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TASK FORCE ON THE FUTURE OF HEALTH INSURANCE

Issue Brief

NOVEMBER 2002

Health Insurance Purchasing Cooperatives

ELLIOT K. WICKS

ECONOMIC AND SOCIAL RESEARCH INSTITUTE

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Small employers' have particular disadvantages as purchasers of health insurance. They often are not well informed about the insurance options available to them because, unlike large employers, they do not have specialized staff to manage their employee benefit programs. Small business owners, who usually make decisions about insurance for their firms, typically have little time or expertise to bring to the task and often must rely on an agent's advice. Even when small employers make informed choices, their health insurance premiums are likely to be substantially higher than what large employers pay for comparable coverage.

One idea for overcoming these disadvantages continues to generate widespread interest—the health insurance purchasing cooperative. People attracted to the idea reason that small employers who join together to purchase health coverage collectively should be able to strike a better deal than they would by acting separately. Acting jointly, it seems that they should be able to realize the advantages that large employers enjoy because of their size and bargaining power. If, by aggregating their purchasing power, small employers were able to buy coverage at lower cost, firms not previously offering health coverage might be encouraged to do so, thus reducing the numbers of uninsured. The collective purchasing idea appeals to people of divergent philosophical perspectives because putting it in place does not require major institutional changes or government regulation and does not seem to be very costly.

Elliot K. Wicks, Ph.D., is a senior fellow at the Economic and Social Research Institute and a senior consultant with Health Management Associates. As a health economist and policy analyst with more than 25 years of experience, he has expertise in the areas of small-employer purchasing, health insurance reform, cost containment, and policies to extend health coverage to the uninsured.

This brief compares the expectations of health insurance purchasing cooperatives for small employers with the actual experiences of different co-ops and draws lessons about the potential for similar future purchasing efforts.

The Case for Co-ops

The theory of purchasing cooperatives is straightforward. Acting as a group, small employers should be able to wield the kind of purchasing clout that large employers enjoy in their negotiations with health plans. If they bring many prospective clients to the table, the cooperative should be able to negotiate more favorable prices and to persuade health plans to cater to their particular needs. Collective purchasing might also be expected to reduce administrative diseconomies and thereby reduce the costs of coverage. When insurers serve hundreds of small employers, they incur higher administrative costs than when they serve a single large employer with the same number of employees. It is expensive to send insurance agents to each small employer to explain coverage, handle sales, and service accounts once the coverage is in place. Because each insurer and health plan serving this market has to establish mechanisms and pay people to perform these functions, there is much duplication. If a single purchasing cooperative served small employers, it could presumably consolidate many of the marketing, educating, billing, and servicing tasks under a single roof, thereby realizing economies of scale and lowering the costs of coverage.

The purchasing cooperative approach could potentially bring another advantage to small employers—a choice of health plans for individual employees. Cooperatives typically allow individual employees to choose from the array of plans with which the cooperative has negotiated contracts. Individual employees, rather than their employers, are thus able to decide what kind of health plan best meets their particular needs. If workers leave one job for another position at a firm that buys through the cooperative, they can avoid having to change health plans and therefore avoid changing

physicians. Employee choice has particular value in an insurance market dominated by managed care plans, each with different treatment philosophies, expectations of enrollees, and panels of providers. Because of the administrative burdens associated with having health insurance contracts with multiple health plans, few small employers are able to offer individual employee choice except when they participate in a collective purchasing arrangement.

Another advantage often attributed to purchasing cooperatives is risk-pooling. People frequently make the argument that, by joining together, small employers can spread risk by pooling firms of normal risk, higher-than-average risk, and lower-than-average risk. (In this context, "risk" refers to the probability that members of an employer's workforce and their insured dependents will incur medical expenses for which the insurer will have to pay.) The expectation is that coverage would become more affordable for higher-risk groups. Unfortunately, this advantage can seldom be realized in practice. If the legal environment permits insurers to use risk-rating to set premiums for firms that buy coverage outside of the co-op—as is the case in many states—lower-risk employers will typically find it more advantageous to buy coverage in that outside market, since they will be offered a price that reflects their lower risk.² If that happens, the average level of risk of the employers remaining in the purchasing cooperative will rise, and the cost of coverage will rise in turn. This will set off a chain reaction of spiraling prices and retreating employers that will destroy the pool's viability. With respect to pooling risks, a purchasing cooperative has to follow essentially the same practices as the outside market when dealing with employers with different levels of risk. If the outside market is permitted to charge higher-risk employers higher premiums, the purchasing cooperative has to do the same to survive—greatly complicating the co-op's pricing and associated administrative tasks. A cooperative can use various forms of community rating—which prohibit basing premium rates on enrollee's health status—only

if the law requires insurers to follow the same community rating rules in pricing *all* of their products sold in the small-group market. (Currently, states vary in their rules on this matter.) But in that case, the cooperative is not the risk-pooling agent; risk-pooling occurs because the law requires insurers to use community rating whether they sell inside or outside the pool.

Measuring Expectations Against Reality

In practice, purchasing cooperatives have not always met expectations. Although there are certainly successful models, there have also been some notable failures.³

One of the first successful collective purchasing co-ops was created in Cleveland, Ohio—the Council of Smaller Enterprises, commonly known as COSE. Today, COSE dominates the small-group market in the Cleveland area with an enrollment of about 200,000 people. COSE is not a prototypical purchasing co-op because, for virtually all of its history, a single health plan has accounted for nearly all of its sales. Although COSE now offers a choice of two independent health plans and a number of plan types, the employers, rather than individual employees, choose the health plan. Nevertheless, because it dominates the small-group market in its area, COSE has proven that small employers banding together can be effective purchasers of health coverage.

The best-known purchasing cooperative is the one in California known in its early years as the Health Insurance Plan of California (HIP). Originally a creation of the state and operated by a state agency, the California co-op is now run by the Pacific Business Group on Health, an organization that during most of its history represented only large employers. Now called PacAdvantage, the co-op provides coverage for approximately 147,000 people and offers about a dozen health plans (not including different plan models offered by the same parent company). Another successful co-op is the Connecticut Business and Industry Association, which enrolls about 10,000. The New

York Business Group on Health collaborated with New York City to establish a purchasing cooperative in late 1999, which has a current enrollment of about 7,000 and is growing.

A significant proportion of co-ops have failed. The failures have included co-ops that initially seemed to be quite successful as well as others that never really became viable. The demise of the Florida Community Health Purchasing Alliances was perhaps the most notable failure because the co-op had once seemed quite successful. Originally a state-created consortium of 11 separate alliances, the cooperatives enrolled 92,000 people when enrollment peaked in 1998. But over the years, the Florida alliances had increasing difficulty attracting any but the smallest employers and gradually found themselves losing health plans. As a consequence, enrollment also fell, and the purchasing alliances ceased operations in 2000.

The Texas Insurance Purchasing Alliance, begun in 1994, never reached the enrollment levels of the Florida effort, covering only about 1,000 firms and 13,000 people at its height. Difficulty in attracting employers led to the withdrawal of health plans, and the Alliance governing board ultimately decided that the operation was not viable and closed it down. The North Carolina Purchasing Alliances, which opened for enrollment in 1995, were patterned after the Florida model, but they struggled to attract employers throughout their existence, and the leaders finally admitted defeat in 2000.

The Alliance in Colorado was the most recent failure. Established in 1995, the Alliance closed in the summer of 2002 after one of its three health plans withdrew from the state small-group market, a second capped enrollment, and the last decided to stop participating.

A number of conclusions can be drawn from the experiences of both the successful and unsuccessful purchasing co-ops. The most important is that collective purchasing arrangements are unlikely to succeed unless they can attract large numbers of employers, and not just the smallest of

employers with only two or three employees. Without large numbers or substantial market share, co-ops cannot exert purchasing power,⁴ they cannot achieve economies of scale, and they cannot attract and retain health plans. Health plans have often been hostile to the purchasing co-op model for several reasons. First, they are understandably wary of the model because it gives their customers bargaining clout. Second, they do not like the individual-choice feature of co-ops because it provides enrollees with a ready way of switching to a different health plan during every open enrollment period. Third, they believe that their chances of getting and keeping all of the employees in an employer group—which brings in more revenue and helps to spread risk—are much better when they market to that group outside of the purchasing co-op.⁵ Therefore, unless a co-op commands a significant market share that health plans cannot afford to pass up, plans are unlikely to be eager to participate. This creates a “chicken-or-egg” dilemma: without large numbers of enrollees, it is difficult for purchasing cooperatives to attract health plans; but without the ability to offer substantial choice among well-known health plans, it is difficult for co-ops to attract enrollees, who are drawn to co-ops in part because of their ability to offer such choice.⁶

Size is also a prerequisite for purchasing co-ops to achieve economies of scale and to reduce administrative costs. As long as their non-co-op business accounts for the bulk of their revenue, health plans must maintain their existing administrative structures to handle that business. The health plans contend that any savings they might realize as a result of the co-op's assumption of some administrative functions for the relatively small number of co-op enrollees is more than offset by the extra cost the plans incur because they have to change their administrative systems to accommodate the administrative structure of the co-op.⁷ In short, health plans believe that dealing with the co-op adds to, rather than reduces, their administrative costs.

It has also become clear that some significant diseconomies of scale are inherent in serving small employers and that these costs cannot be eliminated by centralizing the administration. It will always be more costly to serve 5,000 employers with 10 employees each than to serve a single employer with 50,000 employees.

Early proponents of purchasing co-ops believed that administrative costs could be lowered by reducing or eliminating the role of insurance agents and having the sales activities administered centrally.⁸ Proponents sometimes assumed that if a co-op offered a high-quality, high-value product, it would more or less sell itself. That assumption proved to be incorrect. Selling health insurance of any kind in the small-group market is extremely difficult without the cooperation and even enthusiastic support of insurance agents and brokers. Early efforts to save the cost of commissions by diminishing agents' roles or eliminating them altogether backfired. Insurance agents not only did not sell purchasing co-op plans, they also became strong and effective opponents of the concept. Today, co-ops assiduously cultivate the good will of agents as necessary allies.

Early proponents of cooperatives also hoped that these new organizations could offer prices somewhat lower than were generally available in the market. This hope was not fulfilled. With very few exceptions, premiums for employers buying through co-ops have not been lower than those available to small employers elsewhere.⁹ This failure to realize the expected price advantage is attributable to several factors. Co-ops have not been able to reduce administrative costs. They have not had enough market share to bargain for discounts. And in many instances state laws have prohibited insurers from offering co-ops premiums lower than those they charge to employers outside the coop, even if the insurers' costs are lower for co-ops.¹⁰

Many supporters hoped that purchasing co-ops would attract a large number of employers who had not previously offered coverage. The prospects for success in this area were dimmed by

co-ops' inability to offer lower premiums. Even if co-ops had realized price reductions, however, most uninsured small employers would still not have been induced to offer coverage to their employees. The research evidence shows that even a 30 percent reduction in premiums—far more than co-ops could be expected to produce—would cause only 15 percent of currently uninsured small employers to offer coverage.¹¹

Though they have failed to generate significant savings, co-ops have succeeded in one important respect: participating employers have been able to offer their employees a choice among health plans. This unique feature has proven to be attractive to employers, but it alone has been insufficient to induce a significant number of employers who had not previously offered coverage to do so. The available evidence, though limited, suggests that purchasing co-ops attracted about the same proportion of newly insuring employers as the non-co-op market.¹²

Summary

An analysis of the efforts to implement the purchasing cooperative model yields the following lessons:

1. **The principal advantage that current co-ops offer to small employers is not lower premiums but the opportunity for individual employees to select different health plans from the variety the co-op offers.**
2. **In the future, co-ops might be able to offer more attractive prices, but that would depend on reaching "critical mass" size. To offer attractive prices, a co-op has to be able to realize administrative savings and/or have bargaining leverage with health plans. Both these conditions require that co-ops control significant market shares.**
3. **Achieving critical mass size is difficult.**
To persuade a number of health plans to partic-
- ipate and continue participating, a co-op must have a significant market share. But without the participation of a variety of highly reputable plans, it will be difficult for co-ops to attract the number of employers that would yield a significant market share. Furthermore, co-ops do not sell themselves. Without the support of health plans and insurance agents, small employers will not seek out co-op coverage. But health plans and agents have often been hostile or, at best, indifferent, to the co-op model.
4. **Even if co-ops could offer lower premiums, they could not substantially reduce the number of uninsured because the premium reductions would not be big enough to induce large numbers of uninsured employers and uninsured workers to opt for coverage.**
5. **Co-ops cannot be the vehicle for pooling high-risk, low-risk, and medium-risk employers. If co-ops follow premium rating rules or rules for accepting applicants that are significantly more permissive than those that apply in the outside market, they will suffer from adverse selection and ultimately fail.**
6. **Co-ops are likely to become an important source of health coverage only if some significant change makes them the favored or perhaps the sole source of coverage for particular groups. This could happen, for example, if employers adopting a defined-benefits approach to health coverage channeled employees to co-ops, or if government offered co-ops as the source of coverage for individuals who receive certain kinds of subsidies. Without a change of this sort, purchasing cooperatives are unlikely to become a major feature on the health care landscape.**

NOTES

¹ For the purposes of this brief, the term "small employer" refers to firms employing roughly 100 or fewer workers. Most purchasing cooperatives have limited membership to firms with 50 or fewer workers because state insurance laws have typically defined small groups using this cutoff point.

