LAW  
Title "An Act relating to negative option plans for RDU Civil  
sales, to charges for goods or services..." Component Commercial & Fair Business  
Sponsor Representative Meyer  
Requester House Labor & Commerce Component No. \_\_\_\_\_

**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						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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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)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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)

Prepared by: Kathryn A. Daughhete, Director  
Division: Administrative Services  
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General  
Agency: Department of Law

Phone 465-3673  
Date/Time 2/1/04 2:16 PM  
Date 2/1/2004



# REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

## SPONSOR STATEMENT

### HOUSE BILL 339

**“An Act relating to negative option plans for sale, to charges for goods or services after a trial period, and to acts that are unlawful as unfair trade practices.”**

House Bill 339 prohibits the use of negative option plans, or free trial periods, to sell goods or services unless specific requirements and disclosures are made to the consumer.

Under HB 339, a negative option plan is defined as an arrangement under which a seller provides goods or services to a person and charges the person for the goods or services without express consent from the consumer. Essentially, a negative option plan requires the consumer to take action to avoid initial or continuing charges. Some businesses see the use of negative option plans as a successful marketing ploy; enabling a business to get a product out to a critical number of people, without fully disclosing the terms of the plan, and receiving compensation through unwilling and/or uneducated consumers.

Free trial periods are also a great way to try new products or services without making a long-term commitment to a membership, subscription, or extended service contract. However, consumers should always receive adequate information concerning the extent of the free trial period, and what obligations are required of them.

HB 339 establishes clear guidelines for businesses to follow that do not result in consumer deception. The required disclosures under HB 339 include: providing information pertaining to charges, how charges are calculated and collected, and any and all consumer obligations. The consumer disclosures required in HB 339 are the same for free trial periods and for the use of negative option plans.

Over the past two years, complaints to the Federal Trade Commission (FTC) about unordered merchandise has increased by nearly 60%. Negative option plans and free trial period scams account for a significant amount of all new reports. Consumers are also turning to state Attorney General Offices' to complain of unfair and deceptive trade practices by businesses engaging in these plans. Over the past year, there have been a number of high-profile cases, where the State has intervened on behalf of Alaskans.

HB 339 aligns Alaska statutes with the current federal rules on negative option marketing and free trial periods. It removes uncertainty in statute of what the role and responsibility is of businesses in protecting consumers and their interests.

Last Updated: January 26, 2004

Email: Representative\_Kevin\_Meyer@legis.state.ak.us • Toll Free: (866) 465-4945  
Session: State Capitol, Juneau, Alaska 99801-1132 • Phone: (907) 465-4945 Fax: (907) 465-3476  
Interim: 716 W. 4th Ave., Anchorage, Alaska 99501-2133 • Phone: (907) 269-0199 Fax: (907) 269-0197

## Electronic Code of Federal Regulations

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*e-CFR*<sup>TM</sup>

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THIS DATA CURRENT AS OF THE FEDERAL REGISTER DATED SEPTEMBER 8, 2003

## 16 CFR - CHAPTER I - PART 425

[View Part](#)

## § 425.1 The rule.

(a) In connection with the sale, offering for sale, or distribution of goods and merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, it is an unfair or deceptive act or practice, for a seller in connection with the use of any negative option plan to fail to comply with the following requirements:

(1) Promotional material shall clearly and conspicuously disclose the material terms of the plan, including:

(i) That aspect of the plan under which the subscriber must notify the seller, in the manner provided for by the seller, if he does not wish to purchase the selection;

(ii) Any obligation assumed by the subscriber to purchase a minimum quantity of merchandise;

(iii) The right of a contract-complete subscriber to cancel his membership at any time;

(iv) Whether billing charges will include an amount for postage and handling;

(v) A disclosure indicating that the subscriber will be provided with at least ten (10) days in which to mail any form, contained in or accompanying an announcement identifying the selection, to the seller;

(vi) A disclosure that the seller will credit the return of any selections sent to a subscriber, and guarantee to the Postal Service or the subscriber postage to return such selections to the seller when the announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form to the seller;

(vii) The frequency with which the announcements and forms will be sent to the subscriber and the maximum number of announcements and forms which will be sent to him during a 12-month period.

