

ALASKA LEGISLATURE COMMITTEE FILES, 2003-2004

10935 HOUSE LABOR & COMMERCE

was led by Florida and Missouri, resulted in more than 40 states' entering into the settlement agreement.

From 1996 to 2000, the Triad companies contracted with numerous independent telemarketers to "upsell"⁽⁶⁾ the Triad buying clubs. The telemarketers generally marketed their own products and services through outbound calls or inbound calls in response to advertising, direct mail, or infomercials. After customers purchased products or services from these telemarketers and provided their credit card numbers for payment, the telemarketers promoted a 30-day free trial in the Triad buying club as a thank-you for purchasing the telemarketers' products or services. The Commission's complaint alleges that the telemarketing scripts did not disclose or disclose sufficiently that consumers had to call the defendants and cancel their membership before the end of the trial period to avoid being automatically enrolled as a member and charged an annual fee. In addition, consumers were unaware that their credit card numbers were being transferred from the telemarketer they called to Triad.

In addition to providing monetary relief, the Triad Order requires Ira Smolev and the Triad companies to drastically revise their marketing practices to prevent future deception. The Order prohibits them from misrepresenting "free" offers of goods or services and from failing to disclose any obligations placed on consumers who accept trial offers. The Order also prohibits them from: (1) obtaining consumers' billing information, including credit card account numbers and unique identifying information, from third parties without the consumers' express authorization; (2) disseminating the information (with a few narrow exceptions, such as to process an authorized charge); and (3) signing up new members or renewing existing memberships without express, verifiable authorization from the consumer.⁽⁷⁾

In addition to the FTC and state actions against Triad, since 1999 several states have taken enforcement action against three other buying club marketers, Damark International,⁽⁸⁾ MemberWorks⁽⁹⁾ and Brand Direct Marketing ("BDM"),⁽¹⁰⁾ based on their marketing practices. These matters involved alleged practices like those at issue in the *Smolev* matter.

The FTC and State Attorneys General are continuing to investigate other companies that are engaged in negative option marketing, including offers for buying clubs, that may be misleading to consumers. Past FTC cases have involved book offers,⁽¹¹⁾ website services,⁽¹²⁾ and Internet services,⁽¹³⁾ among others. On October 4, during remarks at the 2001 Privacy Conference in Cleveland, Ohio,⁽¹⁴⁾ FTC Chairman Muris announced that, as part of the FTC's review of the Telemarketing Sales Rule, he will recommend consideration of amendments to address abuses concerning pre-acquired account information to ensure that this type of information is not used to bill consumers for goods or services they did not want.⁽¹⁵⁾

IV. Actions Involving Credit Card Sales and Credit Card Loss Protection Services

The FTC has aggressively challenged deceptive marketing of credit and credit card-related services. Most recently, on October 18, 2001, the FTC announced the filing of nine cases, most of which involve the alleged deceptive telemarketing of "guaranteed loans," worthless credit card protection services, and "protection" from identity theft.⁽¹⁶⁾

The FTC has brought cases challenging the deceptive marketing by telemarketers of major credit cards, such as VISA and MasterCard. For example, in January 2001, the Commission obtained a settlement with American Consumer Membership Services, Inc. and its principal resolving charges that they deceptively telemarketed offers of pre-approved, guaranteed VISA or MasterCard credit cards for a \$69 fee to consumers with credit problems. Instead of the promised cards, consumers received vouchers, coupons, and other offers, and occasionally credit card applications with lists of banks to which they could apply for a credit card. Applying for these credit cards often required additional bank fees of as much as \$150. The settlement bans the defendants from engaging in any telemarketing, or in the advertising, marketing, or sale of credit cards, loans or other extensions of credit. In addition, it requires the payment of over \$40,000 in consumer redress.⁽¹⁷⁾ In other similar cases, the FTC alleged that the companies misrepresented that consumers whose credit cards are lost or stolen are at risk for unlimited charges, when in fact under the Truth-in-Lending Act consumers are not responsible for any unauthorized credit card charges over \$50, and major credit card companies typically waive this fee too.

V. Consumer Education

To help consumers protect themselves, the Commission has widely disseminated numerous consumer education publications.⁽¹⁸⁾ To help consumers understand negative option and trial offers and reduce the risk of having their credit card numbers transferred or charged without authorization, the Commission has issued two publications - "Prenotification Negative Option Plans" and "Trial Offers: The Deal is in the Details." The FTC also has issued consumer education materials addressing the deceptive marketing of gold credit cards and credit card loss protection programs, including "Gold and Platinum Cards;" "Secured Credit Card Marketing Scams;" and "FTC Consumer Alert! Credit Card Loss Protection Offers: They're the Real Steal." We hope that consumers who may have had their credit card numbers transferred or charged without their knowledge or consent will report their experiences by filing a complaint with the FTC. Consumers who feel that they have been defrauded can file complaints with the FTC in writing, online at www.ftc.gov, or by calling the FTC's toll-free number, 1-877- FTC HELP. Information about where such practices are occurring and which companies are engaging in them is critical to effective state and federal law enforcement efforts.⁽¹⁹⁾

VI. Conclusion

The Commission appreciates the opportunity provided by the Subcommittee to describe our efforts to tackle the deceptive marketing of negative option and free trial offers and the improper transfer or misuse of consumers' billing information, as well as other deceptive practices involving the sale of credit cards and credit card loss protection services.

Endnotes:

1. The views expressed in this statement represent the views of the Commission. My oral statement and responses to any questions you may have are my own, and do not necessarily represent the views of the Commission or of any individual Commissioner.
2. *FTC v. Ira Smolev*, No. 01-8922 CIV ZLOCH (S.D. Fla.) (filed Oct. 23, 2001).
3. A negative option is any type of sales term, contract provision, or buying plan that requires an affirmative action on the consumer's part to prevent a sale from taking place. This type of marketing is legal as long as the seller clearly discloses all the material terms and conditions up front and the consumer accepts the offer.
4. The FTC has broad law enforcement responsibilities under the FTC Act, 15 U.S.C. § 41 *et seq.* The statute provides the agency with jurisdiction over most of the economy. Certain entities, such as depository institutions and common carriers, are wholly or partially exempt from FTC jurisdiction, as is the business of insurance. In addition to the FTC Act, the FTC has enforcement responsibilities under more than 40 statutes.
5. The press release and related documents are available at www.ftc.gov/opa/2001/10/triad.htm. Specifically, the complaint alleges that defendants misrepresented that: (1) consumers who agree to the offer of a 30-day trial membership incur no obligation to take any action to avoid having their credit cards charged for the membership; (2) consumers agreed to accept the trial memberships, or agreed to purchase memberships, for which defendants charged them; and (3) only the cost of the products purchased from defendants' third-party telemarketers would be charged to the consumers' credit card accounts and no other charges to the accounts would be made without the consumers' further express authorization. The complaint also alleges that defendants failed to disclose or to disclose adequately that a consumer who fails to contact defendants within 30 days and cancel the membership is automatically enrolled as a member and charged an annual fee, and that the member is charged a renewal fee each subsequent year unless the member cancels the membership. In addition, it alleges that defendants, directly and through their third-party telemarketers, failed to disclose that the consumers' financial information is turned over to defendants, who charge the consumer's credit card for the membership. Finally, the complaint alleges that defendants violated the Telemarketing Sales Rule ("TSR") by not disclosing material terms and conditions of the offers up front.
6. Upselling is the practice of marketing additional products after a consumer has agreed to purchase a different product. In this case, for example, two sellers entered into a joint marketing agreement to offer products or services during the same telephone call. The first seller telemarketed its own products or services. After consumers provided financial information to pay for their orders, the first seller offered the second seller's products or services.
7. The Order also enjoins violations of the Telemarketing Sales Rule, and requires Ira Smolev and the Triad companies to retain a third party monitor to oversee their future business operations and report to the FTC. Finally, the Order requires Ira Smolev to maintain a \$1.5 million escrow account before he markets goods or services to the general public or assists others engaging in telemarketing.
8. In 1999, Minnesota obtained an Assurance of Discontinuance from Damark International to resolve allegations that it deceived consumers by offering a free trial membership in its buying clubs without disclosing that consumers must affirmatively act to cancel the membership within 30 days to avoid a credit card charge.
9. At least four states -- Minnesota, New York, Nebraska, and California -- have obtained either an Assurance of Voluntary Compliance ("AVC") or a court settlement with MemberWorks. Nebraska obtained an AVC in February 2001 that applies

nationwide. The AVC requires MemberWorks to provide refunds to consumers alleging unauthorized charges and includes detailed conduct provisions applicable to MemberWorks' marketing of membership programs.

10. In August 2000, BDM agreed to be bound by a federal court order resolving allegations that BDM violated the TSR and state consumer protection laws. *State of Connecticut and State of Washington v. Brand Direct Marketing, Inc.*, No. 300CV1456-GLG (D. Conn., Aug. 9, 2000). The states filed this action in federal court to enforce the TSR pursuant to the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §6101 *et seq.* The states have authority to bring such TSR enforcement actions under 15 U.S.C. § 6103(a). Pursuant to this Order, BDM paid \$1.9 million in penalties, fees and consumer education funds, and about \$11 million in restitution. In addition, BDM is required to make specific disclosures about its ability to directly charge consumers' credit cards. Finally, the order requires BDM to improve its cancellation, automatic renewal, and refund procedures.

11. For example, the Commission recently obtained a consent decree against a book company for allegedly violating the Prenotification Plan Negative Option Rule, 16 C.F.R. Part 425, the TSR, and the Unordered Merchandise Statute, 39 U.S.C. § 3009. *FTC v. Creative Publishing Int'l, Inc.*, No. 01-945 (DWF/AJB) (D. Minn. May 30, 2001). That case involved allegations that consumers were not told all the terms and conditions of the plan they were unwittingly signed up for when they agreed to receive a book on a free preview basis. Those consumers who paid for the book were sent notices, without their authorization, that other books would be sent to them unless they cancelled.

12. See e.g., *FTC v. Shared Network Services, LLC*, No. CIV. S-99-1087 WBS JFM (E.D. Cal.); *FTC v. Wazzu Corp.*, No. SACV-99-762-AHS (C.D. Cal.); and *FTC v. U.S. Republic Communications, Inc.*, No. 4:99-CV-3657 (S.D. Tex.). The defendants in these cases represented that small businesses would have an opportunity to review website services for a 30-day trial period before being charged for the services. The defendants made it nearly impossible for businesses to cancel, however, by failing to provide information about how to contact the defendants or by providing that information weeks after the telemarketing call.

13. In 1998, the Commission challenged the free trial-period marketing practices of three Internet Service Providers ("ISPs"). The Commission alleged that the ISPs failed to disclose adequately that consumers who do not cancel free Internet services during a 30-day trial period would incur charges on their credit cards (the consumers provided their credit card numbers to the ISPs to initiate the free trial periods). The consent orders require the ISPs to disclose clearly and prominently any obligation to cancel the service in order to avoid being charged, and to provide at least one reasonable means of canceling. See *America Online, Inc.*, No. C-3787, *Prodigy Servs. Corp.*, No. C-3788, and *CompuServe, Inc.*, No. C-3789 (Mar. 16, 1998).

14. Chairman Muris' remarks can be found at www.ftc.gov/speeches/muris/privisp1002.htm.

15. 16 C.F.R. Part 310. As with any rulemaking, the Commission will carefully consider the record developed during the proceeding before making a final decision.

16. The press release announcing the "Ditch the Pitch" cases is at www.ftc.gov/opa/2001/10/ditch.htm.

17. *FTC v. American Consumer Membership Services, Inc.*, No. 99 CV 1206 (N.D.N.Y.) (complaint filed Aug. 5, 1999).

18. These publications are available at www.ftc.gov/bcp/online/pubs.

19. Recently issued voluntary self-regulatory guidelines also may help address and prevent deception and consumer confusion over negative option marketing practices, as well as the use of pre-acquired account information. On October 14, 2001, the Electronic Retailing Association's board approved industry self-regulatory guidelines that address negative option marketing (called advance consent marketing by the industry), made compliance with them a condition of membership, and advised members not to do business with other companies not adhering to the guidelines. In addition, the Magazine Publishers Association and companies such as Time-Life have formally adopted the guidelines, and it appears that other companies and associations also may do so. These guidelines explain the disclosures that are required for various types of negative option marketing (e.g., automatic renewals, free trial offers) and advise sellers "to be sensitive to the privacy concerns of consumers and regulators in connection with the use and disclosure of consumers' account billing information." The guidelines further provide that "sellers and their agents and their service providers should not transfer a consumer's account billing information to any unaffiliated third party other than a billing or processing agent without the consumer's express authorization." We are hopeful that as the self-regulatory guidelines become more widely known and adopted, they will have a significant impact on industry practices and reduce consumer confusion and complaints about negative option marketing techniques. The guidelines are available at www.retailing.org.

Prenotification Negative Option Plans

You see the ads on TV, in magazine and newspaper inserts, and on the Internet: "5 Books for \$1," "10 CDs for FREE," or "4 Videos for 49¢ each." By joining some of the clubs that are offering these deals, you may become a member of a "prenotification negative option plan." That means you are agreeing to receive merchandise automatically unless you tell the club not to send it.

How Prenotification Plans Work

Often, you can join a plan simply by accepting an introductory offer of some merchandise, often at a discounted price. Then, you pay full price for additional merchandise.

Joining a plan means you agree to the plan's sales method as long as you're a member. As a plan member, you will receive periodic announcements describing merchandise that you can buy. These announcements are important because the merchandise is sent to you automatically unless you return the form rejecting the offer within the specified time.

Each time you receive an announcement, you have two choices:

A. If you want the merchandise, do nothing. It will be sent automatically. Some plans require you to pay for the merchandise when you get it. Other plans send the merchandise "on approval," which means you can try it for a specified period. If you return the merchandise, you don't have to pay for it.

OR

B. If you don't want the merchandise, you must say so and return the rejection form included with the announcement within a specified time, usually 10 days. Make sure you follow the instructions on the form. Some plans also let you use the rejection form to order other merchandise.

The Prenotification Negative Option Rule

The Federal Trade Commission enforces the Prenotification Negative Option Rule. The Rule requires companies to give you information about their plans, clearly and conspicuously, in any promotional materials that consumers can use to enroll. If the sales presentation for a plan is made orally, say on the phone, the terms and conditions still must be disclosed clearly and conspicuously during the presentation. For example, companies must tell you:

- whether there's a minimum purchase obligation;
- how and when you can cancel your membership;
- how many announcements and rejection forms you'll receive each year, and how often you'll receive them;

- how to reject merchandise;
- the deadline for returning the rejection form to avoid shipment of the merchandise; and
- whether billing charges include postage and handling.

Minimum Purchase Obligations and Canceling Memberships

Some plans require that you buy a certain amount of merchandise at the club's regular prices. If that's the case, the minimum purchase obligation must be disclosed clearly and conspicuously. Once you've satisfied the minimum purchase requirements, you can cancel your membership. If the club has no minimum purchase obligation, you can cancel your membership any time.

If you want to cancel your membership, send your request in writing. The company must cancel your membership promptly. If the company sends additional merchandise after receiving your written cancellation notice, you need to return the first item that is sent. You may consider any additional shipments as unordered merchandise and keep them as a gift.

However, to avoid dunning notices, it's best to tell the company that you're no longer a member each and every time you receive unordered merchandise. You can do that by sending the company a copy of your cancellation letter.

Announcements and Rejection Forms

The company must tell you how often and how many announcements and rejection forms you'll receive each year and how often you will receive them. The company also must tell you whether billing charges for each item include postage and handling.

The rejection form comes with, or is a part of, the announcement. In some plans, the rejection form can be used to decline merchandise and to choose a different item. The announcement must give you at least 10 days to decide if you want the merchandise and mail back the form. The form includes a "return date" B the date the form must be received by the company, or a "mailing date" B the date you must mail the form to the company. No matter which date the company uses, you have at least 10 days to respond.

If you don't get at least 10 days, and you receive an unwanted shipment, you can return the merchandise to the company for a full credit to your account. The company must pay for the return postage.

Bonus Merchandise

To attract new members, some companies advertise special introductory offers, like "5 Books for \$1." By law, a company must ship the merchandise within 30 days of receiving your order. If the merchandise can't be shipped within that time, the company may offer you an equivalent alternative. If you don't want the alternative, you can cancel your membership. The company must honor your cancellation request, as long as you return the

introductory merchandise.

Another Type of Clubs or Plans

Some book, CD or video clubs may involve membership in another type of plan called a "Continuity plan." "Continuity plans" automatically send merchandise or provide services until you tell them to stop, without sending an announcement or a rejection form before each shipment. While these plans are **not** covered under the FTC's Prenotification Negative Option Rule, basic consumer protection principles apply: Sellers must give consumers information about the plan's terms and conditions, clearly and conspicuously, in their promotional materials.