² Jill Yegian et al., *Health Insurance Purchasing Alliances for Small Firms: Lessons from the California Experience*, California Health Care Foundation, May 1998, p. 7; U.S. General Accounting Office, *Private Health Insurance: Cooperatives Offer Small Employers Plan Choice and Market Prices*, GAO-HEHS-00-49, March 2000, p. 20.

³ For a detailed discussion of six purchasing cooperatives, including both successful and unsuccessful efforts, see Elliot K. Wicks, Mark A. Hall, and Jack A. Meyer, *Purchasing Health Coverage for Small Employers: Barriers to Small-Group Purchasing Cooperatives*, Economic and Social Research Institute, March 2000.

⁴ General Accounting Office, March 2000, p. 18.

⁵ Elliot K. Wicks, Mark A. Hall, and Jack A. Meyer, March 2000, pp. 116-17.

⁶ Elliot K. Wicks and Mark A. Hall, "Purchasing Cooperatives for Small Employers: Performance and Prospects," *Milbank Quarterly*, Vol. 78, No. 4, 2000, p. 534.

⁷ General Accounting Office, March 2000, p. 22.

⁸ Jill Yegian et al., May 1998, p. 8.

⁹ General Accounting Office, March 2000, p. 20.

¹⁰ General Accounting Office, March 2000, pp. 21-22.

¹¹ James D. Reschovsky and Jack Hadley, "Employer Health Insurance Premium Subsidies Unlikely to Enhance Coverage Significantly," Issue Brief: Findings from HSC, No. 46, Center for Studying Health Systems Change, December 2001; see also M. Susan Marquis and Stephen H. Long, "To Offer or Not to Offer: The Role of Price in Employers' Health Insurance Decisions," *HSR: Health Services Research*, Vol. 36, No. 5, October 2001, p. 946.

¹² Elliot K. Wicks and Mark A. Hall, 2000, pp. 517-18.





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Mission Statement

The Commonwealth Fund is a private foundation established in 1918 by Anna M. Harkness with the broad charge to enhance the common good. The Fund carries out this mandate by supporting efforts that help people live healthy and productive lives, and by assisting specific groups with serious and neglected problems. The Fund supports independent research on health and social issues and makes grants to improve health care practice and policy.

The Fund's two national program areas are improving health insurance coverage and access to care and improving the quality of health care services. The Fund is dedicated to helping people become more informed about their health care, and improving care for vulnerable populations such as children, elderly people, low-income families, minority Americans, and the uninsured. An international program in health policy is designed to stimulate innovative policies and practices in the United States and other industrialized countries. In its own community, New York City, the Fund makes grants to improve health care and enhance public spaces and services.

July 2000

Alaska State Legislature

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Representative Cheryl Heinze
District 24 - Anchorage

CSHB 10 (HESS)

SPONSOR STATEMENT

"An Act relating to pooling by employers and self-employed individuals for the purposes of group health insurance; and providing for an effective date."

In this legislation, small and large employers and self-employed individuals are allowed to form an association for the purpose of obtaining health insurance. Under HB 10, an insurer may offer a policy to an association of employers covering the employees and dependents of the employees, or to an association of self-employed individuals covering self-employed individuals and dependents of the self-employed individuals, or to an association that includes a combination of employers and self-employed individuals.

A self-employed individual is defined as an individual who derives a substantial portion of the individual's income from a trade or business through which the individual has attempted to earn taxable income and for which the individual has filed the appropriate Internal Revenue Service form and schedule for the previous year.

An association would be required to establish a constitution and bylaws. The association must be maintained for the benefit of persons other than the association or its officers or trustees. Membership in the association is restricted to large or small employers, or self-employed individuals, who are residents of the state. An employer, however, may reside in another state and may obtain coverage through an association for the employees and dependents of the employees of that employer who are residents of this state.

The association may not condition membership in the association or coverage under a health insurance policy issued to the association. An exception is provided for a self-employed individual where a health care insurer may decline to cover or may restrict coverage offered to that individual under the association plan.

An intent section has been added to the bill to clarify that non-profits are included in those covered by this bill. Specifically, large and small non-profit employers and non-profit self-employed individuals would be allowed to form an association for group health insurance purposes.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 10(L&C)
 (H) Publish Date: 4/14/2003

Revision Date/Time (Note if correction): _____ Dept. Affected: Administration
 Title An Act relating to health insurance BRU Centralized Admin Services
for small businesses and non profits Component Retirement & Benefits
 Sponsor Rep. Heinze and Rokeberg
 Requester House Labor & Commerce Component No. 64

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Due to the adoption of a committee substitute by the House Labor & Commerce Committee, which no longer requires the involvement of the Commissioner of Administration, this bill will now have a zero fiscal impact.

Prepared by: Representative Tom Anderson Phone _____
 Division Chair, House Labor & Commerce Committee Date/Time 4/14/03 11:44 AM
 Approved by: Representative Tom Anderson Date 4/14/2003
 Agency House Labor & Commerce Committee

Alaska State Legislature

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Representative Cheryl Heinze
District 24 - Anchorage

CSHB 10 (HESS)

SECTIONAL

Section 1. This is a section of uncodified law which expresses the intent to include non-profits .

Section 2. This section amends AS 21.54.015 by adding a new subsection to allow an insurer to decline to cover or restrict coverage to a self-employed individual under AS 21.54.060.

Section 3. This section amends AS 21.54.060 defining group health insurance to include as association of employers and their dependents and self-employed individuals and their employers.

Subsection (A) Sets out requirements for the association.

Subsection (B) Defines "self-employed individual"

Section 4. This section amends AS 21.56.120 by adding a new subsection describing how premium rates may be determined .

Section 5. This section provides for an effective date.

SECTIONAL -

Aetna
601 Union St., Suite 810
Seattle, WA 98101



Mike Wiggins
National Accounts
(206) 701-8106
Fax: (206) 701-8175

May 5, 2003

Representative Cheryl Heinze
House of Representatives
Alaska Legislature
Pouch V
Juneau, Alaska 99801

Dear Representative Heinze:

Aetna has reviewed CS HB10, which would allow the pooling of small businesses and nonprofit corporations for the purpose of procuring health insurance.

Any organization for pooling would be done privately and independent brokers may have the opportunity to procure insurance for any groups which might be formed.

Aetna does not have any objection to the creation of this additional option to allow businesses an alternate means to find the best possible private health insurance that will fit their needs.

Sincerely,

A handwritten signature in cursive script that reads "Mike Wiggins".

Mike Wiggins Handwritten initials "MW" inside a circle.

Cc: Nicole Salinas
Jeff Beck
Reed Stoops



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

February 15, 2003

RE: HB 10 (Heinze & Rokeberg)-Support

Dear Chair Anderson:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the House Labor and Commerce Committee to support HB 10, authored by Representatives Cheryl Heinze and Norman Rokeberg, one of your Committee members, and co-sponsored by nine of your other House colleagues.

Alaska has good reason to be concerned about it's uninsured. Almost one of every five Alaskans between the ages of 50 and 64 has no health insurance coverage. These same statistics hold true for younger Alaskans. HB 10 will offer some opportunity for coverage for employees of small businesses, non-profit organizations and agencies and organizations that band together to form a group pool. AARP is very supportive of such efforts. Indeed, AARP was founded by retired educators in the 1940's and 1950's who were unable to secure any form of health insurance once they left the workforce. This was several years before the enactment of Medicare and AARP pool coverage was often the only health insurance our members could find.

AARP believes that all Alaskans should have access to health insurance coverage. We know that the uninsured often postpone preventive care and end up in emergency rooms, receiving the most expensive and often most serious care. We are also well aware that the health care costs of the uninsured are often shifted to those who do have insurance. Obviously, state government often picks up some of the costs of the uninsured because the State does provide coverage to its employees and retirees. If we could reduce the number of uninsured, we would also reduce the health costs unfortunately being shifted to the State as well as other employers that cover their employees (including AARP).

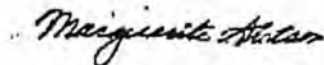
HB 10 will not solve all our problems with the uninsured. However, it has already focused attention in the media on this issue. These are most often our small businesses, farmers, college students, and workers in the non-profit sector. As the authors point out in the bill, expensive turnover for these organizations often eliminates the opportunity for them to retain an experienced workforce. Small business is the future of Alaska. Non-profit organizations, as the bill points out, often provide needed services that the State simply cannot afford to supply.

HB 10 is a very good first effort at addressing this serious problem. AARP encourages you and your colleagues on the House Labor and Commerce Committee to vote "AYE" when HB 10 is heard before you.

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

Thank you for your consideration.

Sincerely,



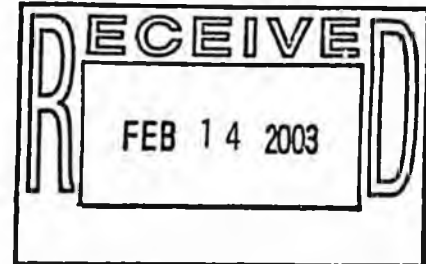
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February 13, 2003

Representative Tom Anderson, Chair, and Members
House Labor and Commerce Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182**RE: HB 10 Group Health Insurance for Private Groups**

Dear Representative Anderson:

Small businesses and non-profits are facing continually rising costs and decreasing availability of health insurance. This adds seriously to an already existing workforce recruitment and retention crisis in the chemical dependency treatment field.

Treatment programs that were already hanging on by a thread due to flat funding for over a decade, are taking a serious look at whether they can keep their doors open. Some have reduced health insurance benefits, increased rates to employees, dropped benefits altogether, cut staff, or cut services. Many of these programs have already lost staff to other disciplines that pay better and offer better benefits.

Alaska ranks at or near the top of all states in alcohol-related problems including Fetal Alcohol Syndrome, Child Abuse and Neglect, Domestic Violence, Sexual Assault, to name a few. Access to appropriate treatment is critical to lowering those ratings. We need well-trained, quality staff to provide needed services and effect successful outcomes for Alaskans, statewide.

HB10 could help provide the kind of relief needed by non-profits such as these treatment programs and other small businesses and non-profits that are unable to afford this benefit that is critical to recruiting and retaining a qualified, stable workforce.

Please give this legislation your full support. If you have any questions regarding this issue as it related to chemical dependency services, please contact me.

Sincerely,

A handwritten signature in black ink that reads "Pamela L. Watts".

Pamela L. Watts
Executive Director
Governor's Advisory Board on Alcoholism and Drug Abuse



t/ 907-274-0827
f/ 907-272-0292

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www.aknurse.org
aknurse@aknurse.org

February 24, 2003

Representative Cheryl Heinze
Representative Norman Rokeberg
Alaska State House of Representatives
State Capitol
Juneau, AK 99801-1182

Dear Ms. Heinze and Mr. Rokeberg:

We wish to commend your efforts and the efforts of other Legislators in addressing the need for group health insurance for persons employed by small businesses, nonprofit organizations, special service organizations, and/or small associations (HB 10).