(2) Prior to sending any selection, the seller shall mail to its subscribers, within the time specified by paragraph (a)(3) of this section:

(i) An announcement identifying the selection;

(ii) A form, contained in or accompanying the announcement, clearly and conspicuously disclosing that the

subscriber will receive the selection identified in the announcement unless he instructs the seller that he does not want the selection, designating a procedure by which the form may be used for the purpose of enabling the subscriber so to instruct the seller, and specifying either the return date or the mailing date.

(3) The seller shall mail the announcement and form either at least twenty (20) days prior to the return date or at least fifteen (15) days prior to the mailing date, or provide a mailing date at least ten (10) days after receipt by the subscriber, provided, however, that whichever system the seller chooses for mailing the announcement and form, such system must provide the subscriber with at least ten (10) days in which to mail his form.

(b) In connection with the sale or distribution of goods and merchandise in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, it shall constitute an unfair or deceptive act or practice for a seller in connection with the use of any negative option plan to:

(1) Refuse to credit, for the full invoiced amount thereof, the return of any selection sent to a subscriber, and to guarantee to the Postal Service or the subscriber postage adequate to return such selection to the seller, when:

(i) The selection is sent to a subscriber whose form indicating that he does not want to receive the selection was received by the seller by the return date or was mailed by the subscriber by the mailing date;

(ii) Such form is received by the seller after the return date, but has been mailed by the subscriber and postmarked at least 3 days prior to the return date;

(iii) Prior to the date of shipment of such selection, the seller has received from a contract-complete subscriber, a written notice of cancellation of membership adequately identifying the subscriber; however, this provision is applicable only to the first selection sent to a canceling contract-complete subscriber after the seller has received written notice of cancellation. After the first selection shipment, all selection shipments thereafter are deemed to be unordered merchandise pursuant to section 3009 of the Postal Reorganization Act of 1970, as adopted by the Federal Trade Commission in its public notice, dated September 11, 1970;

(iv) The announcement and form are not received by the subscriber in time to afford him at least ten (10) days in which to mail his form.

(2) Fail to notify a subscriber known by the seller to be within any of the circumstances set forth in paragraphs (b)(1)(i) through (iv) of this section, that if the subscriber elects, the subscriber may return the selection with return postage guaranteed and receive a credit to his account.

(3) Refuse to ship within 4 weeks after receipt of an order merchandise due subscribers as introductory and bonus merchandise, unless the seller is unable to deliver the merchandise originally offered due to unanticipated circumstances beyond the seller's control and promptly makes a reasonably equivalent alternative offer. However, where the subscriber refuses to accept alternatively offered introductory merchandise, but instead insists upon termination of his membership due to the seller's failure to provide the subscriber with his originally requested introductory merchandise, or any portion thereof, the seller must comply with the subscriber's request for cancellation of membership, provided the subscriber returns to the seller any introductory merchandise which already may have been sent him.

(4) Fail to terminate promptly the membership of a properly identified contract-complete subscriber upon his written request.

(5) Ship, without the express consent of the subscriber, substituted merchandise for that ordered by the subscriber.

(c) For the purposes of this part:

(1) *Negative option plan* refers to a contractual plan or arrangement under which a seller periodically sends to subscribers an announcement which identifies merchandise (other than annual supplements to previously acquired merchandise) it proposes to send to subscribers to such plan, and the subscribers thereafter receive and are billed for the merchandise identified in each such announcement, unless by a date or within a time specified by the seller with respect to each such announcement the subscribers, in conformity with the provisions of such plan, instruct the seller not to send the identified merchandise.

(2) *Subscriber* means any person who has agreed to receive the benefits of, and assume the obligations entailed in, membership in any negative option plan and whose membership in such negative option plan has been approved and accepted by the seller.