Some continuity plans provide an "approval" period so you can check out the merchandise and decide whether to keep it and pay for it. Many programs selling collectibles, like stamps or coins, work this way. Other continuity plans require you to pay for merchandise when you receive it.

Protect Yourself

Before you agree to any prenotification plan:

Read the terms and conditions of the plan carefully so you understand the obligations of membership before you join.

Compare costs. The introductory merchandise may be substantially discounted but you may be required to buy additional merchandise at the club's regular prices and to pay shipping and handling on those purchases. Do the math to compare the club's prices and the shipping charges against those of other sellers.

Keep copies of plan documentation that explain the terms and conditions of the plan and the rejection forms you return to the seller. It's also a good idea to keep documentation of the date you mailed the rejection forms.

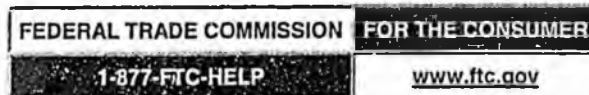
Check out the seller. Contact your local consumer protection agency or the Better Business Bureau to find out if they have any complaints on file. A record of complaints may indicate questionable practices, but a lack of complaints doesn't necessarily mean that the seller is without problems. Unscrupulous businesses or business people often change names and locations to hide complaint histories.

Where to Complain

If you have a problem with your plan, try to resolve it with the seller first. If you're dissatisfied with the response, contact your local Better Business Bureau or local consumer protection agency.

You also may file a complaint with the FTC.

The FTC works for the consumer to prevent fraudulent, deceptive and 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 consumer issues, visit www.ftc.gov or call toll-free, 1-877-FTC-HELP (1-877-382-4357); TTY: 1-866-653-4261. 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.



May 2001

Trial Offers: The Deal Is in the Details

Chances are you've gotten offers to try a product or service through a "free trial." Companies use these offers to sell a variety of items, from books and CDs to videos, magazines, hosiery and Internet access. But as part of a trial offer, a company also must tell you if any conditions are attached to the deal.

The Federal Trade Commission (FTC) carefully monitors the marketing practices in this area and offers this information to help you make wise purchasing decisions. Be a savvy consumer: read the fine print and ask questions. Trial offers can be a great way to try new products or services without making a long-term commitment to a membership, subscription or extended service contract. But by accepting the free trial offer, you may be agreeing to buy additional products and services - if you don't cancel.

What Does "No Risks or Obligations" Really Mean?

A company may claim its free trial offer has no risk or obligation for the consumer. And that may be true, but only if you take timely action to avoid future obligations. For example, you may have to contact the company to cancel **during the trial period** to avoid receiving additional goods or services or to pay for what you've already received. By not canceling, you may be agreeing to let the company enroll you in a membership, subscription or service contract, and to charge the fees to your credit card.

How Conditional Trial Offers Work

Here are a few examples of conditional free trial offers:

- A company offers you an introductory package of free books, CDs or videos. If you accept the offer, you may be agreeing to enroll in a club that will send you the products and bill you **until you cancel**.
- A company offers you the first three issues of a magazine for free. Unless you cancel **after** receiving the third issue, you may be agreeing to a one-year subscription that is automatically renewed each year.
- A company offers you free Internet service for 30 days or 700 hours, whichever comes first (30 days = 720 hours). Unless you cancel **within** the 30-day period or **after** you use the 700 hours, you may be agreeing to pay for continuous Internet service.
- A company offers you a free pair of pantyhose. By accepting the offer, you may be agreeing to receive a second pair as well. You also may be agreeing that, if you keep and pay for the second pair, the company may ship you a third pair. This may continue **until** you tell the company to cancel your account.

Make Sure You Know Who's Selling What

Sometimes, you call a company for one reason and at the end of the transaction, you may be told about a trial offer that another company is offering. This is called upselling. If you receive such an offer, pay close attention to the terms and conditions. Make sure you understand **who** you're dealing with and **what** you're agreeing to. By accepting the trial offer, you may be agreeing to let the company you called in the first place give your credit card account information to another seller.

If you don't cancel **during** the trial period, your credit card may be charged by the second seller for the product or service offered for the trial period. If you don't recognize the seller, you may think the charge is an unauthorized transaction. In fact, by accepting the trial offer, you may have agreed to pay if you didn't cancel **before** the trial period ended.

It's The Law

According to the law, companies must clearly and prominently disclose the "material" terms of their trial offers before you give your consent. Material terms may include:

- the fact that by accepting the trial offer, you're actually agreeing to be enrolled in a membership, subscription or service contract or paying for additional products and services if you don't cancel **within** the trial period;
- how much time you have to cancel before you incur charges;
- the cost or range of costs of goods or services you'll receive if you don't cancel during the trial period;
- how to cancel **during** the trial period;
- whether you'll be charged a non-refundable membership fee if you don't cancel **within** the trial period;
- whether fees will be charged automatically to the credit card you used to buy other goods or services.

Protect Yourself

Trial offers are promoted through all kinds of media: newspaper and magazine ads, TV and radio commercials, direct mail, and the phone and Internet. In print ads and offers, the material terms may appear in fine print as a footnote at the bottom of a page, or on the back of the offer. Read the whole offer carefully before you decide whether it's a good deal for you. When offers are made orally - whether by radio, TV or on the phone - listen carefully to the message. If you don't understand the details, ask the caller to repeat the terms and conditions as many times as it takes until you get it. If you're not satisfied with the responses, consider taking your business elsewhere. Never give in to pressure to agree to a deal.

Here are some questions you may want to ask the seller:

- Is the free trial offer related to a membership, subscription or extended service contract?

- Do I have to contact the company to avoid receiving more merchandise or services? If so, how much time do I have? What is my deadline?
- Who do I contact to cancel? How do I cancel? By letter? By phone? By email?
- Will I get other products with the free item? If so, will I have to pay for them or send them back if I don't want them? How long do I have to decide before incurring a charge?
- How do I stop getting additional merchandise or services?
- Is there a membership fee? If so, is it refundable?
- Will you automatically bill my credit card for anything?
- Who is offering the trial - you or another company? What is the name and address of the company?

Where to Complain

If you have a problem with a trial offer, try to resolve it with the seller first. If you're dissatisfied with the response, contact your local Better Business Bureau or local consumer protection agency.

You also may file a complaint with the FTC. The FTC works for the consumer to prevent fraudulent, deceptive and 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. 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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July 2001



FTC gets complaints of negative options gone wild

BY DAVID S. HILZENRATH
The Washington Post

Timothy Cain of Rochester, N.Y., said he was trying to simplify his Christmas shopping last winter when he visited the Web site of "Girls Gone Wild" and bought a pair of videos for his brother for \$9.99 plus shipping. He was incensed, though, when additional videos started arriving monthly, along with \$24.98 in charges on his credit card.

Unwittingly, he had purchased a subscription, Cain said, a fact that was "hidden" in the Web site.

The videos' producer, Mantra Films Inc., uses an increasingly common marketing strategy known as a "negative option," which requires the consumer to take action to avoid continuing charges. The video series, in which spring break revelers expose themselves for roving cameras, has become a hot seller.

Negative options can be a convenience for consumers, but they are also "ripe for abuse," said Reilly Dolan, assistant director for enforcement in the Federal Trade Commission's bureau of consumer protection. Over the past two years, complaints to the FTC about unordered merchandise have increased by 60 percent, and negative-option marketing accounts for a significant part of that, he said.

Cain filed a complaint with the Better Business Bureau, one of 843 grievances about Mantra filed over the past three years, according to William Mitchell, president of the BBB chapter in the Los Angeles area, where Mantra is based.

The Experian credit reporting bureau's ConsumerInfo.com subsidiary has been the subject of 960 complaints to the BBB over the same time period, Mitchell said, and the bureau revoked ConsumerInfo.com's membership in 2001 when it refused to improve disclosures.

The related FreeCreditReport.com site offers a "FREE credit report in seconds" and adds: "So what's the catch? There isn't one!" But many consumers who took advantage of the offer didn't realize they were enrolling in a credit monitoring service until the annual \$79.95 charge showed up on their credit card statements, a BBB report said.

Under federal consumer protection standards, marketers must disclose significant terms of a transaction in a "clear and conspicuous" fashion.

"Whether a disclosure meets this standard is measured by its performance -- that is, how consumers actually perceive and understand the disclosure within the context of the entire ad," an FTC guidance says.

The "Girls Gone Wild" subscription feature is discussed deep in a "Terms and Conditions" section of the videos' Web site, and it is possible to order the merchandise without ever seeing that text.

"I think it's extremely misleading," said the BBB's Mitchell. "It's fairly obvious that the whole thing is set up to rope people into this automatic reorder program and then of course make it difficult to extricate yourself from that situation."

Asked recently why the company doesn't disclose the terms more conspicuously, Mantra spokesman Bill Horn said, "We are going to evaluate it, and we're sure to make some changes.

"While Mantra feels that the monthly subscription service aspect of Web-based ordering is clear for consumers, you have made some interesting points about how some consumers may be confused or may choose not to read the terms of the sale," Horn said.

The FTC occasionally takes action against companies for inadequate disclosure of negative options. In 1997, it accused America Online of failing to make clear that consumers would automatically be charged for continuing service if they didn't cancel before their free trials ended. AOL settled the case by agreeing to make clearer disclosures.

Last November, the FTC alleged that marketers of books such as "Best of Martha Stewart" and "Southern Living Christmas" failed to properly disclose the negative-option feature of offers made through mail and phone solicitations. Oxmoor House and its parent, Southern Progress Corp., agreed to pay penalties of \$500,000 to settle an FTC complaint.

The company agreed to change the wording in its offers, but Southern Progress spokeswoman Laura Hardin said there was "nothing legally wrong with the way we market the books."

The subscription aspect of the ConsumerInfo.com program is explained in small print under the heading "Privacy Policy Notice" after the consumer fills out two screens of ordering information.

Why isn't the disclosure displayed up front on the site? "You can't put everything on one page," Experian spokesman Donald Girard replied. "I think the font type would be so small that you would not really get the message across very clearly."

The terms are more prominently displayed on another Experian Web site

advertising similar services.

ConsumerInfo.com, which has 1.2 million subscribers, takes the complaints seriously and resolves most of them quickly, Girard said.

As for Mantra, Horn said, the number of complaints about "Girls Gone Wild" doesn't show a huge percentage of unhappy customers, considering the millions of videos sold annually.

In a December television interview, Mantra founder and Chief Executive Joseph Francis, 30, said the company had sold "tens of millions" of videos "and sales have been in the hundreds of millions."

Despite his frustration with the company, Cain expressed admiration for its money-making power. "It's a thing of beauty if you look at it from the other side," he said. "It's just very rigged in their favor."

Mantra said Cain had to return the goods to get his money back, but would not refund the \$4.99 shipping and handling charge.

On Mantra's online order form, the "Agree to Terms" box is automatically checked -- as a convenience, Horn said. Only by clicking on the word "Terms" would the consumer see them. Section 8A of the terms says, "Certain products offered by Mantra consist of a subscription," but the site does not explicitly say which ones.

Elsewhere on the site are references to a "MONTHLY PREVIEW PROGRAM" with the notation "CANCEL ANY TIME," but Horn agreed those references alone don't explain the negative option, and one could place an order without ever seeing them.

A BBB report on Mantra suggested recipients of unordered merchandise dispute unauthorized charges with their credit card issuer.

The report also noted that, under federal law, consumers are entitled to keep unordered merchandise without paying for it.

Click here to return to story:

http://charleston.net/stories/051203/bus_12marketing.shtml



Free trial offers: Are they actually good deals?

By AL TOBIN
Better Business Bureau

Free trial offers are used by many companies to sell everything from books to CDs, from magazines to Internet access. Trial offers can be a great way to try out new products or services without making a long-term commitment. You should be aware, however, that by accepting a free trial offer, you might be agreeing to buy additional products and services, if you do not cancel within a specified period of time.

Before you accept a free trial offer, be sure you know what your obligations will be. For example, you may have to contact the company to cancel *during the trial period* to avoid receiving goods or services or to avoid paying for what you have already received. By not canceling, you may be agreeing to let the company enroll you in a membership, subscription or service contract, and to charge the fees to your credit card.

Pay close attention to the "material" terms advertisers use. According to the law, companies must clearly and prominently disclose the material terms of their trial offers *before* you give your consent. Material terms may include:

Trial offers can be a great way to try out new products or services without making a long-term commitment. You should be aware, however, that by accepting a free trial offer, you might be agreeing to buy additional products and services if you do not cancel within a specified period of time.

- how much time you have to cancel before you incur charges;

- the fact that by accepting the trial offer, you are actually agreeing to be enrolled in a membership, subscription or service contract or agreeing to pay for additional products and services if you do not cancel within the trial period;

- the cost or range of costs of goods or services you will receive if you do not cancel during the trial period;

- how to cancel during the trial period;

- whether you will be charged a non-refundable membership fee if you do not cancel within the trial period; and,

- whether fees will be charged automatically to the credit card you used to buy other goods or services.

Trial offers are promoted through all types of media: newspaper and magazine ads, TV and radio commer-

cial, direct mail, and the phone and Internet. In print ad offers, the material terms may appear in fine print as a footnote at the bottom of a

page, or on the back of the offer. To protect yourself, read the entire offer carefully before you decide whether it is a good deal for you. When offers are made orally – whether by radio, TV or on the phone – listen carefully to the message. If you do not understand the details, ask the caller to repeat the terms and conditions as many times as it takes until you understand. Or, ask them to send you the terms and conditions in writing. Never give-in to pres-

sure to agree to a deal.

The BBB, along with the Federal Trade Commission, suggest you ask the following questions:

- Is the free trial offer related to a membership, subscription or extended service contract?

- Do I have to contact the company to avoid receiving more merchandise or services?

- Who do I contact to cancel?

- Will I receive other

page 32 please

Free trial offers . . .

continued from page 26

products with the free item? If so, will I have to pay for them or send them back if I do not want them? How long do I have to decide before incurring a charge?

- Is there a membership fee? If so, is it refundable?

- Will you automatically bill my credit card for anything?

- Who is offering the trial – you or another company? What is the name and address of the company?

If you have a problem with a trial offer, try to resolve it with the seller first. If you are dissatisfied with the response, contact the Better Business Bureau (www.bbb.org), Federal Trade Commission (www.ftc.gov) or your local consumer protection agency.

Al Tobin is chief executive officer for Better Business Bureau of Alaska, Inc.

State of Alaska
Department of Law

Gregg D. Renkes
Attorney General
P.O. Box 110300
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NEWS RELEASE



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www.law.state.ak.us

FOR IMMEDIATE RELEASE: October 28, 2003

**STATE FILES SUIT AGAINST ACS FOR UNFAIR
BUSINESS PRACTICES**

(Juneau, AK) – Attorney General Gregg Renkes filed a complaint against ACS Wireless and its holding company, ACS Communications, Inc. for violations of Alaska Consumer Protection Act in connection with ACS' promotion of its "Voice Connect" wireless product earlier this year.

ACS promoted the new service through a "negative option" or "opt out" campaign, which required customers to notify the company if they did not want it. The company automatically billed customers \$2.00 if they failed to notify ACS that they did not want "Voice Connect" by the required deadline. The charge continued each month until the customer cancelled the plan.

"Consumers should never have to pay for a product or service not expressly requested by the consumer," said Attorney General Gregg Renkes. "These types of marketing tactics are inherently deceptive and open the door for a variety of consumer abuses. We want to make it clear that this kind of marketing will not be tolerated in Alaska."

The state's complaint asks the court to prohibit ACS from engaging in this kind of opt-out marketing in the future. It also asks the court to make ACS give refunds to consumers who were signed-up for "Voice Connect" as a result of this marketing tactic and pay the state civil penalties of \$5,000 for each consumer who was a target of this conduct.

Alaska Communications Systems Group, Inc. (ACS) provides long distance and facilities-based local telephone, wireless, data, network, and Internet services throughout Alaska. The Anchorage-based company serves residents in 74 communities throughout the state, including Anchorage, Fairbanks, Juneau, Kenai/Soldotna, Kodiak, and Sitka. It sells services to three-fourths of the state's population.

###



Free Voice Connect in April.

Hopefully by now you've had a chance to play with Voice Connect, the new voice-activated dialing product from ACS Wireless. But if not, you have another month to try it free. During the month of April, check out Voice Connect's many great qualities, like:

- Having your phone fetch numbers for you.
- Being the safest, fastest, easiest way to make a call.
- Availability on all Wireless phones.
- And it's the first system of its kind in Alaska.



WHAT A TREAT

ACS
WIRELESS
Alaska Communications Systems

((Voice Connect))



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- And it's the first system of its kind in Alaska.



WHAT A TREAT

ACS
WIRELESS
Alaska Communications Systems

((Voice Connect))



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LIKE IT OR NOT, you may be paying for wireless feature

VOICE-ACTIVATED DIALING: Customers must tell ACS, MTA they don't want it.

By RICHARD RICHTMYER
Anchorage Daily News
(Published: May 2, 2003)

It may look like more junk mail from your cell phone company, but if you toss it away without looking at it, you might unwittingly be signing up and paying for a calling feature you don't want.