The Alaska Nurses Association is particularly sensitive to the health care needs of the uninsured – such as our very own members, the Registered Nurses of the state who upon retirement after 20 to 30 years of service have no health care benefits for themselves or their dependents.

We are not speaking of those Registered Nurses employed by public employers. These nurses do have access to retiree health care. We are speaking of those Registered Nurses employed by private employers, such as Providence Alaska Medical Center and other private (but often “non-profit”) and quasi-private health care providers in the state.

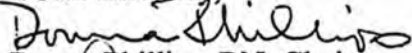
The above Registered Nurses are provided health care coverage during the term of their employment, but not following retirement. A nurse entering the profession at age 22 who works for 30 years is age 52 upon possible retirement. He/she often has sustained back injuries or other job-related medical conditions during his/her career making 30 years about the extent of his/her professional endurance.

Between the age of 52 and 63, this nurse has NO medical coverage for either himself or his family. Once a nurse realizes that this is the case – and that he/she has no other coverage through an insured spouse – he/she begins looking for another employer or another profession. As you can imagine, this situation contributes greatly to the retention of the experienced nurse and the overall resulting nursing shortage.

What we are asking you to consider is the possibility of including in HB 10 a retiree health care provision for nurses for this “bridge” period between retirement and Medicare eligibility. We believe that such a provision would keep men and women in the profession longer. The specifics of employer contributions and employee premiums would also need to be addressed.

We would, of course, provide you additional information upon request. Thank you for your consideration.

Yours sincerely,



Donna Phillips, RN, Chair
Alaska Nurses Association Labor Council



Dianne O'Connell, M.Div.
AaNA Labor Program Director

HB

15

SENATE COMMITTEE REPORT

DATE: 3/4/04

FURTHER: Judiciary

DATE TURNED
IN TO OFFICE: _____

Labor and Commerce Committee considered CS FOR HOUSE BILL NO. 15(FIN) am

HB 15 SOLICITATIONS/CONSUMER PROTECTION

"An Act relating to fair trade practices and consumer protection, to telephone solicitations, to charitable solicitations; and providing for an effective date."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:

- Same Title
- New Title

House Bill:

- Same Title
- Technical Title Change
- New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Zero	Indet.	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>George DeLeon</i>	✓			
<i>George Davis</i>			X	
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
CHAIR: <i>[Signature]</i>			✓	

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE FATE

TO: CSHB 15(FIN) am

1 Page 8, lines 14 - 15:

2 Delete all material.

3 Insert "[MAGAZINE, PERIODICAL,] sound recording or [,] book through [, OR

4 MEMBERSHIP IN] a book or record club"

5

6 Page 8, line 20, following "(11)":

7 Insert "by a publisher, or a publisher's agent operating under a written

8 agreement between a publisher and the agent, who is soliciting the sale of a publisher's

9 magazine if

10 (A) the buyer has the right to review the magazine and

11 cancel the subscription for the magazine within seven days after receipt of

12 the magazine; a cancellation request is timely if the request is mailed,

13 properly addressed and postmarked, postage prepaid, within seven days

14 after receipt of the magazine; and

15 (B) the right of cancellation and refund is fully disclosed to

16 the buyer before or at the time the initial invoice is received by the buyer;

17 (12)"

18

19 Page 8, line 22:

20 Delete "(12)"

21 Insert "(13) [(12)]"

22

23 Page 8, line 24:

1 Delete "(13)"
2 Insert "(14) [(13)]"
3
4 Page 8, line 26:
5 Delete "(14)"
6 Insert "(15) [(14)]"
7
8 Page 8, line 29:
9 Delete "(15)"
10 Insert "(16) [(15)]"
11
12 Page 9, line 5:
13 Delete "(16)"
14 Insert "(17) [(16)]"
15
16 Page 9, line 6:
17 Delete "(17)"
18 Insert "(18) [(17)]"
19
20 Page 9, line 11:
21 Delete "(18)"
22 Insert "(19) [(18)]"

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STATE OF ALASKA

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

FRANK H. MURKOWSKI,
GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-8554

April 2, 2004

Senator Con Bunde
State Capitol
Room 506
Juneau, AK 99801-1182

Re: CS for House Bill 15(FIN) am

Dear Senator Bunde:

On March 15, 2004, the Senate Labor and Commerce Committee heard testimony on HB 15, which amends several consumer protection statutes including the Telephonic Solicitations Act, AS 45.63.010 - 45.63.100. This act requires telemarketers to register with the Department of Law 30 days prior to conducting telephonic solicitations in the state.

During that hearing, a representative for the Direct Marketing Association testified against the proposed change found in Section 21 (page 8, line 13). This change would remove the current exemption for sellers of magazines, periodicals, sound recordings and books from registration requirements. From a consumer protection perspective, however, this proposed change is important because of the number and type of complaints received by the Consumer Protection Unit concerning unfair or deceptive acts or practices by magazine sellers. In our view, these sellers should be required to register as telephonic solicitors.

The DMA's representative also expressed concerns about the existing statute, which defines "by telephonic means" to include both outbound calls (where telemarketers call consumers directly) and inbound calls (where consumers call telemarketers in response to a mailing or other written communication). He suggested an interpretation of the statute by which a magazine seller could be criminally liable for failing to register if the seller sold magazines at news stands in the state, and had a notice in the magazine with an 800 number inviting readers to call to order subscriptions. Although this is clearly not the type of activity that the Telephone Solicitations Act was meant to cover, I did suggest to the Committee that amending the definition of "by telephonic means" could address the situation posed by the DMA.

Senator Con Bunde

April 2, 2004
Page 2

Upon further review, I believe that no statutory change is necessary because the Department of Law has regulations in place that address the DMA's concern. The regulations implementing the Telephone Solicitations Act are found at 9 AAC 14. 9 AAC 14.900(b) provides:

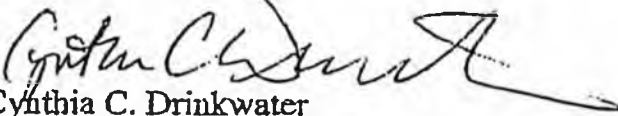
In AS 45, and in this chapter, the sale of "property or services" does not include a transaction:

(3) initiated by a communication in newspapers, magazines, and other publications unless they are directed to one or more persons, institutions, or business organizations by name, specifically advising, requesting, motivating, or otherwise encouraging, that specific person, institution, or business organization to contact the seller by telephonic means.

It is clear that the presence of a general notice in a magazine with a phone number for ordering subscriptions would not subject a seller to telephonic registration requirements in Alaska.

Please let me know if there is any additional information regarding HB 15 that would be helpful for the Committee.

GREGG D. RENKES
ATTORNEY GENERAL

By: 
Cynthia C. Drinkwater
Assistant Attorney General

cc: Representative Hugh Fate
Michael Tibbles
David Marquez
Robert Flynt

CCD/sjm

9 AAC 14.900. Definitions

Statute text

(a) In this chapter,

(1) "affiliated company" means any company that will engage in business transactions with buyers relating to sales solicited by the telephonic seller, or which accepts responsibility for the acts or statements made by the telephonic seller relating to sales made or solicited by the telephonic seller;

(2) "owner" means a person who owns or controls 10 percent or more of the net income of a telephonic seller;

(3) "parent company" means a business entity that has authority to control the appointment of officers or managers of the telephonic seller by reason of being an owner of the telephonic seller;

(4) the term "sound recording" in AS 45.63.080(10) includes video recordings when the video recording has an audio component.

(b) In AS 45. and in this chapter, the sale of "property or services" does not include a transaction:

(1) when the only consideration for the money spent by the buyer is participation in a telephone conversation;

(2) initiated by a written communication addressed to "boxholder," "occupant," "resident," or similar generic description of the intended recipient and no individual person, institution, or business organization is named anywhere in the written communication in a manner that identifies the individual person, institution or business enterprise as the intended recipient; or

(3) initiated by a communication in newspapers, magazines, and other publications unless they are directed to one or more persons, institutions, or business organizations by name, specifically advising, requesting, motivating, or otherwise encouraging that specific person, institution, or business organization to contact the seller by telephonic means.

(emphasis added)

History

History: Eff. 3/19/94, Register 129

Annotations

Authority: AS 45.63.010

AS 45.63.090

AS 45.63.100

STATE OF ALASKA

FRANK H. MURKOWSKI,
GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

1031 WEST 4TH AVENUE,
SUITE 200
ANCHORAGE, ALASKA

APR 6 8 2004

ANCHORAGE
ALASKA

April 6, 2004

CONFIDENTIAL

Anita R. Tardugno
Legal Assistant
Hartig Rhodes Hoge & Lekisch
717 K Street
Anchorage, AK 99501-3397

Re: Public Records Request

Dear Ms. Tardugno:

I am in receipt of your March 15, 2004 request for information relating to statistical compilations of consumer complaints prepared by the Alaska Attorney General's Office. You request information relating to "solicitation by direct marketers and/or publishers for the promotion of products . . . where the customer is offered a free trial period or a free product as an inducement to the sale."

Our office does not maintain statistical compilations that identifies the information you request. I am enclosing copies of statistical compilations for 1999 and 2000, the last years we compiled this information. As you will note, the information is categorized into broad areas. We do not track complaints by "free trial offers" or "free products," nor do we identify "direct marketers." We have not produced similar compilations since 2000.

Alaska's Public Records Act, AS 40.25.110(a) provides: "Unless specifically provided otherwise, the public records of all public agencies are open to inspection by the public under reasonable rules during regular office hours." A second statute, AS 40.25.120(a)(4), provides an exception to the general disclosure requirement for records that are required to be kept confidential by state or federal law. AS 45.50.521 provides the attorney general may not make public the name of a person alleged to have violated the Consumer Protection Act (the "Act"), nor are the "records of investigation or

intelligence information of the attorney general obtained under [the Act] considered public records available for inspection by the general public." We interpret this statute to require that we keep confidential all of the information submitted to us on a consumer

Anita R. Tardugno
Legal Assistant
Hartig Rhodes Hoge & Lekisch

April 6, 2004
Page 2

complaint form, including the fact that a complaint was filed and the identity of the business complained about.

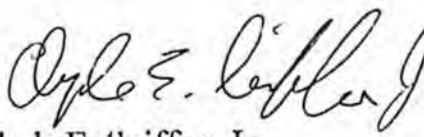
Regulations adopted by the Governors office provide that a public agency is not required to compile or summarize its public records in response to a public records request, nor is a public agency required to manipulate data to create new records in response to a public records request. 6 AAC 96.210(b) and (c). Because we do not track information in the form you request, no amount of manipulation would generate the records you want. But in a broader sense, we would have to create new documents to produce any statistical information.

Pursuant to 6 AAC 96.335(d) you have a right to administratively appeal this decision by complying with the procedures outlined in 6 AAC 96.340, a copy of which is attached. You may also obtain immediate judicial review of this denial by seeking an injunction from the superior court under AS 09.25.125. Your election not to pursue injunctive remedies in superior court shall have no adverse effects on your rights before the Division. Further, an administrative appeal from a denial of a request for public records requires no appeal bond.

I hope this information is useful. Please contact me if you have any questions.