(3) *Contract-complete subscriber* refers to a subscriber who has purchased the minimum quantity of merchandise required by the terms of membership in a negative option plan.

(4) *Promotional material* refers to an advertisement containing or accompanying any device or material which a prospective subscriber sends to the seller to request acceptance or enrollment in a negative option plan.

(5) *Selection* refers to the merchandise identified by a seller under any negative option plan as the merchandise which the subscriber will receive and be billed for, unless by the date, or within the period specified by the seller, the subscriber instructs the seller not to send such merchandise.

(6) *Announcement* refers to any material sent by a seller using a negative option plan in which the selection is identified and offered to subscribers.

(7) *Form* refers to any form which the subscriber returns to the seller to instruct the seller not to send the selection.

(8) *Return date* refers to a date specified by a seller using a negative option plan as the date by which a form must be received by the seller to prevent shipment of the selection.

(9) *Mailing date* refers to the time specified by a seller using a negative option plan as the time by or within which a form must be mailed by a subscriber to prevent shipment of the selection. (38 Stat. 717, as amended; 15 U.S.C. 41-58)

[38 FR 4896; Feb. 22, 1973; 38 FR 6991, Mar. 15, 1973, as amended at 63 FR 44562, Aug. 20, 1998]





Federal Trade Commission  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

For Release: November 1, 2001

## FTC Testimony Details Deceptive Negative Option Marketing and the Deceptive Sale of Credit and Credit Card-Related Services

The Federal Trade Commission's recent enforcement action against deceptive negative option marketing programs as well as Commission actions involving credit card sales and credit card loss protection services were detailed today in testimony before the House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit.

The testimony, presented by Elaine Kolish, Associate Director of FTC's Bureau of Consumer Protection's Division of Enforcement, included information about the Commission's recent crackdown against a group of buying clubs, including Triad Discount Buying Service, Inc., its related companies, and their operator, Ira Smolev, for failure to disclose, or to disclose adequately, the terms of negative option or "free trial" offers. "Negative option marketing is particularly troubling," Kolish explained, "when marketers, as they did in the *Smolev* case, already have consumers' credit card or billing account information and can easily charge consumers' accounts without their permission or when marketers fail to disclose that consumers' credit card numbers will be transferred to another company and charged unless consumers call to cancel."

Kolish also presented examples of FTC's aggressive challenges against deceptive marketing of credit and credit card-related services. The testimony cited the October 18, 2001 FTC filing of nine cases, most of which involved the alleged deceptive telemarketing of "guaranteed loans," worthless credit card protection services, and "protection" from identity theft, and additional cases challenging the deceptive telemarketing of major credit cards, such as VISA and MasterCard.

Included in the testimony was information about the numerous consumer education publications the Commission has disseminated to help consumers protect themselves. Among the publications mentioned were: "[Prenotification Negative Option Plans](#);" "[Trial Offers: The Deal is in the Details](#);" "[Gold and Platinum Cards](#);" "[Secured Credit Card Marketing Scams](#);" and "[FTC Consumer Alert! Credit Card Loss Protection Offers: They're the Real Steal](#)." Kolish urged consumers who may have had their credit card numbers transferred or charged without their knowledge or consent to report their experiences by filing a complaint with the FTC in writing, online at [www.ftc.gov](http://www.ftc.gov), or by calling the FTC's toll-free number, 1-877-FTC-HELP. "Consumer reports are essential to our investigations," said Kolish, "as information about where such practices are occurring and which companies are engaging in them is critical to effective state and federal law enforcement efforts."

FTC publications mentioned in the testimony are available at [www.ftc.gov](http://www.ftc.gov).