ACS Wireless and MTA Wireless both recently added voice-activated dialing to their calling features, making it available to all their customers free for a trial period. But at the end of the trial period, the onus is on customers to notify the company if they don't want to pay \$2 a month for the new feature, not if they do.

That practice, known as opt-out marketing, is perfectly legal, according to the Federal Communications Commission, the agency that regulates wireless telephone companies.

As long as they clearly disclose the terms in writing and notify customers in a timely fashion, cell phone companies may add calling features to their customers' existing service plans and require them to opt out if they don't want them, an agency spokeswoman said.

The add-on feature at issue allows customers to simply speak the name of the person being called rather than dial the number.

ACS Wireless, which introduced its Voice Connect service in early March, has twice sent out "bill stuffers" -- fliers tucked in with the monthly bill -- notifying its 82,000 subscribers throughout the state that they would automatically be billed for the new service unless they canceled it, according to Mary Anne Pease, a spokeswoman for the Anchorage-based company. ACS is a unit of Alaska Communications Systems, which also provides local and long-distance phone service as well as Internet access.

ACS also did two mass mailings, sending postcards to customers advising them about the service and the need to opt out if they didn't want it, Pease said.

But Helen Clough, an ACS Wireless customer in Juneau, said she never saw the bill stuffers. And she nearly pitched the postcard in the trash because on the surface, she thought it looked like junk mail.

On the outside of the card is a picture of an ACS Wireless phone with floppy dog ears and a tail. To the right of the picture it says, "Stay? Want to keep Voice Connect? It's your choice."

You have to break a seal to open the card. Inside are more information about the Voice Connect service and a postage-paid form to mail if you want to opt out.

"It's totally deceptive," Clough said. "There's nothing on the outside to indicate that money's involved. It's like it was specifically designed so that you wouldn't see it."

MTA Wireless also has sent bill stuffers to its roughly 8,000 customers from Talkeetna to Eagle River, as well as a letter describing the service, which it calls Talk to Me VoiceDial, company spokeswoman



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Wireless feature requires opt-out from customers

ANCHORAGE (AP) - ACS Wireless and MTA Wireless both recently added voice-activated dialing to their calling features, and are offering it free to customers for a trial period.

The tricky part, known as opt-out marketing, means if customers ignore the offer, they will end up paying \$2 a month for it.

The practice is perfectly legal, according to the Federal Communications Commission, the agency that regulates wireless telephone companies. Cell phone companies can add calling features to customers' existing service plans and require them to opt-out of them as long as they clearly disclose the terms in writing and notify customers.

The add-on feature at issue allows customers to simply speak the name of the person being called rather than dial the number.

ACS Wireless, which introduced its Voice Connect service in early March, has twice sent out fliers tucked into monthly bills, notifying its 82,000 subscribers that they would automatically be billed for the new service unless they canceled it, according to Mary Anne Pease, a spokeswoman for the Anchorage-based company.

ACS is a unit of Alaska Communications Systems, which also provides local and long-distance phone service as well as Internet access.

ACS also did two mass mailings, sending postcards to customers advising them about the service and the need to opt out if they didn't want it, Pease said.

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On the outside of the card is a picture of an ACS Wireless phone with floppy dog ears and a tail. To the right of the picture it says, 'CECEstay? Want to keep Voice Connect? It's

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your choice."

Inside is more information about the Voice Connect service and a postage-paid form to mail if you want to opt out.

"It's totally deceptive," Clough said. "There's nothing on the outside to indicate that money's involved."

MTA Wireless also has sent bill stuffers to its roughly 8,000 customers from Talkeetna to Eagle River, as well as a letter describing the service, which it calls Talk to Me VoiceDial, company spokeswoman Jackie Whitstine said.

MTA Wireless is a unit of Matanuska Telephone Association, which also provides regular phone and Internet service.

The letter, mailed in a regular MTA envelope, also includes an opt-out form that can be mailed back with your next phone bill.

Both companies are providing the service in partnership with an outfit called Preferred Voice, which supplies the computer hardware, software and billing systems that make it work. Neither ACS nor MTA is bearing any of those costs. Dallas-based Preferred Voice takes a cut of the fees for the service.

Mary Merritt, Preferred Voice's vice president of finance, said the company requires most of its customers to use opt-out marketing.

"It's so we get a return on the investment in our technology," she said.

The free trial period for ACS Wireless' voice-activated dialing service is over at the end of May. June 14 will be the end of MTA's free-use period.



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HB

340

HOUSE LABOR
& COMMERCE

COMMITTEE
PACKET
Index

January 23, 2003

1

HB 340

*Damages in
Construction Claims*

AMENDMENT

#2

passed
V/C

Page 1, line 8:

Following: "defect,"

Insert: "or actual damages that result from the construction defect"

=

AMENDMENT #1

passed
Jc

Page 2, line 12:

Insert New Section:

Section 2. AS 09.45.893(c) is amended to read:

(c) The notice required by (a) of this section must be conspicuous and must be in substantially the following form:

ALASKA LAW AT AS 09.45.881-09.45.899 CONTAINS IMPORTANT REQUIREMENTS THAT YOU MUST FOLLOW BEFORE YOU MAY FILE A COURT ACTION FOR DEFECTIVE DESIGN, CONSTRUCTION, OR REMODELING AGAINST THE DESIGNER, BUILDER, OR REMODELER OF YOUR HOME. WITHIN ONE YEAR OF THE DISCOVERY OF A DESIGN, CONSTRUCTION, OR REMODELING DEFECT, BEFORE YOU FILE A COURT ACTION, YOU MUST DELIVER TO THE DESIGNER, BUILDER, OR REMODELER A WRITTEN NOTICE OF ANY DESIGN, CONSTRUCTION OR REMODELING CONDITIONS YOU ALLEGE ARE DEFECTIVE IN ORDER TO PROVIDE YOUR DESIGNER, BUILDER, OR REMODELER WITH THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE DESIGNER, BUILDER, OR REMODELER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW. FAILURE TO FOLLOW THEM MAY AFFECT YOUR RIGHT TO FILE A COURT ACTION. ALASKA LAW AT 09.45.895 CONTAINS LIMITATIONS TO THE AMOUNT OF DAMAGES THAT MAY BE RECOVERED IN A COURT ACTION FOR DEFECTIVE DESIGN, CONSTRUCTION OR REMODELING.

Renumber the remaining sections accordingly.



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

SPONSOR STATEMENT

HOUSE BILL 340

“An Act relating to damages in an action for a defect in the design, construction, and remodeling of certain dwellings; and providing for an effective date.”

House Bill 340 Damages in Construction Claims places a limit on the damages that can be awarded in a construction defect lawsuit to the actual cost of fixing the defect and other closely related costs. HB 340 does not apply to, limit, or otherwise affect lawsuits alleging personal injury or wrongful death resulting from construction defects.

Beginning in 2001, a disturbing trend among insurance carriers developed that is impacting the housing industry nationwide, but particularly in Alaska. Construction professionals are paying significantly higher insurance premiums for statutorily required general liability insurance. Under AS 08.18, a contractor must file with the State of Alaska satisfactory evidence that the applicant has public liability and property damage insurance covering the applicant's contracting operations in this state.

Coupled with the rising costs in mandatory insurance, contractors and subcontractors are also facing a decline in policy availability and number of insurance carriers in the state of Alaska. If a construction professional is able to find affordable insurance, often the policy is limited in coverage, and generally excludes coverage for any claims arising out of a construction defect.

The cause of these difficulties is the increase in construction defect litigation. Insurance carriers are passing expenses incurred due to these lawsuits on to construction professionals in the form of increased premiums. Insurance carriers are pulling out of the Alaska residential construction market, thus making it difficult to obtain required liability insurance.

HB 340 provides a working solution to the cost of general liability insurance and availability of quality insurance providers in Alaska. By establishing a limit on the amount of damages that may be recovered in a construction defect lawsuit, insurance carriers can see that Alaska is working towards establishing a less risky insurance environment. The passage of HB 340 will create an incentive for national carriers to return to Alaska and provide construction professionals with a break in the cost of mandated insurance.

Last Updated: January 14, 2004

Alaska State Chamber of Commerce

2004 Position

Amend the Tort Laws and Regulations

The Alaska State Chamber of Commerce supports amending tort laws and regulations to reduce the number of wasteful law suits and exorbitant settlements and awards that cause insurance rates to climb and businesses to become less competitive in Alaska.

SECOND CHANCES

Thirteen more states pass laws giving builders the right to fix defects in new homes.

With the ink barely dry on many right-to-repair laws, it's too early to say how much they will ultimately help builders struggling against construction-defect trends and spiraling insurance costs.

But early responses are promising.

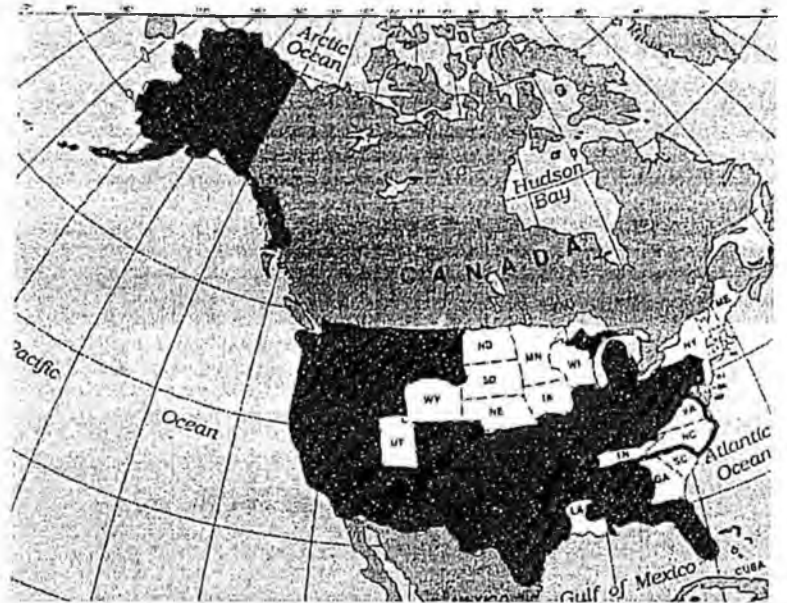
"We've gotten a favorable reaction from the insurance industry," says Clayton Traylor, senior staff vice president of construction, codes and standards (state and local operations) at the National Association of Home Builders (NAHB). "The real bounce for the insurance guys is that something is different...they're looking at the probability that there will be fewer [construction defect] cases going into the court system."

Builders and others hope that will be the case, especially in the thirteen states that passed laws in 2003, giving builders the right to fix any defects in homes before being sued. At press time, Pennsylvania was also considering such a bill.

Among the 17 states with such legislation in place, the NAHB likes the laws in Colorado and Texas best. Colorado limits the amount and type of damages builders must pay in construction-defect suits, while Texas provides for self-policing through a nine-member panel that has the power to set mandatory residential construction performance standards. These state standards should eliminate much of the wrangling of construction-defect litigation by making it easier for people in Texas to decide whether or not a new home's imperfections is truly a defect. "In other states, a construction defect is in the eye of the beholder," Traylor says. "In Texas, these standards are adopted by statute, so they have the force of the law."

Next year, builders hope to pass right-to-repair laws in Arkansas, Illinois, Mississippi, New Mexico, and Oklahoma, where bills made progress last year.

**17 states currently have right-to-repair laws on the books. Eight are considering such legislation.*



Taken from: *Builder Magazine*

December 2003

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CIVIL JUSTICE REFORM

Civil Justice Reform is needed to counter the detrimental impact that increased costs of litigation have had on the housing industry. Civil Justice Reform has several key components, including class action reform and state notice & opportunity to repair laws. With respect to class actions, High Production Builders and affiliate members may be subject to class action lawsuits in the context of a product defect case. Class action lawsuits are subject to widespread abuse by trial attorneys and individual plaintiffs, resulting in costly and unfair settlements, skyrocketing insurance premiums, and unreasonable attorneys fees, with little benefit to consumers. The state notice & opportunity to repair laws create a system that requires homeowners to notify builders of alleged construction defects before commencing litigation. The process gives builders the opportunity to inspect the defects and offer to repair the defects or to settle the claim via monetary payment. The legislation's intent is to resolve disputes between builders and consumers without having to resort to time consuming and costly litigation.

On June 12, 2003 the House approved H.R. 1115, the "Class Action Fairness Act of 2003." The bill was approved by a vote of 253 to 170, with 32 Democrats voting for the legislation. NAHB sent a letter to the entire House in support of the bill and placed calls to Democrats who were undecided on the day of the vote. One amendment was adopted by voice vote on the House floor. The amendment broadens the category of class action cases that would remain in state court. The amendment was a compromise that mirrored an amendment authored by Senator Diane Feinstein (D-CA) and adopted by the Senate Judiciary Committee during its mark up of the Senate version of the class action bill. The adoption of the amendment increases the chance that the bill will move through the Senate and be passed into law. Supporters of the bill claim that reform is needed to curb the trend of "forum shopping," a practice in which class action cases are being filed in state courts that are known for awarding large settlements.

Provisions of the amendment adopted on the House floor:

- Raises the aggregate amount in controversy required for federal court jurisdiction from \$2 million to \$5 million.
- If less than one-third of the plaintiffs are citizens of the same state, the case is automatically eligible for federal court jurisdiction under the new diversity rules in this bill.
- If between one-third and two-thirds of the plaintiffs are citizens of the same state as the primary defendants, the federal courts have the discretion, after weighing five factors, to determine if the case is appropriately of a local character and return intrastate class actions to state court.
- If more than two-thirds of the plaintiffs are citizens of the same state, the case remains in state court and is not subject to the new rules contained in this bill.
- If there are fewer than 100 plaintiffs, the case remains in state court.

The amendment substantially changed the reach of the original bill. NAHB is currently assessing the amendment, and its impact on our members, in anticipation of the Senate's review of the bill.

Senate Majority Leader Bill Frist (R-TN) has indicated that he is planning to bring class action reform legislation to the Senate floor for a vote sometime in this Fall. S. 274, the "Class Action Fairness Act of 2003", was reported out of the Senate Judiciary Committee in April. The bill is similar to the House passed class action bill, H.R. 1115.



NAHB
NATIONAL ASSOCIATION
OF HOME BUILDERS



CIVIL JUSTICE REFORM

NAHB worked with a consultant to gather data to help identify the underlying liability problems facing the building industry and to develop potential solutions that may address these problems. Further, a review was conducted of the constitutionality/legality and political feasibility of various tort reform options. This information enabled NAHB to develop and adopt a resolution on civil justice (tort) reform at the 2003 Spring Board of Directors meeting.

Efforts this year to advance Notice & Opportunity to Repair legislation have scored notable success, with 12 states passing new laws and others still considering them. As of October 20, 2003 notice and opportunity to repair legislation has been signed into law in 2003 by the governors of twelve states (Alaska, Colorado, Florida, Idaho, Indiana, Kansas, Kentucky, Montana, Nevada, Oregon, South Carolina, and West Virginia). Texas' major construction reform bill, which adds to their existing dispute resolution process, was signed by the governor on June 20. The new law includes building standards, which eliminates existing implied warranties, but creates a specific statutory warranty of habitability. NOR bills are still active in several states.

NAHB continues to work with national organizations of elected and appointed public officials that are considering reform of the nation's tort liability system.

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NAHB Web Resources

www.nahb.org

Civil Justice Reform



AIA Says Colo. Bill Provides Relief from Construction Defect Lawsuits

April 22, 2002

A bill making its way through the Colorado House would limit the damages available for civil actions arising out of construction defects and should be enacted as quickly as possible, according to the Alliance of American Insurers.

An amended version of the bill (HB 1398) passed in committee earlier this month. It would require a claimant to file a list of construction defects, limit civil damages, prohibit non-economic damages except for bodily injury or wrongful death and prevent suits for negligence where a building violation has been alleged unless the claimant can show actual loss or damages. Claimants would be entitled to reasonable costs of repairs and temporary housing, the reduction of market value, reasonable value of loss, reasonable attorney fees, additional costs incurred including expert fees and interest as permitted by law.

The introduced version of the bill applied to residential construction defect claims. However, the amended version eliminates the word "residential," extending the bill to all construction defect claims.

"This is a good bill because it is aimed at reducing the costs of construction defect litigation, which may help provide some relief to insurers and construction professionals in Colorado," Sarah White, a policy manager in the Alliance's property/casualty department.

Colorado is one of several states tackling the problem construction defect lawsuits are causing, she noted. "Washington Gov. Gary Locke (D) recently signed into law SB 6049, which establishes an alternative dispute resolution procedure, giving aggrieved parties other options besides litigation in these situations."

Construction defect lawsuits are a growing problem for contractors in many western states. Because of the increased amount of expensive litigation, insurers have either stopped writing policies to cover contractors, or have been forced to price the policies at rates up to 10 times higher than prior coverage.