Sincerely,

GREGG D. RENKES
ATTORNEY GENERAL

By: 
Clyde E. Sniffen, Jr.
Assistant Attorney General

Enclosures

CES/sjm

**CONSUMER PROTECTION
2000 COMPLAINT SUMMARY BY TRADE CLASSIFICATION CODE**

Total No. Of Complaints For 2000 - 192

	<u>TRADE CLASSIFICATION CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for Trade Classification</u>
10	Agricultural Goods/Services	10C Garden/Landscape Services	1	
	Total Agricultural Goods/Services			1
11	Animal	11H Pet Sitter	1	
	Total Animal			1
12	Appliance/Sale/Service	12M Sewing Machine	1	
	Total Appliance/Sale/Service			1
15	Athletics/Recreation/Sales	15E Fishing Trip/Guides	1	
	Total Athletics/Recreation/Sales			1
20	Business/Employment Opportunity	20J Investment	1	
		20Q Internet Related Service	1	
	Total Business/Employment Opportunity			2
23	Charitable Solicitation	General	2	
	Total Charitable Solicitation			2
25	Retail Sale/Repair	25C Clothing Sale	1	
		25H Jewelry Sale	4	
		25K Miscellaneous	6	
		25M Spa	4	
		25P 1	1	
	Total Retail Sale/Repair			16

<u>TRADE CLASSIFICATION CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for Trade Classification</u>
26	Clubs		
	26G Music	1	
	26J Discount Warehouse	1	
	26K Discount Buying Clubs	1	
	Total Clubs		3
27	Credit		
	27A Bank	3	
	27B Collection Agency	5	
	27D Credit Card Issuer	5	
	27F Finance Company	1	
	27H Mortgage Company	2	
	27J Report/Protection Service	1	
	27K State Student Loan	1	
	27M Credit Card Protection Services	1	
	Total Credit		19
30	Door to Door Sale		
	30A Book Sales	1	
	Total Door to Door Sale		1
31	Education		
	31B College/University	1	
	Total Education		1
33	Entertainment		
	33H Restaurant	1	
	Total Entertainment		1
35	Food		
	35E Supermarket	1	
	Total Food		1
36	Energy Equipment		
	36D Furnace	1	
	Total Energy Equipment		1
38	Funeral Services		
	38A Cemeteries/Monuments	1	
	Total Funeral Services		1

	<u>TRADE CLASSIFICATION CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for Trade Classification</u>
42	Health/Medical			
		42L Medical Lab	1	
		42Q Health Cure – Denial	1	
	Total Health/Medical			2
43	Home Furnishings			
		43C Bed/Bedding	1	
		43E Cookware/Crystal	1	
		43G Furniture	2	
	Total Home Furnishings			4
44	Home Construction/Condo/Repair			
		44F Contractor	1	
		44O Home Inspectors	1	
	Total Home Construction/Condo/Repair			2
46	Housing/Real Estate/Rental			
		46G Timeshare	1	
	Total Housing/Real Estate/Rental			1
47	Mobile Home/Manufactured Housing			
		47B Mobile Home Park	1	
	Total Home Mobile Home/Manufactured Housing			1
48	Insurance			
		48C Company	1	
		48D Policy	1	
	Total Insurance			1
49	Mail Order Sales			
		49B Catalogs/Advertisements	1	
		49C Magazine/Book/Music Clubs	2	
	Total Mail Order Sales			3
51	Municipality			
		51B Police Dept.	1	
		51C Animal Control.	1	
	Total Municipality			1

	<u>TRADE CLASSIFICATION CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for Trade Classification</u>
52	Moving/Storage			
		52A Movers	3	
		52B Shipping Company	1	
	Total Moving/Storage			4
53	Photography			
		53E Photography Service	2	
	Total Photography			2
54	Professional Services			
		54F Dentist	1	
	Total Public Professional Services			1
55	Public Accommodations			
		55B Hotel/Motel/Inn/Cottage/ B&B/RV Park	2	
		55C Resort/Lodges (Not Timeshare)	2	
	Total Public Accommodations			4
56	Public Utility			
		56D Telephone	2	
	Total Public Utility			2
57	Publication			
		57D Magazine Subscription (Non-Mail Order)	5	
	Total Publication			5
59	Telemarketing			
		59B Phone Sales	3	
		59F Fax Scam	2	
	Total Telemarketing			5
61	TV/Audio/Video/Equipment			
		61A Answering Machine	1	
		61D Cassette/CD Player	1	
		61H Computer/Hardware	1	
		61P Stereo/Speakers	1	
		61U Misc.	1	
	Total TV/Audio/Video/Equipment			5

<u>TRADE CLASSIFICATION CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for Trade Classification</u>
62	Travel		
	62A Bus	1	
	62B Charter Airline	1	
	62I Travel Agency	4	
	62J Vacation Packages/Plans/Tours	2	
	62K Vacation Scheme	1	
Total Travel			9
64	Miscellaneous	7	
Total Miscellaneous			7
65	Internet		
	65A Auction	1	
	65C Scam	2	
	65D Server	2	
	65F Business Opportunity	1	
Total Internet			6
67	Info Recovery		
	67A Asset	1	
Total Info Recovery			1
68	Communications		
	68A Wireless Service	1	
	68A-2 Cellular Phones	1	
Total Communications			2
MV	Trade Codes for Autos		
	MV01 New Cars	7	
	MV02 Used Cars	24	
	MV03 Repairs	16	
	MV04 Others	1	
	MV05 Auto Parts	1	
	MV07 Lease	1	
	MV08 Rental	8	
	MV08 – RV rentals	3	
	MV14 Tires	1	
	MV15 Warranty Service Co	1	
Total Autos			63
<u>Total Complaints by Trade Classification code</u>			<u>183</u>

CONSUMER PROTECTION
2000 Complaint Summary By Practice Code

Total No. Of Complaints For 2000 - 192

<u>PRACTICE CODE</u>		<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for practice Classification</u>
004				
Total				
100	Advertising			
		101 Bait & Switch	1	
		102 Contest & Prizes	1	
		104 Misrepresentation	3	
		105 Pricing	1	
		108 Unsolicited Merchandise	2	
Total Advertising				8
200	Antitrust			
		205 Price Fixing	1	
Total Antitrust				1
300	Credit			
		300 Harassment	2	
		301 Improper Billing	10	
		302 Incorrect Billing	5	
		304 Repossession	1	
		306 Interest Rate	1	
		307 Failure to invest./correct disputed report	5	
		308 Disclosure Non-public Info	2	
		309 Unauth Transfer Credit Bal.	1	
		310 Unauthorized charges	2	
Total Credit				29
400	Criminal Activity			
		402 Theft by Deception	2	
		403 Deceptive Business Practice	13	
Total Criminal Activity				15

	<u>PRACTICE CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for practice Classification</u>
500	General Sale	501 Defect	3	
		504 Misrepresentation	7	
		505 Pressure Selling	1	
		506 Price	1	
		509 Unsolicited Merchandise	1	
		Failure to: 510 Deliver	10	
		" 511 Disclose information	1	
		" 512 Perform Adequately	4	
		" 515 Disclose Refund Policy	2	
		" 516 Provide Refund	4	
		" 517 Honor Contract	2	
Total General Sale				36
600	General Services	601 Excessive Charge	2	
		604 Inferior Work Performance	5	
		604A Damage to Object	1	
		Failure to: 610 Do Any Work	1	
		" 611 Repair Correctly	4	
		" 612 Return Property	3	
Total General Services				16
700	Housing/Real Estate	704 Failure to Return Deposit	1	
		707 Eviction/Mobil Home Park	1	
Total Housing/Real Estate				2
800	Travel	805 Quality of Accommodations	2	
		809 Unsatisfactory Service	5	
Total Travel				7
1000	Miscellaneous	1000 relating to non-jurisdictional complaints	9	
		1002 Information Given/taken	6	
		1003 Business to Business	1	
Total Miscellaneous				16
2000	Healthcare	2004 Dental – Claims Processing by Dental Office	1	
Total Healthcare				1
4000	Internet	4005 Inferior Service/Performance	1	
Total Internet				1

	<u>PRACTICE CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for practice Classification</u>
5000	Telemarketing	5003 Magazine Sales	1	
		5004 Telephonic Solicitation vio.	3	
		5005 Failure to Register	1	
Total	Telemarketing			5
6000	Auto Dealers	6001 Unfair & Deceptive	43	
		6102 False Damage Claim	1	
Total	Auto Dealers			44
<u>Total Complaints by Practice Code</u>				181

CONSUMER PROTECTION
2000 Complaint Summary By Disposition

Total No. Of Complaints For 2000 -192

<u>DISPOSITION CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for DISPOSITION Classification</u>
Directly Assisted Complainant:			
D01	Money refund or restitution, adjustment, or account credited	D01.1 Mediation	23
		D01.2 Mediation	1
D02	Delivery of merchandise or services	D02.1 Mediation	3
D03	Repair of merchandise or rework of services	D03.1 Mediation	2
D04	Replacement of merchandise	D04.1 Mediation	4
D05	Claim of contractual or money obligation cancelled	D05.1 Mediation	5
D06	Customer received needed information or explanation from respondent business	D06	2
		D06.1 Mediation	6
		D06.1a Satisfied	3
		D06.1b complainant dissatisfied	17
		D06.1c AGO dissatisfied	1
		D06.1d Neither party	1
		D06.1e AGO Satisfied	10
D07	Return to Customer of Customer's Property (repossessed car, personal goods in car, tax records, goods left for repair – store went out of business, etc.)	D06.1f AGO Satisfied – unknown if complainant is satisfied	6
		D07.1 Mediation	1
D08	Business corrected or dropped a threatened (negative) legal or other action (repossession, eviction, foreclosure, cancel credit card account, negative credit report, etc.)	D08.1 Mediation	3
D09	Business stopped (deceptive) practice		2
D10	Sent Certified Warning re: Business Conduct		1
Total Directly Assisted Complainant			91

Indirectly Assisted Complainant:

D22	Customer received needed information from or through efforts of Consumer Protection Office	2	
D23	Assurance (letter) that complained of practice will not reoccur	3	
D25	State lawsuit filed for or injunction obtained against the complained of practice	4	
Total Directly Assisted Complainant			9

Assisted By Referral:

D32	Referred to other Alaska or local agency	7	
D34	Referred to private attorney or Small Claims Court	8	
D36	Referred to Federal Trade Commission	1	
D37	Referred to federal agency other than FTC or Postal Authority	2	
Total Assisted by Referral			18

Unable To Assist:

D40	Lack of resources	1	
D41	Respondent out of business	1	
D42	Unable to locate respondent	4	
D43	No response from respondent - insufficient evidence to compel	4	
D45a	No response from respondent - no determination on status of complaint	6	
D45b	No response from respondent or complainant - possible resolution	1	
D46	Complainant lacks validity /insufficient evidence	2	
Total Unable To Assist:			19

CONSUMER PROTECTION
2000 Complaint Summary By Disposition
Total No. Of Complaints For 2000 -192

Taken Care Of By Action Of Complainant:

D51	No reply from resources	4	
D52	Complainant settled privately— without any significant CP assistance	13	
D55	Void – complaint not valid	1	
Total Taken Care Of By Action Of Complainant			18

Could Not Attempt To Assist:

D61	Complaint filed for Consumer Protection Office information only	5	
D62	No Consumer Protection jurisdiction	1	
D65	Has private atty; litigated	1	
D66	Private parties	1	
D67	Incomplete filing	4	
D68	Complainant lacks credibility	1	
Total Could Not Attempt To Assist:			13

Total Complaints By Disposition Code **167**

**CONSUMER PROTECTION
1999 COMPLAINT SUMMARY BY TRADE CLASSIFICATION CODE**

Total No. Of Complaints For 1999 - 167

	<u>TRADE CLASSIFICATION CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for Trade Classification</u>
09	Advertising	General	1	
		9B Misleading	2	
		9E Scam	1	
	Total Advertising			4
15	Athletics/Recreation/Sales	15E Fishing Trip/Guides	2	
	Total Athletics/Recreation/Sales			2
18	Beauty Products/Service	18A Beauty Parlor/Barber	1	
	Total Beauty Products/Service			1
23	Charitable Solicitation	General	1	
		23A Professional Fundraiser	1	
	Total Charitable Solicitation			2
25	Retail Sale/Repair	25H Jewelry Sale	3	
		25K Miscellaneous	3	
	Total Charitable Solicitation			6
27	Credit	27A Bank	4	
		27B Collection Agency	5	
		27D Credit Card Issuer	6	
		27G Loan Arranger	1	
		27H Mortgage Company	1	
		27J Report/Protection Service	1	
	Total Credit			18
42	Health/Medical	42J Hospital/Medical Center	1	
	Total Health/Medical			1