Copies of the testimony are available from the FTC's Web site at <http://www.ftc.gov> and also from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC works for the consumer to prevent fraudulent, deceptive and

### Related Documents:

[Prenotification Negative Option Plans](#)

[Trial Offers: The Deal is in the Details Prenotification Negative Option Plans](#)

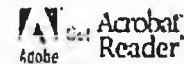
[Gold and Platinum Cards](#)

[Secured Credit Card Marketing Scams](#)

[FTC Consumer Alert! Credit Card Loss Protection Offers: They're the Real Steal](#)

*Prepared Statement of the Federal Trade Commission Concerning Its Recent Enforcement Action Against Ira Smolev, Triad, and Related Parties*

[Text of the Commission Testimony](#)



unfair business practices in the marketplace and to provide information to help consumers spot, stop and avoid them. To file a complaint, or to get free information on any of 150 consumer topics, call toll-free, 1-877-FTC-HELP (1-877-382-4357), or use the complaint form at [www.ftc.gov](http://www.ftc.gov). The FTC enters Internet, telemarketing, identity theft and other fraud-related complaints into Consumer Sentinel, a secure, online database available to hundreds of civil and criminal law enforcement agencies in the U.S. and abroad.

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(FTC File No. 992-3255)

(<http://www.ftc.gov/opa/2001/11/kolish.htm>)

PREPARED STATEMENT  
OF THE FEDERAL TRADE COMMISSION

Before the

COMMITTEE ON FINANCIAL SERVICES  
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT  
UNITED STATES HOUSE OF REPRESENTATIVES

Washington, D.C.

November 1, 2001

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I. Introduction

Mr. Chairman and members of the Committee, I am Elaine Kolish, Associate Director of the Bureau of Consumer Protection's Division of Enforcement at the Federal Trade Commission.<sup>(1)</sup> I am pleased to have this opportunity to provide information concerning the Commission's recent enforcement action against Ira Smolev, Triad, and related parties.<sup>(2)</sup> That case was brought as part of the Commission's crackdown on deceptive negative option marketing programs that fail to disclose, or to disclose adequately, the terms of negative option or "free trial" offers. These practices have resulted in consumers being charged or billed for goods and services without authorization.<sup>(3)</sup> Negative option marketing is particularly troubling when marketers, as they did in the *Smolev* case, already have consumers' credit card or billing account information and can easily charge consumers' accounts without their permission or when marketers fail to disclose that consumers' credit card numbers will be transferred to another company and charged unless consumers call to cancel.

This testimony describes the *Smolev* case and other recent Commission actions involving deceptive negative option marketing and the deceptive sale of credit cards and credit card loss protection services. In addition, this statement describes FTC consumer education materials designed, for example, to help consumers understand negative option offers and minimize the risk of having their billing information transferred or used without their knowledge or consent.

II. Background

The FTC is the federal government's primary consumer protection agency. Congress has directed the FTC, under the FTC Act, to take action against "unfair or deceptive acts or practices" in almost all sectors of our economy and to promote vigorous competition in the marketplace.<sup>(4)</sup> As part of our activity, the Commission monitors complaints about all types of negative option marketing. Although the number of complaints in this general area has been increasing, one of the specific segments with a particularly dramatic increase in complaints is buying clubs. Buying clubs provide members with specified benefits over a period of time, including, for example, discounts on goods, health services, and legal services. From 1998 to 2000, buying clubs jumped from the 26<sup>th</sup> to the 11<sup>th</sup> most frequently complained about subject in the FTC's Consumer Sentinel complaint database. Thus, this area has attracted increased FTC attention, as well as the attention of the State Attorneys General.

III. *Smolev/Triad* Case and Negative Option Marketing

On October 24, 2001, the FTC announced that a group of buying clubs including Triad Discount Buying Service, Inc., its related companies and their operator, Ira Smolev, will pay more than \$9 million to settle charges brought by the FTC and State Attorneys General that the defendants misled consumers into accepting trial buying club memberships and obtained consumers' credit card account numbers without the consumers' knowledge or authorization from telemarketers pitching the buying clubs.<sup>(5)</sup> Consumers then were enrolled in the clubs and charged up to \$96 in yearly membership fees. Of the amount to be paid, \$8.3 million is earmarked for consumer restitution, and \$750,000 will cover state investigative costs. The multi-state investigation, which