"The issue of construction defect lawsuits is of major concern to our industry," White remarked. "Courts have been struggling with the definition of what constitutes a construction defect and whether or not they fall within the coverage of commercial general liability (CGL) policies. We believe CGL policies weren't intended as warranties.

"Many lawyers see this as another class-action shopping spree, and they are suing every contractor and subcontractor they can find, trying to get insurers to foot the bill. I've seen reports of one case that involved 20 contractors and 50 lawyers that ran for 22 weeks. The courts have been inundated by these lawsuits."

URL: www.insurancejournal.com/news/newswire/west/2002/04/22/17507.htm

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INSURANCE CRISIS: Builders voice concerns

Defect lawsuits blamed for rise in coverage costs

By HUBBLE SMITH
REVIEW-JOURNAL

Hundreds of trade contractors Monday blamed an increase in frivolous construction defect litigation for an "insurance crisis" that threatens to cripple Nevada's home building industry.

"This situation has gripped the industry for several years and continues to get worse," said Steve Hill, president of Silver State Materials and chairman of the Coalition for Fairness in Construction, a group that was recently formed to lobby for legislative reform.

Hill was one of several hundred contractors who jammed the Sawyer State Building Monday to testify, via videoconference, before Nevada Insurance Commissioner Alice Molasky-Arman about the availability and cost of construction liability insurance.

More industry officials attended the hearings in Carson City.

The crisis is driving up the median price of a new home in Las Vegas, which is currently at \$187,000 and expected to top \$200,000 by the end of the year. Home builders estimate that 1,400 potential buyers are priced out of the market for every \$1,000 increase in price.

Additionally, Hill said, with construction jobs accounting for about 10 percent of Nevada's work force, the state can expect to see a rise in unemployment if this issue isn't resolved.

Robert Lewis, whose family has built 25,000 homes in Las Vegas since 1961, said one of the reasons he sold his company to KB Home in 1999 was the "hostile environment" for home builders resulting from construction defect litigation and the inability to get insurance.

"I always viewed insurance as a necessity to do business," he said. "Agents may have sold me more insurance than I needed, but it provided our company and our customers comfort and ease of mind."

Lewis said insurance coverage, when available, was not only expensive but

often limited. And instead of having choices, it became a take-it-or-leave-it proposition.

"I really don't blame the carriers since they too have become a victim of our litigious society," he said.

Bruce King, president of Pete King drywall and painting in Las Vegas and Arizona, testified that his insurance rates have gone from \$161,000 a year in 1999 to \$1.4 million that he expects to pay in August.

"Some people say it's because of September 11, but these insurance companies are not only raising their rates, they're leaving the state of Nevada," King said.

Builders would receive four to eight rate quotes just two to three years ago, whereas today they're lucky to get one or two quotes, said Mark Tomlinson, president of the Southern Nevada Home Builders Association.

Molasky-Arman said she's aware of the shortage, and has been sending out notices to beware of insurance companies that are not authorized to do business in Nevada. She said one has already been discovered.

Many things are feeding construction defect litigation, said Paul Wilkins, a building official in charge of permits and inspections for the city of Las Vegas.

"We expect homeowners, if there's a problem, to call up a contractor and they'll come out and fix it," he said. "There are some contractors where a customer calls and gets routed to customer service and they never get back to them."

Then there's the sheer volume of construction activity in Las Vegas. Over the past eight to nine years, Wilkins said construction valuation permits have exceeded \$1 billion a year.

"So that's going to attract a lot of people, all kinds of people," he said, suggesting the high volume of construction activity is probably attracting some lower-quality contractors and builders.

Insurance company representatives generally agreed with the contractors, saying rising premiums are primarily a result of settlements in construction defect cases.

"Insurance companies are basically saying we need to define what a construction defect is and how a policy is supposed to respond," said Rod Leavitt, owner of Leavitt Insurance Agency in Las Vegas.

For example, he asked, if a toilet doesn't sit straight and rocks back and forth, is that a defect or just a maintenance problem?

"A lot of things that were never contemplated to be covered by insurance, the legal society is calling it a defect," he said.

Nancy Quon, a construction defect attorney with the firm Mainor & Harris, said Monday's hearing was an attempt by the construction industry to dovetail with what's happening in medical malpractice insurance.

"It was merely an attempt to catch the Legislature's ear," she said. "A lot of this talk about the right to repair there was already legislation on the books that allowed them to do that, but they didn't take advantage of it."

This story is located at:

http://www.reviewjournal.com/lvrj_home/2002/Jul-02-Tue-2002/business/19098091.html

Industry Under Siege:

Contractors Face Greater Cost, Less Choice for Insurance

by Joe Wheeler

From The Construction Zone: July 2000

Nevada's contractors face increasing costs and less choice of insurance carriers for their general liability insurance thanks to construction defect lawsuits.

Cheryl Justin, branch manager of Comstock Insurance, said that construction defects are a national problem, and that insurance companies are looking harder at southern Nevada risks. One insurer, Hawkeye, has chosen to non-renew most kinds of residential subcontractors, while other insurance companies are excluding contractors who build condominiums.

"What happening is that with residential general contractors, or "paper" generals, it's becoming more difficult to find coverage for them," Justin said. "They are ultimately responsible for the work of all the subs, and if they've had any construction defect cases, it's hard to write them."

Federated Insurance is a well known insurer who still writes subcontractors who do residential construction. Rates have gone up and those who do work on condos will face much more scrutiny in underwriting. So far, Nevada isn't so bad, according to Justin. "We still have good insurance markets."

How long that lasts is a guess. Another problem facing contractors is the quality of the insurance companies willing to write construction risks. "There's a lot of companies who will write coverage," Justin said. "It's just that the companies may not be financially strong or the coverage is reduced."

Tom Wheeler, vice president of marketing for Nevada Contractors Insurance, said that construction defect loss control needs to begin with the project. Documentation of every phase of construction may answer questions of quality asked years later.

"NCI is just starting to offer products like general liability that expose the company to these types of suits," Wheeler said. "We want to make sure our insureds are practicing effective loss control, which means preparing to defend allegations of construction defects."

Contractors must also be aware of changes made to coverage at renewal, according to Comstock Insurance's Justin. Coverage changes could include provisions that leave a contractor on his own if he's sued for a construction defect.

"There are some companies who exclude subsidence," Justin said. "If it's determined that subsidence is the problem, there's no coverage." One of the largest defect settlement on record, \$21 million, involved subsidence issues in North Las Vegas. Based on that, "It's important that contractors understand the exclusions in their policy," Justin said.

Exclusions can be changed at renewal. If a contractor is not careful, his policy may leave him exposed to settling a lawsuit using his own resources. At a recent seminar on construction defects, attorney Scott Rasmussen said that the average case takes two years to settle and the highest cost may not be the settlement, but the legal fees. If the contractor's policy excludes coverage, the contractor pays those costs.

Although a construction defect lawsuit may take two to three years to resolve, time is not on the contractor's side. The insurance company "reserves" an amount of money for the settlement as soon as the lawsuit is filed. That "reserve amount" is credited against the contractor's loss ratio from that point on. When the policy comes up for renewal, the rates go up according to the total amount paid in actual claims and the amount "reserved."

According to attorney Rasmussen, the settlement amount does not reflect the actual cost of the case. If a construction defect case settles for approximately \$20,000 to \$30,000 for a subcontractor, the cost would be much higher when legal fees are factored in. A case that takes two years to resolve will have an additional \$60,000 to \$70,000 in fees.

Such settlements and fees can give a contractor a "negative" loss ratio, meaning that the insurance company paid out more money than collected in premiums. This puts the contractor at the highest level for renewal - *if* that insurer chooses to renew at all.

"There's going to be a lot of business owners who will have to get other coverage," Cheryl Justin said. "Until the legislature changes the law to let money go to repairs and not to attorneys, this is how it's going to be."



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Industry Under Siege:

Defect Claims Impact Insurance

Division of Insurance Survey Shows Less Coverage, Higher Rates

by Joe Wheeler

From The Construction Zone: March 2001

Nevada's Division of Insurance conducted a survey of contractors, insurance companies, and insurance agencies to assess the availability and affordability of insurance.

The results depict an insurance market with, "A limiting of coverage by the carriers, coupled with an increase in rates and premiums for residential developers and contractors."

The survey form was sent to 1000 construction companies, 203 insurance agencies, and 544 insurance companies in August, the results tabulated over time.

Of the construction companies surveyed, not all those who got the survey chose to respond. Those who did were asked to answer questions such as, "Are you having any difficulties procuring construction defect coverage in Nevada?"

The answers reflected that insurance is getting more expensive, that carriers are discontinuing coverage for condos and town homes, that some carriers are canceling policies or non-renewing them, and that contractors are losing customers due to restrictions placed upon them by insurance carriers.

Contractors are passing the higher cost on to their customers, according to one response. The increased insurance cost will be passed on to buyers, and some potential home buyers (especially the first time buyer), will not be able to afford a home.

A builder reported that the construction defect claims process goes awry from the beginning. Citing that insurance companies either give him a new or inexperienced attorney to represent his case, or an attorney who is just "going through the motions" with the plaintiff's attorneys. What really rankled the contractor was the chummy, "coffee club" atmosphere that exists between defense and plaintiff attorneys. They all seem to know one another, he said, the contractor being the only one not part of the club. "This can be seen at nearly every stage of litigation and it is simply a crime, in my estimation."

The most common claims for defects experienced by contractors are for condos, wind damage and subsidence issues. One contractor reacted bitterly to "boiler plate" defect lists that include items that do not even exist at the sites named in the claim. He said, "...As a homebuilder, I am guilty until proven innocent."

Insurance agencies responded that the trend in premiums is for increases, most of the respondents saying that premium increases were 15 percent or higher. New restrictions have multiplied into a laundry list of excluded coverages and excluded activities. Montrose exclusions are common, as are multi-family housing exclusions, condos and town home exclusions.

Agents are finding it harder to place coverage for framing, concrete and drywall contractors, or anyone that has more than 20 home starts a year. Another side of the issue is that while coverage has gotten more restricted, and more complicated, the agents feel that the contractors understand it less and less.

Of the 221 insurance carriers that participated in the DOI's survey, 193 of them had not written construction risk coverage in the last four years, 17 were still writing coverage (many with restrictions or exclusions), and 11 carriers had stopped writing contractors altogether.

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FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 340
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Damages In Construction Claims RDU Occupational Licensing (117)
 Component Occupational Licensing
 Sponsor Representative Meyer
 Requester Labor & Commerce Component No. 2360

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
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| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
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| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This legislation relates to claims and court actions for defects in the design, construction, and remodeling of certain dwellings, and limits when certain court actions may be brought; it has no impact on the Department.

Prepared by: Rick Urion, Director Phone (907) 465-2539
 Division Occupational Licensing Date/Time 1/21/04 12:29 PM
 Approved by: Edgar Blatchford, Commissioner Date 1/21/2004
 Agency Department of Community & Economic Development



REPRESENTATIVE KEVIN MEYER

HOUSE DISTRICT 30

MEMORANDUM

DATE: January 22, 2004
TO: House Labor and Commerce Members
FROM: Representative Kevin Meyer *KM*
RE: House Bill 340 Damages in Construction Claims

Attached to this memo is additional information for Friday's House Labor and Commerce Committee Hearing on HB 340 Damages in Construction Claims.

Included, you will find additional letters of support and two articles that speak to the concerns of homebuilders nationwide and the insurance crisis they are facing.

If you have questions or concerns prior to Friday's hearing, please do not hesitate to contact my office.

Thank you for your consideration of this matter.



January 16, 2004

Representative Kevin Meyers
Alaska State Legislature
State Capitol Building, Room 513
Juneau, Alaska 99811

Dear Rep. Meyers:

My business is facing rising insurance rates that are debilitating, and I see others in the housing industry facing the same problem. I am encouraged to see a bill like House Bill 340.

I am sending you this letter to ask the Legislature to pass HB340.

Like many other builders, my construction company has seen insurance premiums increase over 200% just in the last year. (Other builders say their rates have gone up as much as 2500%.) This is ridiculous! Insurance costs per home are averaging anywhere from \$2,500 to \$4,000, depending on how many homes a contractor builds.

Insurance costs are not calculated into the amount of the appraisal, which means small to medium size building companies will probably go out of business unless something is done. They simply aren't going to be able to absorb costs this large. Mortgage loans used to pay for home prices are limited by the appraisal, and in most cases lending institutions have underwriting standards for loan-to-value ratios at 95% or even less.

HB340 provides reasonable limitations on awards for construction defect claims. If there is a problem in the construction of a home, everyone is better served if the problem is fixed. By limiting awards to actual damages, this creates a situation where there is always an incentive to simply repair the damage.

If something isn't done to help avoid and limit construction claims and awards, the housing market will suffer from the loss of registered contractors - many who have been in business in Alaska for a long time and have solid reputations as good quality builders.

I support HB340 because I would rather fix defects and see a system aimed toward fixing defects and limiting awards to their actual costs.

Thank you for supporting HB340.

Sincerely,



Bill Taylor-President



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January 16, 2004

Representative Kevin Meyers
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99811

Subject: HB340, Construction Defect Claims

Dear Representative Meyers:

Thank you for sponsoring HB340, an Act limiting damages for construction defect claims. Residential home builders across the nation – and especially in Alaska – are experiencing a crisis in being able to both obtain and afford general liability insurance.

HB340 will limit the damages that can be awarded for a construction defect claim in a fair and reasonable manner. When it comes to dealing only with the defects that may occur in home construction, it makes good sense for awards to be limited only to the actual damages and their full cost.

Common sense says that a builder should correct and fix the problem – and in fact, almost all problems are resolved by the home owner and the builder working things out. However, civil justice reform is needed to help counter the detrimental impact that increased costs of insurance is having on the housing industry.

Notification and opportunity to repair laws are helping to create a system that requires home owners to notify builders of any problems before litigation is started. HB340 is the next step toward a system that tries to avoid the expense and consequences of lawsuits. We need a process that encourages both parties to arrive at a resolution that fixes the defect.

This letter is to help you, as the sponsor of HB340, show this bill is important for the housing industry. I support HB340, and hope it will pass this Legislative Session.

Thank you,

Wesley E. Keller
Branch Manager

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The Insurance Crisis

A survival guide for a challenging market

By [illegible]

What goes up must come down, right? In the midst of an all-around economic downtime, this seems the case, but the real question builders are asking is, will these rising insurance premiums ever come down?

"The economy is cyclical," Joel Gregoire of Lockton Construction says, and right now, it's a hard market.

During the general liability issue, growth was the hot word. Now, with layoffs and closings, the economy has entered its natural growth control," recalls Rob Nanfelt, executive affairs director for the Colorado Association of Home Builders. Insurers are dropping out of the market, and those that are staying are raising their prices and dropping essential coverage. What can a builder do to survive this blow? The first step to resolving this problem is to define the crisis; the second, is to identify the possible solutions.

The Crisis

The high price for general liability unfortunately puts smaller builders out of business because they can't afford the premiums. If a small residential builder only puts out a few houses a year, unless they are high-end projects, it's hard to add them on to cover the cost, so they can't stay in business," Nanfelt says.

Why are premiums on the rise? Many factors have been in motion contributing to the difficulty of keeping premiums

low, while getting important coverage.

According to Colleen King, a speaker at the 2003 International Builders' Show (IBS) from a carrier that specializes in builder insurance, "The investment market is changing. Insurers aren't getting high returns on paid premiums." With interest rates decreasing, insurers are also losing out on gains, "passing this cost on to the builder." In addition, catastrophes have been more prevalent; for example, the insurance industry has paid out billions of dollars with Sept. 11, King explains, not to mention a string of natural disasters: floods, hurricanes, earthquakes. "You may be asking how this affects you? Look at it like this — when, insurance pays out a loss, it affects everyone."

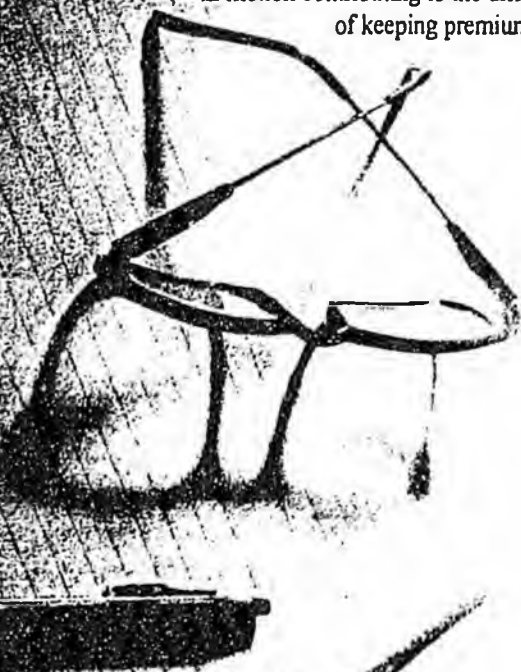
In the immediate forefront of this crisis, construction defect litigation has hit every state and poses a constant threat to all general liability providers. "In the residential market, insurance losses are horrendous. Insurance carriers are drawing out from residential construction due to poor underwriting losses, which means [insurers] are paying out more in losses than they're taking in with premiums," reports Bruce Harrell, CEO of HBW Insurance Services.