<u>TRADE CLASSIFICATION CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for Trade Classification</u>
44	Home Construction/Condo/Repair		
	44A Additions	1	
	44E Cabinets	1	
	44F Contractor	1	
	44U Paving	1	
	44Y Roofing	1	
Total Home Construction/Condo/Repair			5
46	Housing/Real Estate/Rental		
	46A Apartment Rental	1	
	46I Appraisal – real estate	1	
Total Housing/Real Estate/Rental			2
48	Insurance		
	48C Company	1	
Total Insurance			1
49	Mail Order Sales		
	49B Catalogs/Advertisements	2	
	49C Magazine/Book/Music Clubs	1	
	49D Out-of-State Corporation	1	
Total Mail Order Sales			4
52	Moving/Storage		
	52A Movers	1	
Total Moving/Storage			1
55	Public Accommodations		
	55B Hotel/Motel/Inn/Cottage/B&B	1	
Total Public Accommodations			1
56	Public Utility		
	56D Telephone	4	
Total Public Utility			4
57	Publication		
	57D Magazine Subscription (Non-Mail Order)	4	
Total Publication			4
59	Telemarketing		
	59B Phone Sales	2	
	59E Sweepstakes scam	1	
Total Telemarketing			3

<u>TRADE CLASSIFICATION CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for Trade Classification</u>
61	TV/Audio/Video/Equipment		
	61H Computer/Hardware	2	
	61N Repair	1	
	61R VCR	1	
Total TV/Audio/Video/Equipment			4
62	Travel		
	62I Travel Agency	3	
	62J Vacation Packages/Plans/ Group Tours	1	
Total Travel			4
63	Weight Salon/Health Spa/Athletic Club		
	63A Membership	1	
Total Weight Salon/Health Spa/Athletic Club			1
64	Miscellaneous	4	
Total Miscellaneous			4
65	Internet		
	65A Auction	1	
	65B Advertising	1	
	65C Scam	1	
	65D Server	1	
Total Internet			4
67	Info Recovery		
	67 Asset	2	
	67B Auction info	1	
Total Info Recovery			3
68	Communications		
	68A wireless service	1	
Total Communications			1
69	Trade/Craft Shows		
	69A Nondelivery	1	
Total Trade/Craft Shows			1

<u>TRADE CLASSIFICATION CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for Trade Classification</u>
MV	Trade Codes for Autos		
	MV01 New Cars	8	
	MV02 Used Cars	46	
	MV03 Repairs	10	
	MV04 Others	1	
	MV08 Rental	1	
	MV13 Towing	2	
Total Autos			68
<u>Total Complaints by Trade Classification code</u>			<u>151</u>

CONSUMER PROTECTION
1999 Complaint Summary By Practice Code

Total No. Of Complaints For 1999 - 167

<u>PRACTICE CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for practice Classification</u>
100	Advertising		
	101 Bait & Switch	1	
	102 Contest & Prizes	1	
	104 Misrepresentation	8	
	105 Pricing	1	
	108 Unsolicited Merchandise	2	
Total Advertising			13
300	Credit		
	300 Harassment	1	
	302 Incorrect Billing	8	
	303 Usury	1	
	304 Repossession	1	
	307 Failure to invest./correct disputed report	3	
Total Credit			14
400	Criminal Activity		
	401 Theft	2	
	402 Theft by Deception	2	
	403 Deceptive Business Practice	18	
	407 Charitable Solicitation	1	
Total Criminal Activity			23
500	General Sale		
	501 Defect	1	
	503 Lay-away	1	
	504 Misrepresentation	3	
	509 Unsolicited Merchandise	1	
	Failure to:		
	510 Deliver	11	
	" 511 Disclose information	1	
	" 512 Perform Adequately	6	
	" 514 Allow to cancel	1	
	" 515 Disclose Refund Policy	1	
	" 516 Provide Refund	2	
Total General Sale			28

<u>PRACTICE CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for practice Classification</u>
600	General Services	601 Excessive Charge	4
		604 Inferior Work Performance	2
	Failure to:	607 Complete Work	1
	"	611 Repair Correctly	8
	"	612 Return Property	1
Total General Services			16
800	Travel	803 Cancellation Policy	1
		804 Refund Policy	1
		809 Unsatisfactory Service	1
Total Travel			4
1000	Misc. – relating to non-jurisdictional complaints	Misc.	8
		1001 Inquiry	1
Total Misc. – relating to non-jurisdictional complaints			9
2000	Healthcare	2001 Medical - Billing	1
Total Healthcare			1
3000	Banks	3002	2
Total Banks			2
5000	Telemarketing	5001 Black Dot Violation	2
		5002 Swee[stales Sca,	1
Total Telemarketing			3
6000	Auto Dealers	6001 Unfair & Deceptive	17
Total Auto Dealers			17
7000	Telecommunications	7001 Billing	1
Total Telecommunications			1
Total Complaints by Practice Code			133

CONSUMER PROTECTION
1999 Complaint Summary By Disposition

Total No. Of Complaints For 1999 -167

<u>DISPOSITION CODE</u>	<u>SUBCLASS</u>	<u>No. of Complaints</u>	<u>Total No. of Complaints for DISPOSITION Classification</u>
Directly Assisted Complainant:			
D01	Money refund or restitution, adjustment, or account credited	D01.1 Mediation	13
D02	Delivery of merchandise or services	D02.1 Mediation	4
D03	Repair of merchandise or rework of services	D03.1 Mediation	2
D05	Claim of contractual or money obligation cancelled	D05.1 Mediation	5
D06	Customer received needed information or explanation from respondent business	D06.1 Mediation	3
		D06.1b complainant dissatisfied	3
D08	Business corrected or dropped a threatened (negative) legal or other action (repossession, eviction, foreclosure, cancel credit card account, negative credit report, etc.)	D08.1 Mediation	8
D09	Business stopped (deceptive) practice	D09.1 Mediation	3
Total Directly Assisted Complainant			41
Indirectly Assisted Complainant:			
D22	Consumer received needed information from or through efforts of Consumer Protection Office		1
D26.0	Closed and incorporated as part of investigation		1
Total Directly Assisted Complainant			2

CONSUMER PROTECTION
1999 Complaint Summary By Disposition
Total No. Of Complaints For 1999 -167

Assisted By Referral:

D32	Referred to other alaska state or local agency	5	
D34	Referred to private attorney or Small Claims Court	5	
D36	Referred to Federal Trade Comission	1	
D37	Referred to federal agency other than FTC or Postal Authority	1	
Total Assisted by Referral			12

Unable To Assist:

D41	Respondent out of business	1	
D43	No response from respondent – insufficient evidence to compel appearance	5	
D45		3	
Total Unable To Assist:			9

Taken Care Of By Action Of Complainant:

D51	No reply or response from complainant	3	
Total Taken Care Of By Action Of Complainant			3

Could Not Attempt To Assist:

D61	Complaint filed for Consumer Protection Office information only	5	
D62	No Consumer Protection jurisdiction	4	
D64	No action taken due to relevancy (lack of)	1	
D65	Has private atty; litigated	1	
D66	Private parties	3	
Total Could Not Attempt To Assist:			14

Total Complaints by Disposition Code			81
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RECIPROCAL RELATIONSHIP

GRUENING & SPITZFADEN

JUNEAU, ALASKA

ROBERT L. HARTIG (1928-1980)
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ANDREW E. HOGE
CHRISTINE FOOTE HYATT
MICHAEL JUNGREIS
ROBERT J. MAHONEY
DOUGLAS C. PERKINS

April 15, 2004

Representative Hugh Fate

RE: HB 15

Our File No.: 100224-1

Dear Representative Fate:

Attached are the complaint records for 1999-2000 produced by the Department of Law pursuant to the Freedom of Information Act request filed by this office.

The very small number of complaints over two years related to magazine, book, etc. sales that are or may be affected by HB 15 - (12 or 3% of all complaints) - do not support the Department of Law's efforts to bring publishers under the fraud statute with its draconian registration requirements and criminal penalties and attendant increased cost to the state for enforcement. The Department records do not even allow the determination of nature of the complaints, the outcome or whether any would be affected by the Department's amendment.

No business, especially one as extensive as this one, operates with a zero complaint record. The Department's own records show clearly that no pervasive or fraudulent abuse is present.

The Department's proposal should be rejected as unsubstantiated.

Very truly yours,

HARTIG RHODES HOGE & LEKISCH, PC

By:


Robert B. Flint

RBF/art

Enclosure

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April 15, 2004

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RECIPROCAL RELATIONSHIP
GRUENING & SPITZFADEN
JUNEAU, ALASKA

Representative Kevin Meyer
State Capitol, Room 513
Juneau, Alaska 99801

RE: HB 339
Our File No.: 100224-1

Dear Representative Meyer,

Attached are the complaint records for 1999-2000 produced by the Department of Law pursuant to the Freedom of Information Act request filed by this office.

The very small number of complaints over two years related to magazine, book, etc. sales that are or may be affected by HB 339 - (12 or 3% of all complaints) - do not support the Department of Law's efforts to suppress promotional offers by publishers. Indeed there is no information available as to how many of the 12 involve free trial or similar offers, if any.

No business, especially one as extensive as this one, operates with a zero complaint record. The Department's own records show clearly that no pervasive or fraudulent abuse is present.

The Department's proposal should be rejected as unsubstantiated.

Very truly yours,

HARTIG RHODES HOGE & LEKISCH,

By:


Robert B. Flint

RBF/art
Enclosure

STATEMENT

Robert B. Flint
Representing Direct Marketers/Publishers
Before Senate Labor & Commerce Committee
HB 15

March 25, 2004

The Direct Marketing Association (DMA) and Magazine Publishers of America (MPA) are trade associations of businesses that market products directly to consumers by mail, advertising and telephone. Products include periodicals, sound recordings, books, CDs, videos and similar items. Promotions often include free gifts or trial periods with a cancellation option if the customer is not satisfied or has a change of mind. In all cases, the customer specifically accepts the offer before it goes into effect.

HB 15 contains a section (Sec 21) that would remove the exemption for magazines and other periodicals, sound recordings, books, videos, and similar items from the Alaska Telemarketing Act, AS 45.63.80(10) and registration. Direct Marketing/Publishers opposes the removal of the exemption.

1. AS 45.63. The Alaska Telemarketing Act is an anti-fraud statute aimed at fly-by-night telemarketers. Since proving fraud is often difficult the Act requires registration. Thus, the charge and penalty is for failure to register, not fraud. It was first enacted by California in 1985 and has been adopted by 24 states. In all states where it is law, magazines and other periodicals, sound recordings, books, videos, and similar items are

exempt. This is because telephone registration laws typically exempt identifiable and findable companies from the onerous registration laws. Section 21 changes the intent of the law from a device against fraudulent operators to an attack on legitimate business. Magazines and periodical publishers are substantial businesses with contracts to authors and photographers, etc., and have regular contracts with the postal service to mail their products. Sound recordings and videos and similar products pay substantial sums to distribute such products, have unique packaging and major mailing distribution centers. All of these publishers and companies are substantial, identifiable, and findable. No such company was involved in the fraud investigations of the 1980's and early 90's, which were aggressively prosecuted by federal and state governments with the help of the FBI and the industry. This amendment to delete the exemption for magazines and periodicals and sound recordings, videos and similar items changes the intent of the law from a device against fraudulent operations to attack on legitimate businesses.

2. Amendment Origin. HB 15 began last year as a bill regarding the state "Do Not Call" list. NOTE THAT THE PURPOSE OF HB 15, AS INTRODUCED, WAS TO CONFORM ALASKA LAW TO THE NEW FEDERAL NO-CALL LIST. AMENDMENTS TO THE TELEPHONE REGISTRATION LAW HAVE NO EFFECT ON THE PURPOSE OF THE BILL. On February 23, 2004, the amendments to AS 45.63 were added at the request of the Department of Law. Inquiry to the offices of the sponsors or review of the Finance Committee minutes for that day could not discover any reason for the amendment other than the additions were "technical." Removal of the exemption is not technical but a direct

stealth attack against a legitimate business.

A magazine publisher would have to comply with 11 pages of regulation promulgated by the Department of Law including:

- ▶ submitting articles of incorporation;
- ▶ a listing of all telephone numbers used to call consumers
- ▶ information for each officer, director, trustee, general partner, limited partner, sole proprietor, owner including:
 - ▶ date of birth
 - ▶ principal residence
 - ▶ drivers license number and state
 - ▶ ownership interest
- ▶ plus for all individuals with management responsibilities or in charge of locations - - similar to information above
- ▶ whether the above persons have been convicted of a felony or misdemeanor. have had a judgment or order in a civil or administrative action, subject to any injunction or court order - - for each person, etc.
- ▶ a listing of all individuals who solicit and their personal residence address;
- ▶ all sales scripts that will be used;
- ▶ all sales information or literature;

- ▶ all written material sent to any prospective or actual purchaser;
- ▶ any changes in information must be submitted within 10 days if the telephone seller uses agents - - both agent and seller must file separate registrations.

3. Department of Law Rationale. Inquiry to the Department of Law disclosed that the amendment was indeed substantive not technical. Magazines were, it was stated, where the problem seems to be. The problem presumably is free trial offers, although so little information is available it is impossible to tell for sure. However, much more than free trial offers are affected by this proposed amendment. The definition includes facsimile machines, electronic communications, and "a letter, postcard, notice, or other written communication advising, requesting, motivating, or otherwise encouraging a person to contact a seller by telephonic means." (45.63.100).

4. No Evidence. No evidence, even anecdotal, has been presented regarding a scale of abuses that would justify such a sweeping amendment.

5. No Consultation with Business. The Department of Law has made no effort to educate itself or the Legislature of the effect of preventing free trial offers of periodicals on the business and the consumer. Actual business practice nationwide does not conform to the Department of Law's amendment or AS 45.63

6. Amendment is Unique. No other state has placed magazine promotions into antifraud telemarketing legislation.

7. Federal Regulations. Telemarketing sales of periodicals are regulated

satisfactorily by the Federal Trade Commission, 16 CFR Part 310.

8. Effect of Amendment. Many promotions of this kind are inbound calls to the seller. The customer responds to an ad and initiates a call to request the product and accept the free trial offer. Outbound calls (seller initiated) are subject to the federal Do Not Call list, now at 57 million and rising. The effect would be to stop transactions in Alaska. The sellers cannot adapt a nationwide promotion and advertising campaign to the requirements of one state which represents one quarter of one percent of the nationwide market.

9. HB 339 and the Goal of the Department of Law. The Department of Law does not like free trial offers. Another bill is HB 339 which is now in House Judiciary. The association has been negotiating with the Department of Law for a month without any success. A copy of objections to HB 339 is attached. It is evident that the intent here is to stop these promotions in Alaska. There is no reason to do so. There is no reason to put up a firewall preventing Alaska consumers the same access to these products as the rest of the country.

10. Summary. The amendment

- a. Lacks rationale
- b. Would damage legitimate businesses
- c. Would interfere with consumer choice.

The amendment should be stricken.

SUPPLEMENTAL STATEMENT

Robert B. Flint
Representing Direct Marketers/Publishers
Before House Judiciary Committee
HB 339

March 18, 2004

The following addresses some of the points raised at the hearing regarding regulation of free trial and "opt out marketing" plans ("Trial Plan").

1. Effectiveness of Right to Cancel. A key feature of Trial Plans is the right to cancel after the customer agrees to the Trial Plan. In actual practice, this right is routinely and effectively exercised by consumers. For one book marketer, 48% of the Trial Plans are canceled by the consumer. Two other marketers state that their cancellations run a little over 50%.

2. Consumer Protection at Initial Contract Stage. To supplement existing Federal Trade Commission regulations and certain state statutes such as the Unwanted Merchandise Act, Direct Marketers propose that HB 339 protect the consumer at the contract stage showing that:

- a. Seller has made required disclosures to customer;
- b. Customer has given express agreement.

A very significant overall additional protection for outbound (seller) telemarketing is the Federal Do Not Call List, now at 57,000,000.

3. Objection. The major stumbling block on the HB 339 proposal is the added obligations and inflexibility placed on direct marketers after the contract is made. The Attorney General's and Representative Gara's changes do not conform to actual nationwide business practices.

4. Problem with Special Alaska Conditions. Alaska is a very small market. Its population is about one quarter of one percent of the United States. Alaska cannot drive the national marketing standards the same way as a very large state can. Direct marketing is a business where, of course, cost is very important to both seller and consumer. Special conditions for a tiny segment of the national market will raise costs at least for Alaska consumers and could cause some sellers to make offers invalid in Alaska. I do not understand that HB 339 is intended to restrict Alaska access to direct marketing, but that result is very possible for some sellers.

5. Seller Abuses and Customer Problems. There is no law which can prevent crooks from trying to defraud customers or a legitimate business from making stupid mistakes like the telephone company did last year. The telephone company's unsolicited billing, however, was stopped under existing law and there should be adequate tools to prevent fraud. HB 339 can help, but legitimate practices carrying significant consumer benefits should not be adversely impacted. The cure should not be worse than the disease. Similarly, although virtually every consumer knows exactly how to cancel the obligation, there will always be some who misunderstand or forget. No business, especially a nationwide one, can be held to a 100% no problem standard. Indeed at some point it has to be said that a consumer has obligations too, especially after the strict safeguards provided at the contract stage.

6. Extent of Problem. What has been presented to date has been anecdotal evidence such as the vitamin sales story. I submit that one or two anecdotes should not be the basis of sweeping restrictions on an industry. I have requested statistics from the Attorney General's office on the extent of complaints regarding trial periods. A copy of the request is attached. I believe it is important to compare the extent of such complaints and what kind of promoter or promotions are involved with the vast number of customers in the normal trial period promotion situation who know and exercise their rights in large numbers.

7. Promotion Benefits. Trial plans are a cheaper ways to buy a product than the normal straight sale. The cancellation feature is a second look which is widely exercised. It seems odd for the Department of Law to say that it does not care about a straight sale which cannot be canceled, but is concerned with a sale that the customer can cancel. The latter is a real extra benefit to consumers. This type of marketing also makes products, especially an extensive variety of books and periodicals, available to people in rural and isolated areas, a feature important to Alaska. We are not all close to a Barnes & Noble.

8. Summary. Direct Marketers and Publishers are reasonable and legitimate businesses with a long track record. They want to do business in Alaska and do not want to cheat or overreach anyone. Customers in Alaska, as elsewhere, benefit from the price and availability of their products. Direct Marketers and Publishers operate under and accept government regulation, but special regulations crafted for a single small market cannot fit a national marketing situation. We believe the amendments we have proposed reasonably meet the problems expressed without endangering a legitimate and, to the customer, valuable service.

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March 15, 2004

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RECIPROCAL RELATIONSHIP

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DOUGLAS C. PERKINS

Alaska Department of Law
Commercial and Fair Business Practices
Attn: Signe Andersen
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501

via facsimile: 278-4683

RE: Fair Business Practice Complaints Against Direct Marketing Sellers
Our File No.: 100224-1

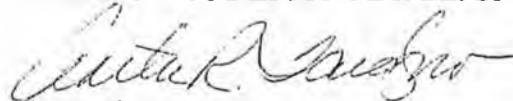
Dear Records Custodian:

Pursuant to AS 40.25.110, please provide me with copies of any statistical compilations of consumer complaints to the Office of the Attorney General, including resolutions thereof, relating to solicitation by direct marketers and/or publishers for the promotion of products such as books, periodicals, CD's, videos, etc., by mail, telephone, newspaper or internet where the customer is offered a free trial period or a free product as an inducement to the sale.

We understand that there is a fee for copying such documents. If you will notify us of the amount due when sending the documents, we will provide payment upon receipt. If you prefer to call me and advise me of the total amount due, we can send you a check in advance. Thank you for your timely assistance.

Very truly yours,

HARTIG RHODES HOGE & LEKISCH, P.C.



Anita R. Tardugno

Legal Assistant to Robert B. Flint

/art

Enclosure

cc: Ed Sniffen

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Phone solicitors must register with state

THE JUNEAU EMPIRE

To help foil telephone scam operations that bilk Alaskans of thousands of dollars each year, people and organizations soliciting money from the public now must register with the state attorney general's office.

The new rules are part of a law passed this year by the Legislature; they went into effect Thursday.

State officials say the law covers the selling of goods and services over the phone, and companies that solicit money for charity or stage fund-raising events for charity.

"The law is not expected to curtail all telephone frauds or misuse. But this law will make it much more difficult to carry on these cons in the future," said Rick Gilmore of the Alaska Better Busi-

ness Bureau in Anchorage.

In recent years, Gilmore said, fraudulent operations have collected donations by promoting spurious or non-existent charities. Others hoodwinked Alaskans into sending money for worthless goods or to qualify for gifts and prizes that were never received, he said.

Gilmore estimated Anchorage residents lost more than \$150,000 in 1992 alone.

The law states that solicitors must provide the names of employees, the location of their operation and must file a surety bond with the state. Solicitors must also send potential buyers a written

contract with warnings, including the right to cancel their order and get a full refund.

The contract must be signed by the buyer before the deal is considered official.

Failure to register with the attorney general's office is a felony.

Catalog firms, religious or non-profit charities that conduct their own solicitations, face-to-face sales and certain other regulated operations are exempt from the

new law.

Alaska was one of the few states that did not regulate phone solicitors, making it a target of a number of scam operations.

People may receive brochures and registration forms from the Better Business Bureau, 2805 Bering Street, No. 2, Anchorage, 99503; or the Department of Law Fair Business Practice Section, 1031 W. Fourth Ave., Anchorage, 99501.

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

WALTER J. HICKEL, GOVERNOR

REPLY TO:

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100 OMBUDMAN ST., SUITE 400
FAIRBANKS, ALASKA 99701-4079
PHONE: (907) 462-1500
FAX: (907) 408-1317

P.O. BOX 6 - STATE CAPITOL
JUNEAU, ALASKA 99901-0006
PHONE: (907) 453-8000
FAX: (907) 463-6295

April 22, 1993

Honorable Ron Larson
Chair, House Finance Committee
Alaska House of Representatives
Room 602, State Capitol
Juneau, Alaska 99801

Re: HB 113 - Direct Marketing
Association concerns

Dear Representative Larson:

Your staff has inquired as to whether two concerns raised by the Direct Marketing Association (DMA) could be properly resolved through the adoption of regulations. The first concern deals with whether solicitations for the sale of video recordings could be made exempt under AS 45.63.080(10). In our opinion, there is nothing preventing the adoption of a civil regulation to that effect. The bill, as written, contemplates the exemption of a person who is primarily soliciting the sale of a . . . sound recording. Since virtually all video recordings include a sound recording component, we believe that such a regulation would be consistent with the intent of the bill, if it is enacted into law.

The second question deals with whether an agent, hired by an exempt direct marketing company, could properly be the subject of a regulation clarifying that the agent is exempt to the same extent as the exempt company. With the exception of AS 45.63.080(15) which deals with the sale of an item by the person who made it, we see no reason why a civil regulation could not be adopted clarifying that such agents, under proper conditions, would be exempted as well.

Honorable Ron Larson

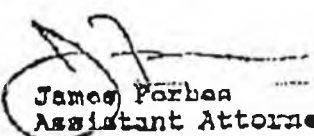
April 23, 1993
Page 2

If you have any further questions, or if DMA raises any other issues, do not hesitate to contact me.

Sincerely yours,

CHARLES E. COLE
ATTORNEY GENERAL

BY:


James Farber
Assistant Attorney General

JF:bav

cc: Charles E. Cole, Attorney General
Bruce M. Botelho, Deputy Attorney General
Deborah Behr, Assistant Attorney General



March 25, 2004

The Honorable Con Bunde, Chair
Senate Labor and Commerce Committee
Alaska Capitol, Room 506
Juneau, AK 99801-1182

RE: HB 15 (Fate)—Support

Dear Chair Bunde:

On behalf of the AARP members in Alaska, we encourage you and your colleagues on the Senate Labor and Commerce Committee to support HB 15, authored by Representative Bud Fate and co-sponsored by Representatives Gara, Chenault, Crawford, Kerttula, Croft, Seaton, Hawker, Wilson, Foster, Kookesh, Guttenberg, and Gruenberg.