He continues that these providers choose not to deal with the problem, but rather leave the industry altogether. "The problem with certificates of insurance is that it is nearly impossible to accurately predict the potential losses. Reinsurers don't predict risk and insurance carriers can't figure out the amount to charge over 10 years," Gregoire says. This unpredictability drives insurers to leave the market to make money where good predictions can be made, like workers' compensation, he adds.

Exclusions and endorsements

Meanwhile, having wised up to the potential for huge losses and soliciting lawyers, the few insurers remaining are actually eliminating critical coverage from general liability policies on issues such as soil movement and mold. Carriers have exercised their right to exclude likely "incidents" from general liability coverage. Patrick Wielinski of Cokin, Bosien & Young says in his article, *The Changing Landscape of Coverage Disputes Over Defective Work Claims* (March 2000; www.IRIM.com), that exclusions, targeted specifically at business risks, have done little to affect the basic coverage under the policy. The exclusion simply amounts to a restatement of basic concepts relating to the definition of "property damage."

"In terms of insurance coverage disputes, this phenom-



enon has resulted in a de-emphasis of the traditional property damage exclusions as a basis to deny coverage for defective work claims," Wielinski notes.

Builders who have had coverage in the past are not shielded from this trend. Upon renewal of contracts, endorsements and exclusions can be added, removing the coverage a builder once had from his policy. Clifford J. Shapiro, partner and chair of the construction law group at Sachnoff & Weaver, Ltd. in Chicago, advises that it is key to be careful when renewing policies to ensure that a builder is well covered or at least aware of the coverage they've been given. Shapiro notes that the reality of a tight market is obvious when a general contractor renews his/her insurance; it's likely that he or she will leave with a higher rate and less coverage.

Standard policies have more frequently been including endorsements, or written changes in policy stating certain terms, that legally become part of the policy, Shapiro explains. "These offer an insurer the right to change a policy in conjunction with what the market can bear on renewal," he says.

If these additions fall through the cracks, which can be the case with smaller companies who don't have an in-house risk management team, and a claim is filed, the builder learns about these changes the hard way, Shapiro adds. Once a renewal notice is signed, it is a binding contract, he says, so it is pertinent that a builder has a broker, an attorney or a third party look over the policy before it is signed. "Be aware of what you're buying," Shapiro asserts.

Wise additions to internal practices

So what can a builder do to keep insurance premiums low and receive good coverage? In the face of this crisis there are no quick fixes; however, there are ways you can improve your business to make yourself more attractive to insurers.

One of the big challenges you will face, Harrell points out, is the difficulty in determining legal liability for builders and contractors. Unfortunately for builders, the insurance industry operates on this principle.

"Your general liability policy is designed to protect you from any legal liability brought against you," Harrell says. "If insurers can't determine when this starts and ends, the industry generally leaves because they need a dollar amount in order to turn a profit." The builder must implement change in his practices to set the stage for credibility, reassuring the providers they can invest in you, he adds.

First, you must prove that you are a reliable client. "It is your responsibility to prove to the underwriter that you are better than other builders because you are fighting for the

same coverage," explains Bruce Thompson, senior loss control consultant at Lockton Insurance and a presenter at IBS.

The ways things are going, Harrell says, you must be responsible for implementing a risk management program, step up and define your legal liability.

Documentation procedures

Gregoire says that as a builder, a quality assurance program is essential with step-by-step plans and an audit program. "Go out with construction managers and train them how to look for potential construction defects," he says. "Have written programs in place, go over them with a carrier and broker, making sure you're doing things right before anything happens." Thompson suggests working with the NAHB, your broker, your attorney and other builders to see what they're doing; ask for their help.

Shapiro recommends a third-party job oversight engineer to lend credibility to your documentation. The oversight engineer serves to watch over and document the project through its various stages. Although smaller firms may not be able to afford this, keeping proper documentation throughout will still be beneficial if an occurrence arises, Shapiro says.

The NAHB Research Center (NAHBRC) gives these pointers for quality assurance documentation in its *Quality Assurance System for Wood Framing Contractors* manual. In the event a construction defect claim is brought against your firm, you should have such documentation to support your work and your product. The NAHBRC suggests that within the firm, an appointed employee must ensure that records are retained for a minimum of three years.

The following records must be retained:

- Job specifications
- Completed inspection forms
- Records of nonconformances
- Warranty service and repair records

Contracts, including:

- Builder-trade contracts
- Purchase contracts

Quality management records, including:

- Training and test records
- Preventive action records, quality system audits and review records
- All quality manual versions
- Builder satisfaction surveys

Beneficial wording

The Hartford Loss Control Department, one of the nation's

largest investment and insurance companies, recommends these options in the Product Liability Risk Transfer Techniques portion of its Technical Information Paper Series.

Certificates of Insurance. These certificates state the essential provisions of your policy, exerting the existence and limits of your coverage. The loss control department suggests the policy be insured by a reputable domestic insurer and cover comprehensive general liability, product liability and workers' compensation. Also, make sure the policy limits are equal to or greater than your own, and you are named as the certificate holder.

Waivers of Subrogation. In the event of an incident, an insurer has the right to attempt to recover some of its losses if they feel the builder was at fault. Waivers of Subrogation prevent such a lawsuit. The builder would need to have this waiver from the other party's insurer prior to any loss; it is an endorsement to the insurance policy issued to the other party. Shapiro points out that although these are common practice, they do raise complex issues. In some cases, the waiver can prevent builders from pursuing other lawsuits. For example, if an insurer picks up half the cost of a claim and a builder the other half, but the subcontractor was at fault, the builder would be bound by the waiver, unable to regain losses from the subcontractor.

Hold Harmless Agreements. This is a legally binding contract by which the other party agrees to hold you harmless for any liability arising out of their work, including liability for claims that would not be covered by insurance. Such parties include vendors,

contractors and subcontractors. This agreement must be in writing and must clearly state the homeowner's responsibility to indemnify you against liability of loss or damage. The agreement should have no time limitations or be cancelable without sufficient notice.

Prevention

The best way to keep the confidence of your insurer and your premiums low is by preventing incidents before they occur.

Subcontractors. Shapiro recommends that as a builder, you must make sure you're working with a reputable subcontractor who signs agreements with precise warranty and indemnification wording. Any of the inclusions listed are worthless if you're not dealing with a good, reliable subcontractor. "The best protection for construction defects is to go with the best subcontractor you can afford," Shapiro advises.

"The courts buy into the illusionary belief that contractors should be able to control the quality of their work, even though that work may have been performed by one of many subcontractors on a complex construction project. Any defective work claim would therefore fall under the contractor's risk of doing business," Wielinski says. "After a project is complete, it becomes your project — the subcontractor is exempt, and you are responsible," Shapiro warns.

"The courts are not working in our favor: they are ruling that faulty workmanship be paid from the assets of the builder," Harrell states. The insurance industry doesn't have to reimburse you or protect you for coverage eliminated by the court through endorsements, he continues. "You are left exposed; the insurance company is not responsible for you — they won't offer you an attorney if you get sued — it will come out of your pocket."

However, there are steps you can take to protect yourself and have control over what's happening to your business, Harrell says. (For more information, refer to the *The Liability Game* on page 32.)

Customer Service. With any type of claim, be proactive, Thompson recommends. Being aggressive is cheaper in the long run. "If you catch wind of a possible claim, put your best people on it to find out how things are going. Customer service is important even before a problem. Follow up with your clients and their satisfaction," he says.

The Hartford Loss Control Department suggests that complaint management be dealt with seriously. "In product liability, near misses or complaints can be construed as notice of a defect or problem that could cause harm or damage." It goes to say that complaints offer opportunity. "If handled in a professional manner, complaints represent opportunities for cor-

rection of immediate problems; constructive ideas to improve products; improving services; and modifying promotional material and information."

Planning. Shapiro recommends that a builder take costs into account prior to a claim. "Rather than accrue a loss for repairs, problems should be anticipated, not acknowledged in hindsight." However, if there is a complaint, regardless of whether you fixed it or not, Shapiro warns that you're aware of the potential traps you may encounter. "For example, the notice trap — let's say a problem is brought to your attention, and you fix it but don't report it to your insurer. Then five years down the line, the problem returns and results in a lawsuit. Your insurer can sue you for breach of contract. You'll get dropped and be left to cover the lawyer fees and fix the problem by yourself," he says.

Most policies have notice provisions to report occurrences when a problem first emerges. If you do things behind the backs of your insurer, the insurance company can take you to court saying you breached these notice provisions. Eventually, you will end up with no coverage, paying lawyer fees for both the claim and breach of contract. Shapiro insists that you report incidents to your insurer; it ultimately protects you.

Crucial legislation

Builders are not alone in this crisis. Organizations are working to get legislation passed that will protect the builder from the destruction construction defect claims can have on firms. Such legislation will not only ease the minds of builders, it should bring insurers back to the market.

New legislation has captured the attention of the insurance market. In Colorado, the "notice and opportunity to repair" law, passed in April, contains

caps on damages awarded to plaintiff's and noneconomic damages, like pain and suffering, at \$250,000. Such legislation is very important to insurers who can now actuate the risk of insuring a builder. Nanfelt explains that American Family Insurance was about to drop its builders' insurance but ceased to pull out with the passing of the bill. He says that "this is remarkable."

However, a citizen ballot is in the works to overturn the bill. "We need to sell and market our stance as a way to measure risk to the insurers and try to ensure that the opposing bill will die," Nanfelt says. "The problem is that it takes time [with insurance companies]. You have the decision makers at a corporate office in other states, looking at the risks — some builders don't have time."

"Ultimately we'd like insurers to come back to the market and offer a product at a reasonable price," Nanfelt explains.

Gregoire suggests that builders contact their legislators to get similar bills passed in their states; builders should also get involved in organizations like the NAHB.

There is hope. Aside from the tips given, "The bottom line is that insurance carriers won't change until construction defects get resolved before the problem," Gregoire says. "All builders must improve the quality of construction before there will be any change."

Let's hope the cliché is reliable and the premiums that do go up, will eventually come down. (For more information on construction defect liability issues, see page 32) ♦

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Fighting A War: It's Time To Be Proactive

A few months ago the state of Colorado followed in the footsteps of other states leading the charge to help protect builders from construction defect litigation, and adopted the "notice and opportunity to repair" legislation.

This new law asks homeowners to notify builders and give them the chance to fix defects before filing a lawsuit.

While this law is a huge step forward in the battle for affordable general liability insurance, the war is not yet over.

Premiums need to become affordable once again, and insurance companies need to offer more coverage rather than create more exclusions. This will only happen when insurance companies can reduce their risk. In order for this to happen, a limit of liability on builders and the homes they build must be established — where does a builder's liability start and where does it end?

Our industry has been in an insurance and liability crisis for far too long, and it's time we start being proactive. The "notice and opportunity to repair" law is the first such measure taken toward a comprehensive solution. It provides caps on damages and limits a plaintiff's recoveries (for the full description, see pg. 36). This legislation has also captured the attention of insurance companies, as some have decided to continue offering coverage in states that have the law.

Only seven states have adopted this law so far, and others have it in the works. But, what's disheartening is that while Colorado builders were feeling some relief with the passing of the bill, a citizen ballot is in the works to overturn the bill. An overturn could be a major setback to resolving the insurance and liability crisis if homeowners in other states take similar action. Insurance companies may decide not to re-enter or worse yet, more may leave; premiums will continue to increase, and builders will continue to be exposed to risk, making a profitable business difficult. Ultimately, the costs will be passed onto the homeowners. (I have to point out: Would the homeowners pushing the overturn in Colorado think differently if they knew that?)

So, what can you do? Get involved. Work with your local builders' association and legislature. Tell your clients why this is important and educate them. This war can only be won when building professionals band together and take a proactive stance.



Photo: Susie's Photography

Jordanna Smida

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NAHB



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HB

351

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: January 12, 2004

FURTHER REFERRALS: State Affairs

Date of Committee Action: Jan 21, 2004

The LABOR AND COMMERCE Committee considered:

HB 351

HOUSE BILL NO. 351

CARBON MONOXIDE DETECTION DEVICES

"An Act relating to the devices, including carbon monoxide detection devices, required in dwellings; and providing for an effective date."

Recommends it be replaced with HCS or CS for HB 351 (L&C)
 For Senate Bills with new title: Technical Title New Title: HCR _____ Same Title New Title

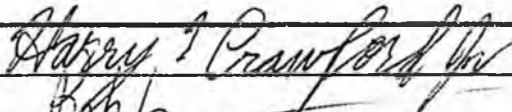
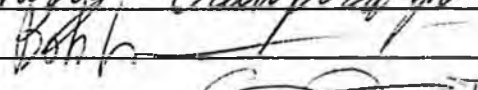
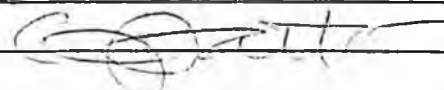
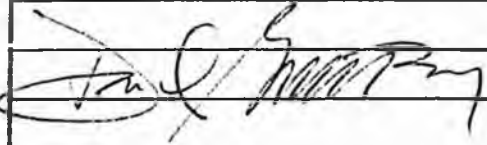
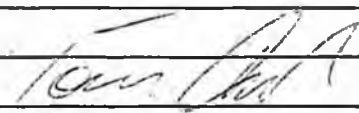
- attach amendments
- add new referral to _____ Committee
- Letter of Intent _____ Committee

List of
Abbrev
for
Depts.:

- ADM
- CED
- COR
- CRT
- EED
- DEC
- DFG
- GOV
- HSS
- LEG
- LAW
- LWF
- MVA
- DNR
- DPS
- REV
- DOT
- UA

| <u>NEW FISCAL NOTES</u> | | | | |
|-----------------------------------|------|--------|--------|------|
| *Assigned by Chief Clerk's Office | | | | |
| List by Dept(s): | *FN# | Fiscal | Indet. | Zero |
| HSS | | | | X |
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| <u>PREVIOUS FISCAL NOTES</u> | | | | |
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| List by Dept(s): | FN# | Fiscal | Indet. | Zero |
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| <u>Signing with recommendations</u> | Printed Last Name | DP | DNP | NR | AM |
|---|-------------------|----|-----|----|----|
|  | CRAWFORD | X | | | |
|  | LYNN | X | | | |
|  | GATTO | X | | | |
|  | GUTTENBERG | X | | | |
|  | ANDERSON | X | | | |
| Chair: | | | | | |
| Chair: | | | | | |

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 351
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: HESS
 Title Carbon Monoxide Detection Devices BRU _____
 Component _____
 Sponsor Gatto Component No. _____
 Requester House L & C Committee

Expenditures/Revenues (Thousands of Dollars)

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

| OPERATING EXPENDITURES | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|--|--|--|--|--|--|
| CAPITAL EXPENDITURES | | | | | | |
|-----------------------------|--|--|--|--|--|--|

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

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact.

Prepared by: _____
 Division _____
 Approved by: _____
 Agency _____

Phone _____
 Date/Time 1/21/04 1:51 PM
 Date 1/21/2004

Subject: CO Legislation
Date: Tue, 20 Jan 2004 08:49:35 -0900
From: mhayashi <mhayashi@gci.net>
To: Representative_Carl_Gatto@legis.state.ak.us

Representative Gatto:
or "Carl", as I used to call you in the Providence Emergency Department.
Alaska SAFE KIDS supports your effort to introduce CO Detector
legislation in Alaska.

After working in emergency nursing for nearly 38 years and
being the statewide Alaska SAFE KIDS State Coalition Coordinator for 15
years,
it is evident that CO poisoning is a preventable injury/death for
Alaska citizens.
It is also evident that the general population knows little about how
to protect themselves.

The recent terrible tragedy in Anchorage brought needed attention to
this issue.
SAFE KIDS, volunteered time, along with the Alaska Injury Prevention
Center, and First Alert, giving out information on
detectors and CO poisoning at the Home Depot. We spoke with over 150+
individuals about the issues.
So little was generally known. Nearly everyone who needed detectors,
bought one, two, or three.
Still, some didn't, saying they would eventually get to it.

Moving to legislation really does bring the same deserved attention to
CO as we now have with smoke detectors.
Thank you, Carl, for your work.

Peggy Hayashi, RN
State Coordinator Alaska SAFE KIDS
Providence Alaska Medical Center
mhayashi@provak.org

Municipality
of
Anchorage



P.O. Box 196650
Anchorage, Alaska 99519-6650
Telephone: (907) 267-4936
Fax: (907) 267-4977
<http://www.muni.org>

Mark Begich, Mayor

FIRE DEPARTMENT
Administration
100 East Fourth Avenue
Anchorage, Ak 99501

The Anchorage Fire Department is in support of House Bill No.351, "An Act relating to the devices. Including carbon monoxide detection devices, required in dwelling; and providing for an effective date."