Well over half the number of people targeted by telemarketers each day are age 50 and over – and many of them are your own constituents.

AARP's perspective:

Recently the Federal Tenth Circuit Court ruled in favor of upholding the constitutionality of the National Do Not Call Registry. AARP filed an amicus brief to support the recently enacted federal legislation.

This court ruling affirms the long campaign AARP waged in Congress to put control of the telephone back where it belongs—with the consumer.

AARP's survey of older telemarketing fraud victims revealed they find it almost impossible to tell the difference between fraudulent and legitimate sales calls, underscoring the importance of allowing the consumer to stop calls in the first place.

Even though baby boomers have been called the most savvy and informed consumers of any generation of Americans, many of them, like their parents and their children, have been victims of an unrelenting deluge of unwanted telemarketing sales calls.

The FTC does not regulate intrastate calls. The FTC Chair has explained that it is very hard to predict how many calls the new federal registry will prevent, as telemarketers may establish in-state call centers to avoid the federal law. Therefore, state law is crucial to cover any Alaska-originated calls.

The FTC has no jurisdiction over common carriers (such as long-distance companies or airlines), banks, credit unions, or insurance companies. There is no limitation on the states to regulate these calls and state law is needed to address the exemptions to the FTC rule.

In addition, telephone calls soliciting money for charitable institutions or political organizations are not covered by the Telemarketing Sales Rule. Alaska has the authority to regulate these types of solicitations should the Legislature decide to include them:

Realistically, it may be difficult to have comprehensive federal enforcement of a national Do Not Call law covering millions of people, given the relatively small size of the FTC's staff devoted to this issue and the resources available to fight abuse of consumers. Alaska is in a much better position to detect, deter, and prosecute Do Not Call violations. AARP believes a state law that is enforceable in state court is essential to give the law some needed teeth. Without a state statute, some telemarketers may not have a strong incentive to carefully monitor, update, and follow Do Not Call lists.

It should be much more cost-effective for Alaska to enact a Do Not Call law in 2004 since we will not have to bear the expense of collecting, updating, and disseminating the Do Not Call list. The FTC will allow consumers to register free-of-charge and will use a sliding scale to charge telemarketers for access to the list.

Other states have already taken step to make sure that their constituents can have dinner in peace. Alaska's citizens deserve no less.

AARP recommends an "AYE" vote on HB 15.

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

Thank you for your consideration.

Sincerely,

Marguerite Stetson

Marguerite Stetson
AARP Alaska
Executive Council Member for Advocacy
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cc: Representative Bud Fate
Vice-Chair Ralph Seekins
Senator Gary Stevens
Senator Bettye Davis
Senator Hollis French
Marie Darlin
Patrick Luby

Representative
HUGH "BUD" FATE
Finance Committee
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Alaska State Legislature



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House District 7

House of Representatives Sponsor Statement CS for HB 15

“An Act relating to fair trade practices and consumer protection; relating to telephonic solicitations; relating to charitable solicitations; and providing for an effective date.”

Committee Substitute for House Bill 15 is a combined effort of the Department of Law and our office to assure a quieter dinner hour for Alaskans. When HB 15 was introduced the intent was to bring responsibility to the telemarketing industry, and give Alaskans an opportunity to sign up for a no-call list. While working on the bill, Congress was working on similar language for the nation. H.R. 395 was passed into law, regulations have been promulgated and the National No-Call list is in effect.

The CS version of HB 15 is language that will complete the process for Alaska. It supplements the federal law by making specific, some of the language geared for a nation, rather than a state. Further, it establishes specific guidelines for telemarketers operating in state. Those guidelines include a registration fees, how telemarketers are expected to identify themselves, financial reports, and allows the Department of Law to establish penalties for non-compliance.

CS for HB 15 will accomplish what the original version sought to do, without the need for Alaskans to sign up again in state. It sends a clear message to telemarketers that these people do not wish to be called, and that there are consequences for non-compliance. It strengthens statutory language and assures Alaskans that we agree the phone should only ring during the dinner hours when it is someone we want to talk too.

Sponsor Statement

Representative
HUGH "BUD" FATE
Finance Committee
Energy Council- Executive
Committee
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Fairbanks, Alaska 99701
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House District 7

House of Representatives Sectional Analysis

CS for HB 15

"An Act relating to fair trade practices and consumer protection; relating to telephonic solicitations; relating to charitable solicitations; and providing for an effective date."

Section 1

Changes telephonic to telephonic means. This change is throughout the bill and expands the language to include other forms of communication using telephone lines.

Section 2

Identifies the existence of a national do not call registry and that Alaskans on that list are not to be called.

Section 3

References to Section 2 and allows for a good faith error on the part of the solicitor.

Section 4

The no-call policy is expanded to all telephone numbers that are registered. Also referenced is a release from liability for the caller if the call was unintended and did not represent a reckless disregard.

Section 5

Establishes a notification policy for local phone companies to pass along to their customers. The notice will be in the annual phone directory and as an insert in the phone book each quarter.

Section 6

Defines customer to include more than residential

Sectional Analysis

Section 7

Defines telephone solicitation and cites exemptions and specifics for previous contacts, charities, businesses, polls and political ideas.

Section 8

Defines National do not call registry

Section 9

Defines goods and services and includes solicitations by credit organizations offering financing arraignments

Section 10

A telephone seller may not operate in the state without registering 30 days in advance with the Department of Law

Section 11

Further requires a telephone seller not to operate in the state without receiving acknowledgement from the department that they have registered.

(b) To register under (a) of this section, a person shall file with the department (emphasis added)

Section 12

Establishes a format for the notice of intent, which must be filed, and that, at the department's discretion that intent may have to be submitted under oath or affirmation. It requires the telephone seller to detail the campaign and whether the seller has or is involved in criminal, administrative, or civil action.

Section 13

Allows the Department to establish fees for registration.

Section 14

Requires that a written, signed contract must be received by the telephone seller, from the buyer before any charges can be assessed the buyer. The telephone seller must notify the buyer of their rights.

Section 15

Refund and replacement language if the product is not as promised, provided that the buyer returns the product and asks within seven days of receipt.

Section 16

Telephone sales become final seven days after receipt of the product and exceptions.

Section 17

Telephone sales for a service becomes final seven days after delivery and exceptions.

Section 18

Telephone sellers may not represent themselves as licensed in Alaska if they are not nor may they claim that license as an endorsement by the state or municipality.

Section 19

Requires telemarketers to identify themselves when calling, forces them to hang up if the person indicates they are not interested in the goods or service, and prevents them from harassing a person.

Section 20

Prevents a telephone seller from requesting a waiver from the buyer of the buyer's rights.

Section 21

Lists the exemptions in current statute and makes a technical correction. The list of exemptions, only apply to the registration requirements. All other applications of the no-call list must be adhered too. Penalties will also apply for non-compliance.

Section 22

Defines buyer

Section 23

Defines telephone seller

Section 24

Adds telephonic means to existing language and details what must be included as part of the registration or re registration forms.

Section 25

Adds telephonic means to existing language which defines reasons for the department not to issue a or to suspend a license.

Section 26

Adds telephonic means to existing language in another section of statute

Section 27

Allows the department to use either a form or a format for registration

Section 28

The Department may require additional information of the telephone seller than is on the registration or renewal form and may require oath or affirmation.

Section 29

Allows the Department to establish registration fees for the permit which must be filed with the registration forms.

Section 30

Establishes reporting requirements for each solicitation campaign including financial information.

Section 31

Makes all reports in reference to telemarketers public information

Section 32

Defines solicitation campaign as contacting two or more people

Section 33 & 34

Emphasis added language is repealed

Sec. 45.63.100. Definitions.

(6) "telephonic seller" means a person who is required to be registered under AS 45.63.010

Sec. 45.50.475. Unlawful, unwanted telephone advertisements and solicitations.

(a) A person is in violation of AS 45.50.471 (b)(41) if the person

(1) engages in the telephone solicitation of a residential telephone customer of a telecommunications company and the customer is identified in the telephone directory as not wishing to receive telephone solicitations; or

(c) A local exchange telecommunications company shall, upon request, provide to a person who engages in telephone solicitation a list of all telephone numbers identified in the telephone directory as residential customers who do not wish to receive telephone solicitations. If possible and if requested by the person who engages in telephone solicitations, this list shall be provided in computer readable format. The local exchange telephone company may impose a reasonable charge for the list. The charge shall be based on the cost of providing the list and is subject to the approval of the Regulatory Commission of Alaska. (emphasis added)

Section 35

Effective dates for various Sections of the Bill

Section 36

Allows the department to begin the regulation process to take effect when the statute becomes law.

Section 37-39

Effective dates for various Sections of the Bill

Fiscal Notes

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 15(L&C)
(H) Publish Date: 2/10/03

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Telemarketers No-Call Lists BRU Banking, Securities & Corp. (115)
Component Banking, Securities & Corp.
Sponsor Representative Fate
Requester House Labor & Commerce Component No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

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

Estimate of any current year (FY2003) cost: 0.0
Mark this box (X) if funding for this bill is included in the Governor's FY 2004 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation does not affect the operations of this department.

Prepared by: Mark Davis, Director Phone 907-269-8452
Division Banking, Securities & Corporations Date/Time 1/28/03 5:31 PM
Approved by: Edgar Blatchford, Commissioner Date 1/28/2003
Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 15(L&C)
 (H) Publish Date: 2/10/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act establishing the Alaska No-Call List, BRU Civil Division
a data base of residential telephone customers . . ." Component Fair Business Practices
 Sponsor Representative Fate
 Requester House Labor & Commerce Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	103.4	103.4	103.4	103.4	103.4	103.4
Travel	0.4	0.4	0.4	0.4	0.4	0.4
Contractual	16.5	14.5	14.5	14.5	14.5	14.5
Supplies	1.9	1.9	1.9	1.9	1.9	1.9
Equipment	13.0					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	135.2	120.2	120.2	120.2	120.2	120.2

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	135.2	120.2	120.2	120.2	120.2	120.2
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	135.2	120.2	120.2	120.2	120.2	120.2

Estimate of any current year (FY2003) cost: 0.0

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

POSITIONS

Full-time					
Part-time		2	2	2	2
Temporary					

ANALYSIS: *(Attach a separate page if necessary)*
 HB 15 requires the attorney general to contract with an designated agent to establish and maintain a centralized data base of telephone subscribers who do not want to receive telephonic solicitations. Telephonic solicitors and organizations who are otherwise exempt from telephonic solicitation registration requirements, but who intend to conduct a solicitation, must purchase the data base. Fees charged to buy the "Alaska No-Call" data base must cover the direct and indirect costs of creating, updating, and maintaining the data base. Fees will be based on a sliding scale from zero, for solicitors with fewer than five employees and non-profit organizations, to a maximum of \$500, for solicitors with more than 1,000 employees. In addition to the data base, the designated agent is to be charged with maintaining an automated complaint system for residential subscribers to report suspected violations to the appropriate enforcement agency, which is the Department of Law, via the Internet or 800 number.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division Attorney General's Office Date/Time 2/5/03 3:27 PM
 Approved by: Kathryn Daughhettee for Gregg D. Renkes, Attorney General Date 2/5/2003
 Agency Department of Law

FISCAL NOTE #2

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSHB 15(L&C)

ANALYSIS CONTINUATION

The Colorado Public Utilities Commission was recently charged with implementing the Colorado No-Call Law, on which Alaska's HB 15 is modeled. The Colorado Attorney General's Office handles enforcement under that law. We have spoken with both of these agencies, and used their experience to develop this fiscal note, making adjustments for the smaller number of residential telephone subscribers in Alaska, as compared to Colorado.

COSTS TO THE STATE:

During the first year, the costs to the Department of Law will involve implementing the Alaska No-Call data base. Legal services will be necessary to develop and implement regulations, including holding public hearings on the draft regulations. Next, the procurement process to hire the designated agent will take place. Once a designated agent is under contract, considerable time will be required to oversee the web site content development including what consumer information should be available, and what information should be available to registering telemarketers. The development of the automated complaint system is expected to require significant amounts of time to ensure the department will receive all necessary information related to the complaints electronically, in a timely manner. Colorado estimated this phase of the project required as much as one-third of each of three full-time employees for five to six months (one full-time equivalent), and approximately 400 hours of attorney time and 100 hours of paraprofessional time. While hopefully, Alaska can piggyback on Colorado's experience, considerable time will still be required to fit our own circumstances.