Carbon Monoxide is a colorless, odorless, invisible gas produced when fossil fuels do not burn completely, or are exposed to heat (usually fire). These fuels include wood, coal, charcoal, natural gas, gasoline, kerosene and propane. Electrical appliances typically do not produce CO.

The Anchorage Fire Department finds that a properly installed and operating Carbon Monoxide detector is an excellent means of protection from the dangers of CO poisoning because it monitors the air and sounds a loud alarm before Carbon Monoxide levels become threatening for average, healthy adults. This allows precious time to leave a dwelling and correct the problem before CO levels become life threatening. CO being invisible, odorless and tasteless is not easily detected by means other than a properly installed and operating detector.

The Anchorage Fire Department also recommends that smoke detectors as well as CO detectors should be installed on each level of a dwelling, in each bedroom of the dwelling and in hallways connecting such areas. This vital warning equipment has a limited life and do require testing for proper operation on a regular basis.

Thomas G. Kempton
Deputy Fire Chief, Information Officer
Anchorage Fire Department



State of Alaska

Department of Public Safety
Division of

Fire Prevention

Frank H. Murkowski, Governor
William Tandeske, Commissioner

Testimony to HB 351

January 23, 2004

I was asked to provide help on sections 1(a), 4(d)(3)(A), and provide an explanation of how our office promoted the smoke detector law throughout the state in 1984.

HB 351

Section 1(a). Issue: Address the requirement of installing carbon monoxide detectors in all hotel and motel rooms.

Discussion: 1. There is no data that supports the evidence of loss of life or injury in hotels or motels from carbon monoxide. There are no exceptions to address hotels and motels that have carbon based fuel systems but heat their rooms by an indirect method such as hydronic in-floor or baseboard hot water.

Discussion: 2. Section 4(d)(1) defines Dwelling Unit according to A.S. 34.03.350. It is my opinion this definition only approaches "homes" and does not address hotels and motels (There are some exceptions). Carbon monoxide detectors, unlike smoke detectors, are not addressed in the building code. When the smoke detector law was put into place it was written to address those locations that the building code did not cover. As written, hotels and motels would require additional language in this legislation to be addressed because the requirement is not identified in the building or fire code. We generally support the installation of carbon monoxide detectors in hotels and motels that utilize carbon-based fuel but have no data to document the loss of life or injury as we can in single or multiple unit dwellings.

Section 4(d)(3)(A). Issue: Address the inclusion of all fuel types that emit carbon monoxide.

Proposal: contains or is serviced by a carbon based fueled appliance or device that produces by-products of combustion.

Discussion: This change in wording incorporates all fuel types that can produce carbon monoxide and eliminates any product, device or fuel type loophole.

Office of the Director

6700 East Tudor Rd. - Anchorage, AK 99507 - Voice (907) 269-5491- Fax (907) 338-4375

Page 2

Implementation discussion: When the smoke detector requirement was written into law the Division of Fire Prevention sent out mailers, had contests, spoke at community functions and traveled the state to educate the public on the benefits and requirements of installing smoke detectors in their homes. Fortunately today we have more efficient methodologies to "get the word out" without all the associated costs of the past.

Under the existing budget and time constraints the Division of Fire Prevention would maximize the use of public safety announcements and press releases through the department's Public Information Office. Other sources, such as media interviews and free brochures from federal, private and manufacturer's sources for public distribution are already available. Additionally, local fire departments, private business partnerships and the use of the internet would be used to educate the public. The Division of fire prevention would work with other state agencies to identify potential grant programs and resources to address the new requirement and address the selection, placement and maintenance of the detectors through the manufacturer's recommendations. Availability and variety of the carbon monoxide detectors should increase dramatically as market conditions respond to the public's increase in demand.

Other considerations: Enforcement of the new law will be problematic if not impossible by the Division of Fire Prevention or local authorities in deferred jurisdictions. The bill is directed toward private homes and tenant spaces. A person's home is their castle, although we can ask to check if an appropriate carbon monoxide detector has been placed in the home, access can be denied.

I believe that fiduciary requirements and insurance carriers will carry greater impetus to install these detectors, once adopted as law, than any regulatory agency.

Kelly Nicoello
Assistant State Fire Marshal

Alaska State Legislature

House of Representatives



Official Business

State Capitol
Juneau, AK 99801-1182

Date: January 23, 2004

To: Labor & Commerce Committee Members
From: Representative Gatto, Representative Gruenberg
Re: Changes to HB 351 Carbon Monoxide Detectors

Attached is a work draft CS for HB 351 Carbon Monoxide Detectors. The changes in the CS address the concerns raised in the January 21st committee hearing.

1. To address the concern that devices fueled by fossil fuels be covered in the language of this bill, an amendment to page 2, lines 16-19, was added. The new language states: (3) "qualifying dwelling unit" means a dwelling unit that (A) contains or is serviced by a carbon-based-fueled appliance or device that produces by-products of combustion; (B) has an attached garage or carport; or (C) is adjacent to a parking space. Including "carport" and "parking space" adds two other areas where carbon monoxide is potentially present. This language came from discussions with the offices of both the Anchorage Fire Chief and the State Fire Marshall.
2. To address the committee's concern that the owners of multi-unit properties (e.g. hotels, motels) would be required to install huge numbers of CO detectors, it was found, after talking with the offices of both the Anchorage Fire Chief and State Fire Marshall, that large multi-unit facilities are regulated by local codes and not by state laws, and therefore not affected by this legislation.

23-LS1325V
Bannister
1/23/04

CS FOR HOUSE BILL NO. 351()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GATTO AND GRUENBERG

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the devices, including carbon monoxide detection devices, required
2 in dwellings; and providing for an effective date."

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

4 * Section 1. AS 18.70.095(a) is amended to read:

5 (a) Smoke detection devices shall be installed and maintained in all dwelling
6 units in the state, and carbon monoxide detection devices shall be installed and
7 maintained in all qualifying dwelling units in the state. The devices shall be of a
8 type and installed in a manner approved by the state fire marshal.

9 * Sec. 2. AS 18.70.095(b) is amended to read:

10 (b) In a dwelling unit occupied under the terms of a rental agreement or under
11 a month-to-month tenancy,

12 (1) at the time of each occupancy, the landlord shall provide smoke
13 detection devices and, if the dwelling unit is a qualifying dwelling unit, carbon
14 monoxide detection devices; the devices must be in working condition, and, after

1 notification by the tenant, the landlord shall be responsible for replacement; and

2 (2) the tenant shall keep the devices in working condition by keeping
3 charged batteries in battery-operated devices, if possible, by testing the devices
4 periodically, if possible, and by refraining from permanently disabling the devices.

5 * Sec. 3. AS 18.70.095(c) is amended to read:

6 (c) If a landlord did not know and had not been notified of the need to repair
7 or replace a smoke detection device or a carbon monoxide detection device, the
8 landlord's failure to repair or replace the device may not be considered as evidence of
9 negligence in a subsequent civil action arising from death, property loss, or personal
10 injury.

11 * Sec. 4. AS 18.70.095(d) is repealed and reenacted to read:

12 (d) In this section,

13 (1) "dwelling unit" has the meaning given in AS 34.03.360;

14 (2) "landlord" has the meaning given in AS 34.03.360;

15 (3) "qualifying dwelling unit" means a dwelling unit that

16 (A) contains or is serviced by a carbon-based-fueled appliance
17 or device that produces by-products of combustion;

18 (B) has an attached garage or carport; or

19 (C) is adjacent to a parking space;

20 (4) "rental agreement" has the meaning given in AS 34.03.360;

21 (5) "tenant" has the meaning given in AS 34.03.360.

22 * Sec. 5. AS 34.03.100(a) is amended to read:

23 (a) The landlord shall

24 (1) make all repairs and do whatever is necessary to put and keep the
25 premises in a fit and habitable condition;

26 (2) keep all common areas of the premises in a clean and safe
27 condition;

28 (3) maintain in good and safe working order and condition all
29 electrical, plumbing, sanitary, heating, ventilating, air-conditioning, kitchen, and other
30 facilities and appliances, including elevators, supplied or required to be supplied by
31 the landlord;

1 (4) provide and maintain appropriate receptacles and conveniences for
2 the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of
3 the dwelling unit and arrange for their removal;

4 (5) supply running water and reasonable amounts of hot water and heat
5 at all times, insofar as energy conditions permit, except where the building that
6 includes the dwelling unit is so constructed that heat or hot water is generated by an
7 installation within the exclusive control of the tenant and supplied by a direct public
8 utility connection;

9 (6) if requested by the tenant, provide and maintain locks and furnish
10 keys reasonably adequate to ensure safety to the tenant's person and property; and

11 (7) provide smoke detection devices and carbon monoxide detection
12 devices as required under AS 18.70.095.

13 * Sec. 6. AS 34.03.120(a) is amended to read: —

14 (a) The tenant

15 (1) shall keep that part of the premises occupied and used by the tenant
16 as clean and safe as the condition of the premises permit;

17 (2) shall dispose all ashes, rubbish, garbage, and other waste from the
18 dwelling unit in a clean and safe manner;

19 (3) shall keep all plumbing fixtures in the dwelling unit or used by the
20 tenant as clean as their condition permits;

21 (4) shall use in a reasonable manner all electrical, plumbing, sanitary,
22 heating, ventilating, air-conditioning, kitchen, and other facilities and appliances
23 including elevators in the premises;

24 (5) may not deliberately or negligently destroy, deface, damage,
25 impair, or remove a part of the premises or knowingly permit any person to do so;

26 (6) may not unreasonably disturb, or permit others on the premises
27 with the tenant's consent to unreasonably disturb, a neighbor's peaceful enjoyment of
28 the premises;

29 (7) shall maintain smoke detection devices and carbon monoxide
30 detection devices as required under AS 18.70.095;

31 (8) may not, except in an emergency when the landlord cannot be

1 contacted after reasonable effort to do so, change the locks on doors of the premises
2 without first securing the written agreement of the landlord and, immediately after
3 changing the locks, providing the landlord a set of keys to all doors for which locks
4 have been changed; in an emergency, the tenant may change the locks and shall,
5 within five days, provide the landlord a set of keys to all doors for which locks have
6 been changed and written notice of the change; and

7 (9) may not unreasonably engage in conduct, or permit others on the
8 premises to engage in conduct, that results in the imposition of a fee under a municipal
9 ordinance adopted under AS 29.35.125.

10 * Sec. 7. This Act takes effect January 1, 2005.

Alaska State Legislature

House of Representatives



Representative Carl Gatto

Representative Max Gruenberg

HB 351

Carbon Monoxide Detection Devices

The recent deaths of an Anchorage family from carbon monoxide poisoning in their home has prompted introduction of House Bill 351 that will require carbon monoxide detectors to be installed and maintained in most Alaskan homes. This bill adds carbon monoxide detection devices to the requirement in Alaska state statute (AS 18.70.095) that homeowners install and maintain smoke detectors and adds that landlords shall install the devices to be maintained by their tenants.

According to the Journal of the American Medical Association, carbon monoxide poisoning is the leading cause of accidental poisoning in America annually, claiming the lives of 1,500-2,000 people in the United States and hospitalizing an additional 10,000. Also, continuous exposure to low levels of carbon monoxide can compromise the efficiency of young children's brains in processing information.

Carbon monoxide detectors are essential because carbon monoxide is invisible to the human senses—it is odorless, tasteless, colorless, and non-irritating. Without a carbon monoxide alarm, one doesn't know they're being poisoned.

Representatives Carl Gatto and Max Gruenberg have co-introduced this bill in order to help save Alaskan lives and to prevent long-term illnesses in children.

Alaska CO Incidents

March 27, 2003

Evacuations, Rescues, CPR, 911; Citizens Honored for Lifesaving Acts
"Jean Schulte and Ron Harper, who evacuated 3 people suffering from serious carbon monoxide poisoning from an Anchorage house in December 2002."
-Anchorage Daily News

December 17, 2002

Headlines – Anchorage - Carbon monoxide injures 3
"Three people were rushed to the hospital Monday afternoon for carbon monoxide poisoning, the second such incident in Anchorage in less than a week. The three people were discovered inside 9203 Campbell Terrace Drive around noon by an employer who had gone to the home because one of the people had not shown up to work, said Anchorage Fire Department spokesman, Tom Kempton. All 3 individuals were incoherent and disoriented, he said. A cracked heat exchanger in a furnace is believed to be the cause of the carbon monoxide leak."
-Anchorage Daily News

December 13, 2002

6 Saved From Gas Poisoning
"Six people, including 3 children, were rescued early Thursday morning after a 911 dispatcher realized a caller and her family were suffering carbon monoxide poisoning during the call, fire officials said." -Anchorage Daily News

Consumer Product Safety Commission

Carbon Monoxide Questions and Answers

CPSC Document #466

1. What is carbon monoxide (CO) and how is it produced in the home?

Carbon monoxide (CO) is a colorless, odorless, poisonous gas. It is produced by the incomplete burning of solid, liquid, and gaseous fuels. Appliances fueled with natural gas, liquified petroleum (LP gas), oil, kerosene, coal, or wood may produce CO. Burning charcoal produces CO. Running cars produce CO.

2. How many people are unintentionally poisoned by CO?

Every year, over 200 people in the United States die from CO produced by fuel-burning appliances (furnaces, ranges, water heaters, room heaters). Others die from CO produced while burning charcoal inside a home, garage, vehicle or tent. Still others die from CO produced by cars left running in attached garages. Several thousand people go to hospital emergency rooms for treatment for CO poisoning.

3. What are the symptoms of CO poisoning?

The initial symptoms of CO poisoning are similar to the flu (but without the fever). They include:

- Headache
- Fatigue
- Shortness of breath
- Nausea
- Dizziness

Many people with CO poisoning mistake their symptoms for the flu or are misdiagnosed by physicians, which sometimes results in tragic deaths.

4. What should you do to prevent CO poisoning?

- Make sure appliances are installed according to manufacturer's instructions and local building codes. Most appliances should be installed by professionals. Have the heating system (including chimneys and vents) inspected and serviced annually. The inspector should also check chimneys and flues for blockages, corrosion, partial and complete disconnections, and loose connections.
- Install a CO detector/alarm that meets the requirements of the current UL standard 2034 or the requirements of the IAS 6-96 standard. A carbon monoxide detector/alarm can provide added protection, but is no substitute for proper use and upkeep of appliances that can produce CO. Install a CO detector/alarm in the hallway near every separate sleeping area of the home. Make sure the detector cannot be covered up by furniture or draperies.
- Never burn charcoal inside a home, garage, vehicle, or tent.
- Never use portable fuel-burning camping equipment inside a home, garage, vehicle, or tent.
- Never leave a car running in an attached garage, even with the garage door open.
- Never service fuel-burning appliances without proper knowledge, skills, and tools. Always refer to the owner's manual when performing minor adjustments or servicing fuel-burning appliances.
- Never use gas appliances such as ranges, ovens, or clothes dryers for heating your home.
- Never operate unvented fuel-burning appliances in any room with closed doors or windows or in any

room where people are sleeping.

- Do not use gasoline-powered tools and engines indoors. If use is unavoidable, ensure that adequate ventilation is available and whenever possible place engine unit to exhaust outdoors.

5. What CO level is dangerous to your health?

The health effects of CO depend on the level of CO and length of exposure, as well as each individual's health condition. The concentration of CO is measured in parts per million (ppm). Health effects from exposure to CO levels of approximately 1 to 70 ppm are uncertain, but most people will not experience any symptoms. Some heart patients might experience an increase in chest pain. As CO levels increase and remain above 70 ppm, symptoms may become more noticeable (headache, fatigue, nausea). As CO levels increase above 150 to 200 ppm, disorientation, unconsciousness, and death are possible.

6. What should you do if you are experiencing symptoms of CO poisoning?

If you think you are experiencing any of the symptoms of CO poisoning, get fresh air immediately. Open windows and doors for more ventilation, turn off any combustion appliances, and leave the house. Call your fire department and report your symptoms. You could lose consciousness and die if you do nothing. It is also important to contact a doctor immediately for a proper diagnosis. Tell your doctor that you suspect CO poisoning is causing your problems. Prompt medical attention is important if you are experiencing any symptoms of CO poisoning when you are operating fuel-burning appliances. Before turning your fuel-burning appliances back on, make sure a qualified serviceperson checks them for malfunction.

7. What has changed in CO detectors/alarms recently?

CO detectors/alarms always have been and still are designed to alarm before potentially life-threatening levels of CO are reached. The UL standard 2034 (1998 revision) has stricter requirements that the detector/alarm must meet before it can sound. As a result, the possibility of nuisance alarms is decreased.

8. What should you do when the CO detector/alarm sounds?

Never ignore an alarming CO detector/alarm. If the detector/alarm sounds: Operate the reset button. Call your emergency services (fire department or 911). Immediately move to fresh air -- outdoors or by an open door/window.

9. How should a consumer test a CO detector/alarm to make sure it is working?

Consumers should follow the manufacturer's instructions. Using a test button, some detectors/alarms test whether the circuitry as well as the sensor which senses CO is working, while the test button on other detectors only tests whether the circuitry is working. For those units which test the circuitry only, some manufacturers sell separate test kits to help the consumer test the CO sensor inside the alarm.

10. What is the role of the U.S. Consumer Product Safety Commission (CPSC) in preventing CO poisoning?

CPSC worked closely with Underwriters Laboratories (UL) to help develop the safety standard (UL 2034) for CO detectors/alarms. CPSC helps promote carbon monoxide safety awareness to raise awareness of CO hazards and the need for regular maintenance of fuel-burning appliances. CPSC recommends that every home have a CO detector/alarm that meets the requirements of the most recent UL standard 2034 or the IAS 6-96 standard in the hallway near every separate sleeping area. CPSC also works with industry to develop voluntary and mandatory standards for fuel-burning appliances.

11. Do some cities require that CO detectors/alarms be installed?

On September 15, 1993, Chicago, Illinois became one of the first cities in the nation to adopt an

ordinance requiring, effective October 1, 1994, the installation of CO detectors/alarms in all new single-family homes and in existing single-family residences that have new oil or gas furnaces. Several other cities also require CO detectors/alarms in apartment buildings and single-family dwellings.

12. Should CO detectors/alarms be used in motor homes and other recreational vehicles?

CO detectors/alarms are available for boats and recreational vehicles and should be used. The Recreation Vehicle Industry Association requires CO detectors/alarms in motor homes and in towable recreational vehicles that have a generator or are prepped for a generator.

Send the link for this page to a friend! Consumers can obtain this publication and additional publication information from the Publications section of CPSC's web site or by sending your publication request to info@cpsc.gov.

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The U.S. Consumer Product Safety Commission is charged with protecting the public from unreasonable risks of serious injury or death from more than 15,000 types of consumer products under the agency's jurisdiction. Deaths, injuries and property damage from consumer product incidents cost the nation more than \$700 billion annually. The CPSC is committed to protecting consumers and families from products that pose a fire, electrical, chemical, or mechanical hazard or can injure children. The CPSC's work to ensure the safety of consumer products - such as toys, cribs, power tools, cigarette lighters, and household chemicals - contributed significantly to the 30 percent decline in the rate of deaths and injuries associated with consumer products over the past 30 years.

To report a dangerous product or a product-related injury, call CPSC's hotline at (800) 638-2772 or CPSC's teletypewriter at (800) 638-8270, or visit CPSC's web site at www.cpsc.gov/talk.html. Consumers can obtain this release and recall information at CPSC's Web site at www.cpsc.gov.

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CARBON MONOXIDE (CO): THE SILENT KILLER

HISTORY OF CO LEGISLATION

1992: The first U.S. city to adopt a law requiring CO alarms was Kingston, New York. The law was adopted November 10, 1992.

1994: In March of 1994, the City of Chicago became the second and largest U.S. municipality to enact a CO alarm law.

1998: In 1998, West Virginia became the first state to adopt a statewide CO alarm law.

2002: Rhode Island enacted a statewide CO law in the year 2002.

2003: New York and New Jersey enacted statewide carbon monoxide laws in the spring of 2003.

Present: Current states working to pass statewide CO legislation include Massachusetts and Pennsylvania.

CO FACTS

- Carbon monoxide is the leading cause of accidental poisoning deaths in America, claiming more than 2,100 lives per year, according to a study published in the Journal of the American Medical Association.
- CO accounts for 40,000 emergency room visits and 20,000 health-related injuries annually, according to the American Association of Poison Control Centers. Yet according to safety industry estimates, 88 percent of homes remain unprotected because they do not have at least one CO alarm.
- CO is known as the "Silent Killer" since it is invisible to the human senses. It is odorless, tasteless, colorless and non-irritating, so without a CO alarm's warning there is no way to know that you are being poisoned. CO mimics the flu or food poisoning and symptoms include headache, nausea, fatigue and dizziness.
- In fact, studies performed at the University of Illinois Hospital at Chicago found that five to ten percent of patients presented to the emergency room with flu-like symptoms actually had CO poisoning.
- CO is a by-product of combustion produced by common household appliances such as gas or oil furnaces, water heaters, space heaters and clothes dryers. Other potential sources include barbecue grills, fireplaces, wood-burning stoves, gas ovens and fumes entering a home from an attached garage.
- Once in the bloodstream, CO suffocates the body from the inside out, preventing life-sustaining oxygen from reaching vital organs in the body such as the brain and heart.
- The level of exposure to carbon monoxide and the amount of damage done is greater in children than adults. For example an adult breathes 12 times within a minute, while a child will take 20-30 breaths during that same time. If carbon monoxide is present, the child is metabolizing more of the deadly gas at a faster pace, resulting in a more severe poisoning.

- Children, infants and the unborn cannot articulate pain or other symptoms associated with carbon monoxide poisoning, which often prolongs their exposure and increases their risk for serious injuries and death. Effects of exposure can include brain damage, heart defects, cerebral palsy and death.

EXPERT TESTIMONIALS

Bill Webb

Executive Director, Congressional Fire Services Institute

"There's a mantra in the fire service that saving lives starts with prevention. We have seen that with smoke detectors. By installing smoke detectors we have saved thousands of lives. We can do the same if we install carbon monoxide detectors."

Assemblyman Joseph Morelle (D)

Irondequoit, New York – Sponsored a statewide CO law that went into effect in March of 2003.

"We have evidence from other places including the cities of Chicago and St. Louis, that CO laws have helped reduce fatalities in those communities. We have a great example here, as smoke alarm laws were enacted, more of these life safety devices went into homes and death rates from fire have declined. It's time now to look at carbon monoxide alarms the same way."

Steve Gladstone,

President-elect, American Society of Home Inspectors (ASHI)

"If people don't have a carbon monoxide detector in their house, at almost any point in the life of their equipment, it can fail and it can become a lethal environment. So if they don't have a carbon monoxide detector, they won't know and they could die in that environment. We're talking about a small investment, and god forbid something terrible happens, you'll never forgive yourself for the rest of your life."

Dr. Jerrold B. Leikin

Director of Medical Toxicology, Evanston Northwestern Healthcare-OMEGA

"Carbon monoxide has no odor, and is not irritating at all, and targets the brain for its poisoning capabilities, so that you can be overcome by carbon monoxide and not even know it...carbon monoxide detectors are just like seat belts and motorcycle helmets in that they save lives. And especially they save lives from traumatic accidents that can occur all of a sudden with nobody in the household knowing they've been exposed to these deadly gases."

Hal and Kathy Ketofsky

Carbon Monoxide Survivor Family, New Jersey

"I used to feel the same way most people feel about carbon monoxide – unconcerned. But I have a different opinion now. It's clear that the difference between life and death is as simple as having an alarm and not having one."

PREVENTION

The Consumer Product Safety Commission and the International Association of Fire Chiefs recommend every home have at least one carbon monoxide alarm with an audible warning signal installed near sleep areas.

For more information about carbon monoxide, contact the Our Children at Risk Task Force at 1-877-COFACTS.

Frequently Asked Questions About Carbon Monoxide Detectors

What is carbon monoxide (CO) and why do I need a carbon monoxide detector?

Carbon monoxide is a colorless, odorless, tasteless and toxic gas produced as a by-product of combustion. Any fuel burning appliance, vehicle, tool or other device has the potential to produce dangerous levels of carbon monoxide gas. Examples of carbon monoxide producing devices commonly in use around the home include:

- Fuel fired furnaces (non-electric)
- Gas water heaters
- Fireplaces and woodstoves
- Gas stoves
- Gas dryers
- Charcoal grills
- Lawnmowers, snowblowers and other yard equipment
- Automobiles

The Consumer Products Safety Commission (CPSC) reports that approximately 200 people per year are killed by accidental CO poisoning with an additional 5000 people injured. These deaths and injuries are typically caused by improperly used or malfunctioning equipment aggravated by improvements in building construction which limit the amount of fresh air flowing in to homes and other structures.

While regular maintenance and inspection of gas burning equipment in the home can minimize the potential for exposure to CO gas, the possibility for some type of sudden failure resulting in a potentially life threatening build up of gas always exists.

What are the medical effects of carbon monoxide and how do I recognize them?

Carbon monoxide inhibits the blood's ability to carry oxygen to body tissues including vital organs such as the heart and brain. When CO is inhaled, it combines with the oxygen carrying hemoglobin of the blood to form carboxyhemoglobin. Once combined with the hemoglobin, that hemoglobin is no longer available for transporting oxygen. How quickly the carboxyhemoglobin builds up is a factor of the concentration of the gas being inhaled (measured in parts per million or PPM) and the duration of the exposure. Compounding the effects of the exposure is the long half-life of carboxyhemoglobin in the blood. Half-life is a measure of how quickly levels return to normal. The half-life of carboxyhemoglobin is approximately 5 hours. This means that for a given exposure level, it will take about 5 hours for the level of carboxyhemoglobin in the blood to drop to half its current level after the exposure is terminated.

The following table describes the symptoms associated with a given concentration of COHb:

| <i>% COHb</i> | <i>Symptoms and Medical Consequences</i> |
|---------------|--|
| 10% | No symptoms. Heavy smokers can have as much as 9% COHb. |
| 15% | Mild headache. |
| 25% | Nausea and serious headache. Fairly quick recovery after treatment with oxygen and/or fresh air. |
| 30% | Symptoms intensify. Potential for long term effects especially in the case of infants, children, the elderly, victims of heart disease and pregnant women. |
| 45% | Unconsciousness. |
| 50%+ | Death. |

Since one can't easily measure COHb levels outside of a medical environment, CO toxicity levels are usually expressed in airborne concentration levels (PPM) and duration of exposure. Expressed in this way, symptoms of exposure can be stated as follows:

| <i>PPM CO</i> | <i>Time</i> | <i>Symptoms</i> |
|---------------|--------------|--|
| 35 PPM | 8 hours | Maximum exposure allowed by OSHA in the workplace over an eight hour period. |
| 200 PPM | 2-3 hours | Mild headache, fatigue, nausea and dizziness. |
| 400 PPM | 1-2 hours | Serious headache- other symptoms intensify. Life threatening after 3 hours. |
| 800 PPM | 45 minutes | Dizziness, nausea and convulsions. Unconscious within 2 hours. Death within 2-3 hours. |
| 1600 PPM | 20 minutes | Headache, dizziness and nausea. Death within 1 hour. |
| 3200 PPM | 5-10 minutes | Headache, dizziness and nausea. Death within 1 hour. |
| 6400 PPM | 1-2 minutes | Headache, dizziness and nausea. Death within 25-30 minutes. |
| 12,800 PPM | 1-3 minutes | Death. |

As can be seen from the above information, the symptoms vary widely based on exposure level, duration and the general health and age on an individual. Also note the one recurrent theme that is most

significant in the recognition of carbon monoxide poisoning- headache, dizziness and nausea. These 'flu like' symptoms are often mistaken for a real case of the flu and can result in delayed or misdiagnosed treatment. When experienced in conjunction with the sounding of a carbon monoxide detector these symptoms are the best indicator that a potentially serious buildup of carbon monoxide exists. This comment will be returned to later.

What are the different types of carbon monoxide detectors and how do they work?

There are a number of different types and brands of carbon monoxide detectors on the market today; They can be most easily characterized by whether they operate on household current or batteries. Underlying this, in most cases, is the type of sensor employed in the detectors operation. Detectors using household current typically employ some type of solid-state sensor which purges itself and resamples for CO on a periodic basis. This cycling of the sensor is the source of its increased power demands. Detectors powered by batteries typically use a passive sensor technology which reacts to the prolonged exposure to carbon monoxide gas.

Are some types of detectors better than others? How do I select the best detector for me?

Regardless of the type of sensor used all detectors sold on the market today should conform to minimum sensitivity and alarm characteristics. These characteristics have been defined and are verified by Underwriters Laboratory in their standard for carbon monoxide detectors UL 2034. This standard was most recently revised in June of 1995 and went into effect in October of 1995. This revision specified additional requirements regarding identification of detector type, low-level (nuisance) alarm sensitivity and alarm silencing. Under no circumstances should one purchase a detector that is not UL listed.

Each of the two types of detectors mentioned previously has applications in the home along with associated advantages and disadvantages. The proper detector for each application or installation should be chosen based on the application requirements and the products specifications. The following are the principle advantages and disadvantages of the two different type detectors:

| <i>Characteristic</i> | <i>Household Current</i> | <i>Battery Operated</i> |
|------------------------|---|--|
| Cost | \$30-50 | \$30-50 |
| Ease of Installation | More difficult- requires outlet near detector or 'hard wiring'. | Less difficult. Can be placed anywhere needed. |
| Maintenance | No maintenance required during life of product (5-10 years). Detector sensor becomes more sensitive with age. | Requires periodic replacement of battery/sensor module every 2-3 years at a cost of ~\$20. |
| Reaction Time/Exposure | Gives continuous display | Reaction time depends |

| | | |
|---------------|--|---|
| Level Display | of CO levels updated every few minutes. | on concentration level and duration of exposure. Display information is limited. |
| Reset Time | Will reset immediately once CO problem is corrected. | Reset time depends on exposure concentration and duration. May require removal of sensor pack. A silence button, however, is now provided/required. |

How many carbon monoxide detectors should I have and where should I place them?

The Consumer Product Safety Commission recommends a detector on each floor of a residence. At a minimum, a single detector should be placed on each sleeping floor with an additional detector in the area of any major gas burning appliances such as a furnace or water heater. Installation in these areas ensures rapid detection of any potentially malfunctioning appliances and the ability to hear the alarm from all sleeping areas. In general, carbon monoxide detectors should be placed high (near the ceiling) for most effective use. Detectors should also not be placed within five feet of gas fueled appliances or near cooking or bathing areas. Consult the manufacturers installation instructions for proper placement of a detector within a given area.

What are the most common causes of carbon monoxide detector alarms?

There are many conditions which can cause a carbon monoxide detector to alarm. Most are preventable and few are actually life threatening. Ideally through proper placement of the detector and education of the users the number of preventable calls can be minimized and activation will only occur in the more serious situations.

Preventable causes of CO alarm activation and the recommended preventive action are as follows:

| <i>Cause</i> | <i>Preventive Action</i> |
|--|--|
| Inadequate fresh air venting of the home. | Have a heating contractor install a fresh air makeup system in the home |
| Running gas powered equipment or automobiles in a home or garage | Gas powered equipment or vehicles should never be operated within a home or garage- even if the garage door is open. Since most homes are typically at a lower pressure relative to outside air, the gas can |

| | |
|---|---|
| Charcoal grilling in the home or garage. | actually be drawn into the home. Charcoal grilling is a tremendous producer of carbon monoxide gas. Charcoal grills should never be operated in the home. |
| Malfunctioning appliances or equipment in the home. | All fuel burning appliances or equipment in the home needs periodic inspection and preventive maintenance. While all fuel burning appliances will produce some CO gas, regular preventive maintenance can keep this to a minimum. |
| Malfunctioning or overly sensitive alarm. | Buy only UL Listed alarms conforming to the latest revision (June 1995) of UL standard 2034. This revision includes new requirements to minimize nuisance alarms. |

While many causes can be prevented others can not and may occur unpredictably. Not only are these problems harder to predict but they also tend to be more serious in nature. Examples of these type problems are:

- Cracked furnace heat exchanger.
- Malfunctioning furnace or water heater.
- Blocked chimney.
- Other unpredictable events- vehicle left running in garage, gas powered device placed near fresh air vent to home, etc.

Minimizing preventable events allows everyone to take other less preventable and predictable events more seriously.

What should I do when my carbon monoxide detector goes off?

First and foremost, stay calm. As mentioned previously most situations resulting in activation of a carbon monoxide detector are not life threatening and do not require calling 911. To determine the need to call 911, ask the following question of everyone in the household:

"Does anyone feel ill? Is anyone experiencing the 'flu-like' symptoms of headache, nausea or dizziness?"

If the answer to the above by anyone in the household is true, evacuate the household to a safe location and have someone call 911. Failure to evacuate immediately may result in prolonged exposure and worsening effects from possible carbon monoxide gas. The best initial treatment for carbon monoxide gas exposure is fresh air.

If the answer to the above by everyone in the household is no, the likelihood of a serious exposure is greatly diminished and one probably does not need to call 911. Instead, turn off any gas burning appliances or equipment, ventilate the area and attempt to reset the alarm. If the alarm will not reset or resounds, call a qualified heating and ventilating service contractor to inspect your system for possible problems. If at any time during this process someone begins to feel ill with the symptoms described above evacuate the household to a safe location and have someone call 911.

What can I expect to happen if I call 911?

What to expect when calling 911 is based on the policies and procedures of the public safety agencies serving your community and will vary from area to area. Most public safety agencies are, however, recognizing the dangers posed by carbon monoxide gas and are adopting similar procedures to the ones described below. These procedures are based on information developed by the International Association of Fire Chiefs (IAFC) and other national and regional associations. The objective of these procedures is to quickly determine the severity of the situation and provide the proper emergency response. The following is a summary of what one can expect to happen if the call 911 because a carbon monoxide detector is sounding:

When initially calling 911 be prepared to provide the following information:

- Your address.
- The type of detector that is sounding.
- Whether or not anyone is feeling ill with 'flu-like' symptoms as previously described.
- Whether or not everyone has evacuated the residence.
- The reading on the detector (if known or available)

The dispatcher will determine the response required based on the answers to the above- most significantly whether or not anyone is feeling ill.

If anyone is feeling ill and/or you can not or have not been able to evacuate everyone, law enforcement, medical and fire personnel will be assigned to the call on an emergency basis. Law enforcement to assist with the immediate evacuation of individuals, medical to treat any victims and fire to monitor for CO gas and assist with the other activities.

If no one is feeling ill, you may be advised to contact your local heating contractor or gas company to assist you or, more likely, fire personnel will be dispatched on a routine basis to monitor for CO gas and advise if a 'real' carbon monoxide problem exists.

As mentioned previously, response policies vary by community and you may wish to call your local fire or police non-emergency number to ask what their particular policies are. An example standard operating procedure for CO alarms is attached. This policy is based on the IAFC model procedures and has been adopted by the Hennepin County Fire Chiefs Association as their 'standard' policy for fire departments which are part of that association.

Where can I get further information concerning carbon monoxide detectors?

Several manufacturers of carbon monoxide detectors offer toll free numbers for additional information regarding their products. These numbers are as follows:

| <i>Manufacturer</i> | <i>Number</i> |
|---------------------|--------------------------|
| American Sensors | 800-387-4219 |
| Enzone | 800-448-0535 |
| First Alert | 800-323-9005 |
| Jameson | 800-779-1719 |
| Nighthawk | 800-880-6788 |
| Quantum | 800-432-5599 |
| Radio Shack | Contact your local store |
| S-Tech | 800-643-5377 |

Additional information with product ratings is contained in the July 1995 Consumer Reports issue on home safety products. One word of note regarding the ratings in this issue- the products tested have probably since be replaced by updated models conforming to the revised UL 2034 standard which took effect in October 1995. Check with the manufacturer for current information.

This information provided as a public service by the Hamel Volunteer Fire Department.
Comments or questions concerning this document should be directed to:

H. Brandon Guest, Chief
Hamel Volunteer Fire Department
92 Hamel Road
Hamel, Minnesota 55340
(612) 723-5400
guestb@freenet.msp.mn.us
[URL=http://freenet.msp.mn.us/people/guestb](http://freenet.msp.mn.us/people/guestb)

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Municipality of
Anchorage



P.O. Box 196650
Anchorage, Alaska 99519-6650
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Fax: (907) 343-4499
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Mark Begich, Mayor

FOR IMMEDIATE RELEASE
December 15, 2003
2003-46

Contact: Julie Hasquet
343-7103

DONORS FUND CO DETECTORS FOR AWARENESS CAMPAIGN
\$31,000 raised buys carbon monoxide detectors for low income families

Mayor Mark Begich announced today that through the support of several local companies and organizations, \$31,000 has been raised to purchase 1,140 carbon monoxide detectors for distribution to low and moderate income families.

The Mayor's office launched a fundraising effort last week following the deaths of an Anchorage family poisoned by carbon monoxide. All five members of the Arts family died after the accidental poisoning in their home on Dec. 6.

"As we grieve the deaths of the Arts family, we have reached out to the community and they are responding," said Mayor Begich. "While this CO detector giveaway cannot take away our pain, we can raise awareness about this deadly gas and how we can prevent future tragedies."

The companies and organizations who have given financial donations to the awareness campaign include Allstate, BP Exploration, ConocoPhillips, Enstar, Tote, Horizon Lines, the Anchorage Homebuilders Association, the Anchorage Police Department Employees Association, and the International Association of Fire Fighters, Local 1264.

The effort has also been greatly supported by the American Red Cross of Alaska, Home Depot, which has offered the detectors at cost, and Federal Express, which is picking up the cost of flying the large order of CO detectors to Anchorage from Fresno, California.

According to the Journal of the American Medical Association, carbon monoxide poisoning claims the lives of 1,500 to 2,000 people in the United States every year. It is the leading cause of accidental poisoning deaths in America, and hospitalizes another 10,000 people annually.

Having a working carbon monoxide detector on every level of a home and in sleeping areas is considered a key part of preventing accidental poisonings.

CO Detectors
Page 2 of 2

The carbon monoxide detectors purchased through the fundraising effort will be available to families who need them through the GIFT program in Anchorage this week. Sponsored by Catholic Social Services, Lutheran Social Services, The Salvation Army and the United Way of Anchorage, GIFT is a community outreach event that provides holiday gift and food assistance to thousands of low to moderate income families.

The distribution runs December 17-19 in the ACS Garage at 650 Telephone Ave. The detectors will be available until the supply runs out. The Red Cross office at 235 E 8th Avenue will have a small supply as well.

The shipment of 1,140 carbon monoxide detectors from a Kidde distributor in Fresno is expected to arrive in Anchorage, via Federal Express, on Tuesday.

"I am overwhelmed by the generous spirit of our local companies and organizations," said Mayor Begich. "I would also like to thank our city firefighters, police officers and other emergency personnel who had to respond to this terrible tragedy."

In a separate program, the Municipality's Department of Health and Human Services Weatherization Program provides CO detectors to low income families each year. Priority is given to elderly, the disabled, and families with children under the age of six years. The program is available to both homeowners and renters, and qualifying requires meeting income eligibility guidelines and the home must be inspected.

Funding for the program is provided by The Federal Department of Energy and Alaska Housing Finance Corporation. Those who are interested in the Weatherization Program can call 343-6630 for more information.

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Our Children at Risk Task Force

December 11, 2003

Representative Max F. Gruenberg, Jr.
House of Representatives
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801-1182

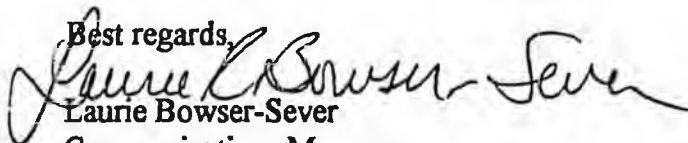
Dear State Representative Gruenberg,

Recently, you and members of your staff requested information on carbon monoxide legislation from the Children At Risk Task Force based on meetings with folks at the National Conference of State Legislators. Hopefully you received the packet of information that included copies of recent state legislation, codes and/or amendments from New York and New Jersey that require carbon monoxide alarms in residential dwellings and that you found it useful.

I personally wanted to give you a heads up that there was an unfortunate carbon monoxide poisoning incident in Anchorage over the weekend in which an entire family was fatally poisoned. One person is still hospitalized from what I recall, but several family members perished, including a few children. Anchorage Mayor Mark Begich is currently conducting a fundraising campaign to solicit donations of CO alarms to donate to low-income families there with the hopes of preventing another CO tragedy. He seems to be very affected by this incident, is very passionate about this issue and may be a great supporter if you are still looking at sponsoring a bill at the state level (note that I haven't spoken with him regarding your interest on this issue). This would also be a solid example in your own backyard that might heighten awareness of the need for CO legislation in Alaska.

If you need further information, please don't hesitate to contact me.

Best regards,



Laurie Bowser-Sever

Communications Manager

Phone: 919-304-8312

children
RISK

See me

July 10, 2003

Dear NCSL attendee:

Several years ago, I lost two of my three sons, Zachary and Nicholas (16 months and four years of age) to carbon monoxide poisoning from a furnace malfunction that nearly wiped out our entire family. Since the death of my sons, I have become an advocate for the use of carbon monoxide alarms in *all* homes.

Carbon monoxide is known as the "Silent Killer" for a very good reason – you don't know it is there. CO attacks without warning – you can't see it, smell it or taste it and symptoms mimic the flu. CO is the #1 cause of accidental poisoning deaths in the U.S. and accounts for 40,000 emergency room visits, 20,000 health-related injuries and 2,000 deaths annually.

I can assure you that my family was no different than yours or families in your district. We simply didn't know what CO was or that we were at risk. As someone who survived a deadly carbon monoxide incident, I can tell you that you don't know what's happening to you – until it's too late. Only an alarm can alert you to the presence of carbon monoxide before it becomes life threatening.

Carbon monoxide is a natural by-product of combustion in fuel burning appliances. A toxic spill can happen at any time due to a faulty furnace, blocked chimney, cracked vent pipe or clothes dryer with a blocked vent. Electric-only homes are just as susceptible to this household threat because a car left idling in an attached garage, a gas-powered generator used during a power outage or a charcoal grill brought indoors or operated too close to the home can cause hazardous consequences.

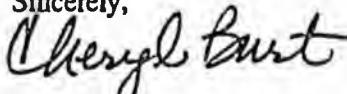
Smoke alarm legislation has been successful in reducing the number of fire-related deaths in our communities. Now, it is time to look at carbon monoxide alarms in the same way – as a critical piece of home safety equipment that belongs in every household, rental property and lodging facility.

New York, New Jersey and Rhode Island are three states with laws requiring carbon monoxide alarms in homes, lodging facilities and rental properties. Many other cities and towns have similar requirements. By sponsoring carbon monoxide legislation, you can help your state and its constituents save lives and prevent injuries, especially among younger family members who are at greater risk to carbon monoxide exposure.

Your help is urgently needed *today!* **I urge you to stop by booth 837 at the National Conference of State Legislators meeting July 23-25 in San Francisco** where members of the Our Children at Risk Task Force, including myself, will be available to discuss the importance of passing carbon monoxide legislation in your state. We can provide model legislation and any additional information you may need to aid in this important effort.

If you'd like further information prior to the conference, please don't hesitate to contact us. I look forward to meeting you.

Sincerely,



Cheryl Burt

Chairperson, Our Children at Risk Task Force

NYS Department of State

FOR IMMEDIATE RELEASE

December 30, 2002

Contact: Theresa Smolen
Assistant Secretary of State
for Public Affairs
(518) 474-4752

New York State Will Enter 2003 With New Fire Prevention, Building Codes in Effect

ALBANY – (December 30, 2002) – Transition Period Ends In December, Codes of New York State Supersede Current Provisions

As New Yorkers ring in the New Year, new fire prevention and building codes will take effect that supersede the existing codes and bring updated technology, products, safety standards and flexibility that will provide a major incentive for new investment, construction and economic development across the state, Governor George E. Pataki today announced.

"New York State will now have a set of requirements that are consistent with the rest of the country," said Governor Pataki. "The new codes will ensure that our homes and workplaces are safe and energy efficient, while spurring development and creating job opportunities across the State."

The new model codes were adopted by a unanimous vote of the State Fire Prevention and Building Code Council in March, culminating a four-year process of reviewing the International Codes and making modifications for New York State in an effort to replace the current outdated code. A 180 day transition period has been in effect since July, during which time the current code or the new code could be used.

"Many building permits submitted during the transition period utilized the new code over the old one. The feedback has been positive and reflects our belief that new codes will not only be easier to comply with and enforce, but will provide an incentive for new investment and economic development as well," said Secretary of State Randy A. Daniels, whose Department oversees Codes Enforcement and Administration.

The Governor directed the Department of State to undertake the code review process in 1998. Since that time, the Code Council established technical subcommittees to review the International Family of Codes, which includes the building, fire, residential, plumbing, mechanical, fuel gas, property maintenance and energy conservation codes.

The adoption of the International Codes also gives New York State a voice in the code development process at the national level. New York State's Code will be updated on a regular schedule consistent with the International Codes three-year cycle.

Secretary Daniels is Chair of the State Fire Prevention and Building Code Council. The Code Council is a 17-member body comprised of representatives from several disciplines, including architects, engineers, builders, trade unions, people with disabilities, fire prevention, local governments and state agencies.

All construction in the state is governed by the Uniform Fire Prevention and Building Code, which addresses issues such as fire prevention, life safety, structural stability and accommodation for people with disabilities. The code applies to all communities across New York, except New York City which has its own building code. NYC is covered by the energy conservation code, which took effect in July.

###

THE
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NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Section 1 (e)

(x) Memo on original draft of bill
() Memo on amended bill

BILL NUMBER: Assembly

Senate

SPONSORS: Member (s) of Assembly: Joseph D. Moralle
Senator (s):

TITLE OF BILL:

AN ACT to amend the executive law, in relation to requiring the installation of carbon monoxide detectors.

PURPOSE OR GENERAL IDEA OF BILL:

The purpose of this bill is to require the installation of carbon monoxide detectors in multiple dwellings, hotels, motels, and lodging houses.

SUMMARY OF SPECIFIC PROVISIONS:

Section one would amend subdivision 5-a of section 378 of the executive law by adding multiple dwellings to the type of dwellings that are required to have carbon monoxide detectors installed if the dwelling is constructed or sold after this law takes effect.

Section two of this bill amends subdivision 8 of section 378 of the executive law by adding carbon monoxide detectors as a required device to be installed in hotels, motels and lodging houses. Currently only smoke detectors are required.

Section three would only require such carbon monoxide detectors in dwellings that contain or are serviced by gas-fueled or oil-fueled devices, a wood stove or has an attached garage.

Section 4 sets the effective date.

JUSTIFICATION:

As with smoke detectors/fire alarms many years ago, carbon monoxide detectors have earned the respect of the fire service as a valuable tool in the saving of lives.

Everyone recognizes that carbon monoxide kills if not responded to immediately. The most serious quality of CO₂ is that, unlike smoke, it is virtually undetectable, even when someone is awake and alert. Chapter 257 of the laws of 2002 required carbon monoxide detectors be installed in one and two family dwellings and in condominiums and cooperatives that are constructed or sold in order to prevent the loss of life.

This bill requires multiple dwelling units and hotels, motels and lodging houses to install carbon monoxide detectors as well.

PRIOR LEGISLATIVE HISTORY:

New legislation.

FISCAL IMPLICATIONS:

Undetermined.

EFFECTIVE DATE:

This act shall take effect on the one hundred twentieth day after it shall have become law, provided, however, that effective immediately, the addition, amendment and/or repeal of any rules or regulations by the secretary of state necessary for the implementation of the foregoing sections of this act on its effective date is authorized and directed to be made and completed on or before such effective date.



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CARBON MONOXIDE DETECTORS REQUIRED AS OF JANUARY 1, 2002

In 2001, the Rhode Island General Assembly enacted a new law, which will require most new and existing single family homes and other residential properties to be equipped with both a working smoke detector and carbon monoxide detector prior to transfer of the property or issuance of a certificate of occupancy as of January 1, 2002.

QUESTIONS AND ANSWERS

When will the new carbon monoxide detector law go into effect? January 1, 2002.

What properties are covered? The law will apply to existing, occupied single-family homes and other residential buildings which are transferred on or after January 1, 2002. The law will also apply to new single-family homes and other residential buildings with gas utilities which are constructed or converted for residential occupancy on or after January 1, 2002. Residential buildings which are required to have a fire alarm system are exempt.

What kind of carbon monoxide detectors must be installed? Carbon monoxide detectors must emit an audible signal with a minimum rating of eighty-five decibels at a distance of ten feet and have a "power on" indicator. The detectors must be listed and/or approved by Underwriters Laboratories Inc., Factory Mutual, or some other nationally recognized testing laboratory approved by the state fire marshal and installed according to the manufacturer's specifications.

How expensive are carbon monoxide detectors? Prices typically range from \$25 - \$70 per detector.

Where must the carbon monoxide detectors be placed? An approved smoke and approved carbon monoxide detector must be installed in the access space immediately adjacent to bedrooms or sleeping rooms, and in bedrooms, or sleeping rooms, which are separated by other use areas, such as kitchens or living rooms, but not bathrooms. If a bedroom opens directly into the kitchen, a smoke detector must be installed in the bedroom, and a carbon monoxide detector must be installed in the kitchen, located in accordance with manufacturer's specifications in relation to fuel burning appliances. All carbon monoxide detectors must be mounted in accordance with manufacturer's specifications.

Who will inspect the carbon monoxide detector? Inspections will be performed by the same department in each town or city which performs smoke detector inspections. Typically, this will be the fire department.

How much will a carbon monoxide detector inspection cost? The cost of a carbon monoxide detector inspection will be \$30, which will be the same price as a smoke detector inspection beginning on January 1, 2002. However, a town or city may charge an additional fee of \$30 if the detectors must be reinspected due to improper installation, wrong location, improper wiring, or the owner's failure to keep his inspection appointment.

Must a carbon monoxide certificate be recorded? Yes, a carbon monoxide detector certificate must be recorded with the town or city clerk's office in the same way that a smoke detector certificate is recorded.

When must the inspection be completed? The inspection must be completed within sixty days prior to