We estimate the services of one-half of a full time attorney position and one-half of a full time paraprofessional position will be required for this implementation stage. In addition, we anticipate \$2,000 will be needed for direct case costs associated with holding public hearings on the draft regulations. As there will be no fee revenue available to pay for these start-up costs, and the Department of Law cannot absorb this activity within its existing budget, these costs would need to be paid for with general funds.

Once the data base is up and running, a certain amount of attorney and paraprofessional time will be necessary to manage the program. This activity would include reviewing telephone solicitor registrations, supervising the web site, and regular contact with the designated agent. The Colorado PUC told us this regular contact took about four hours per week for them. We are assuming the impact of this in Alaska will be much smaller, both because some of their contact was due to problems with their web site and 800 number we hope to avoid using their example, and because Alaska has a much smaller population. We anticipate this regular contact will require no more than one-hour of paraprofessional time per week. In addition, the department estimates the annual readjustment of fees will require 10 hours of attorney time and 10 hours of paraprofessional time, with an additional 10 hours of attorney time needed to assist in preparation of the semi-annual report to the legislature.

As pointed out in the introduction, the bill also requires the designated agent set up and maintain an automated complaint system that would "... report violations to the appropriate state enforcement agency for enforcement action." The Department of Law would be responsible for these enforcement actions. The Colorado Attorney General's Office estimates they use the services of one-half of an attorney and one full-time paraprofessional for enforcement. We estimate the services of a half-time attorney position and a half-time paraprofessional position would be sufficient to handle all on-going maintenance and enforcement activities.

HB 15 requires that fees cover the cost of creating and maintaining the Alaska No-Call List. It is unclear whether enforcement actions would be considered creating or maintaining the data base, and we do not know if fees will be sufficient to cover any of the state's cost if that is the legislature's intent. (See subsequent discussion.) Accordingly, we have included all Department of Law anticipated costs as general funds starting in FY 2005 for the purposes of further discussion with the legislature.

FISCAL NOTE #2

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSHB 15(L&C)

ANALYSIS CONTINUATION

EXTERNAL COSTS AND REVENUES:

Under this bill, telemarketers purchase the data base from the designated agent, who receives the fees. Fees are designed to cover the costs of developing and maintaining the data base, so are adjusted annually. In Colorado, the contract with the designated agent requires that, in a given year, surplus revenues collected by the agent be placed in escrow, to be applied against future No-Call List contracts. Surplus revenues are those over the amount of the contract between the State of Colorado and the designated agent; costs to the state have not been charged against fees to date, although the Colorado AG has asked the legislature for authority to receive \$15.0 in FY 2002, \$55.0 in FY2003, and \$50.0 in FY 2004 from fee revenue to offset part of their costs.

When the State of Colorado started the Colorado No-Call List, the number of potential telemarketers who might purchase the list was unknown. Only 40 telemarketers were registered with the Colorado Attorney General's Office. When Colorado's system was implemented, the rates were set as follows: 0-5 employees, \$0; 6-10 employees, \$100; 11-50 employees, \$200; 51-100 employees, \$300; 101-250 employees, \$350; 251-400 employees, \$400; 401-1000 employees, \$450; 1001+ employees, \$500. The list proved wildly successful.

As of November 30, 2002, there were 2,103 telemarketers registered under Colorado's No-Call program. Fees from 501, or 24 percent, of those telemarketers generated \$156,750 in revenue. The Colorado Public Utilities Commission, who administers the No-Call List, have lowered the fees in FY 2003 due to revenues collected in FY 2002 being more than the contracted price for the period of the contract. Fees were lowered from 50 to 75 percent.

Colorado has approximately 2 million residential telephone subscribers, of which more than 1,000,000 have signed up for the No-Call List as of December 31, 2002. Alaska has approximately 275,000 residential subscribers, or 14 percent of Colorado's. If Alaska's subscribers follow Colorado's example, we could expect about 137,500 subscribers to sign up to be on the No-Call List.

Alaska has less than ten registered telemarketers, and 40 paid solicitors who would have to register under this bill. We have no idea how many other organizations there are who are exempt from registration, but who would need to purchase the No-Call List. We would expect that most, if not all, of these organizations have less than 1,000 employees. If we assume there are 50 exempt organizations, there may be 100 entities in total who would purchase the data base. Assuming an average fee of \$350, \$35,000 per year in revenue might be generated. However, if the Colorado experience is repeated in Alaska and only 24 percent of these 100 entities are paying all the fees, even if all 24 percent paid the maximum, total annual revenues would only be \$12,000.

We do not know how much it would cost to hire the designated agent in Alaska. Colorado entered into a contract with their designated agent on December 18, 2001. The web site and toll free number were required to be operational July 1, 2002, but came on line May 8, 2002. The Colorado PUC entered a three-year contract with their designated agent totaling \$126,500, and the Colorado Attorney General paid an additional \$10,500 for the development and administration of their complaint reporting system. As of September 30, 2002, the agent showed \$176,849 in expenses. Unexpected first year costs for the toll free voice recognition system and unanticipated legal fees for the vendor resulted in an amendment to the PUC's contract for \$63,990. (The vendor was named in a federal lawsuit seeking to overturn the No-Call List law.) The contract amendment brings the 3-year total projected cost to \$173,990, with much of the expenditure occurring in the first year.

We would expect that at least some of these start-up costs could be avoided in Alaska by using Colorado's experience as much as possible. In addition, we would not have the volume of toll free calls Colorado's toll free voice recognition system received in the early days because we don't have that many telephone subscribers. (Colorado's designated agent had to expand their number of toll free lines from eight to 24 in the first month of operation to handle the volume of calls coming in from consumers wanting to get on the No-Call List. They had an estimated \$45,000 phone bill in that first month from those lines.)

FISCAL NOTE

STATE OF ALASKA
2003 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 15 (STA)
 (H) Publish Date: 3/26/03

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act establishing the Alaska No-Call List, a data base of residential telephone customers . . ." BRU Civil Division
 Sponsor Representative Fate Component Fair Business Practices
 Requester House State Affairs Committee Component No. 2206

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Personal Services	83.3	83.3	83.3	83.3	83.3	83.3
Travel	0.3	0.3	0.3	0.3	0.3	0.3
Contractual	11.7	11.7	11.7	11.7	11.7	11.7
Supplies	1.5	1.5	1.5	1.5	1.5	1.5
Equipment	6.5					
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	103.3	96.8	96.8	96.8	96.8	96.8

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

1002 Federal Receipts						
1003 GF Match						
1004 GF	103.3					
1005 GF/Program Receipts						
1037 GF/Mental Health						
1108 Statutory Designated Prog Rcpts		96.8	96.8	96.8	96.8	96.8
TOTAL	103.3	96.8	96.8	96.8	96.8	96.8

Estimate of any current year (FY2003) cost: 0.0

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

POSITIONS

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

CSHB 15 (STA) requires the attorney general to contract with an designated agent to establish and maintain a centralized data base of telephone subscribers who do not want to receive telephonic solicitations. Telephonic solicitors and organizations who are otherwise exempt from telephonic solicitation registration requirements, but who intend to conduct a solicitation, must purchase the data base. Fees charged to buy the "Alaska No-Call" data base must cover the direct and indirect costs of creating, updating, and maintaining the data base, and reimbursement to the attorney general for relevant expenditures. In addition to the data base, the designated agent is to be charged with maintaining an automated complaint system for residential subscribers to report suspected violations to the appropriate enforcement agency, which is the Department of Law, via the Internet or 800 number.

Prepared by: Joan M. Kasson Phone (907) 465-5370
 Division: Attorney General's Office Date/Time 3/24/03 3:09 PM
 Approved by: Joan M. Kasson for Gregg D. Renkes, Attorney General Date 3/24/2003
 Agency: Department of Law

FISCAL NOTE #3

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSHB 15(STA)

ANALYSIS CONTINUATION

The Colorado Public Utilities Commission was recently charged with implementing the Colorado No-Call Law, on which this bill is modeled. The Colorado Attorney General's Office handles enforcement under that law. We have spoken with both of these agencies, as well as a number of other states administering No-Call laws, and used their experiences to develop this fiscal note.

COSTS TO THE STATE:

During the first year, the costs to the Department of Law will involve implementing the Alaska No-Call data base. Legal services will be necessary to develop and implement regulations. Next, the procurement process to hire the designated agent will take place. Once a designated agent is under contract, considerable time will be required to oversee the web site content development including what consumer information should be available, and what information should be available to registering telemarketers. The development of the automated complaint system is expected to require significant amounts of time to ensure the department will receive all necessary information related to the complaints electronically, in a timely manner. Colorado estimated this phase of the project required as much as one-third of each of three full-time employees for five to six months (one full-time equivalent), and approximately 400 hours of attorney time and 100 hours of paraprofessional time. Given the number of states with this type of program that we should be able to piggyback on, we would expect our costs to be less.

Once the data base is up and running, a certain amount of attorney and paraprofessional time will be necessary to manage the program. This activity would include reviewing telephone solicitor registrations, supervising the web site, and regular contact with the designated agent. The Colorado PUC told us this regular contact took about four hours per week for them. We are assuming the impact of this in Alaska will be much smaller, both because some of their contact was due to problems with their web site and 800 number we hope to avoid using their example, and because Alaska has a much smaller population. We anticipate this regular contact will require no more than one-hour of paraprofessional time per week. In addition, the department estimates the annual readjustment of fees and reporting to the legislature will require 10 hours of attorney time and 10 hours of paraprofessional time.

As pointed out in the introduction, the bill also requires the designated agent set up and maintain an automated complaint system that would "... report violations to the appropriate state enforcement agency for enforcement action." The Department of Law would be responsible for these enforcement actions. The Colorado Attorney General's Office estimates they use the services of one-half of an attorney and one full-time paraprofessional for enforcement. Idaho, which maintains its database in house, estimates they use the services of 1.5 non-enforcement staff to take complaints and maintain the data base, and three attorneys to investigate complaints and provide enforcement. Other states using vendor maintained databases that we surveyed estimated anywhere from 1.5 to 15, with most estimating two to four staff positions.

After talking to these other states, we estimate the services of a full-time paraprofessional position would be sufficient to handle the program implementation and all on-going maintenance and enforcement activities. While some attorney time will be expended, as a practical matter we anticipate this will be offset as the paraprofessional takes on some paraprofessional-level duties that attorneys are now doing themselves at the higher hourly rate due to staffing constraints.

CSHB 15 (STA) requires that fees cover the cost of creating and maintaining the Alaska No-Call database and complaint system, and relevant expenditures of the Department of Law. Under this bill, telemarketers purchase the data base from the designated agent, who receives the fees. Fees are designed to cover the costs of developing and maintaining the data base and relevant expenditures of the attorney general, so are adjusted annually.

FISCAL NOTE #3

STATE OF ALASKA
2003 LEGISLATIVE SESSION

BILL NO. CSHB 15(STA)

ANALYSIS CONTINUATION

Alaska has less than ten registered telemarketers, and 40 paid solicitors who would have to register under this bill. We have no idea how many other organizations there are who are exempt from registration, but who would need to purchase the No-Call List. If we assume there are 50 exempt organizations, there may be 100 entities in total who would purchase the data base.

Discussions with other states indicate the amount of revenue generated from sale of the No-Call List is linked to enforcement. If the state actively enforces their No-Call law with hefty fines, telemarketers who wish to do business in that state have an incentive to purchase the list. We would expect this same effect in Alaska, but have no way of projecting an amount without some experience. Idaho is the only state we talked to that is near our size with a self-supporting program, but they also charge subscribers to sign up and most of their revenue derives from that source. Louisiana has a self-supporting program using a vendor, but the revenue used to support their program comes from noncompliance fines.

We do not know how much it would cost to hire the designated agent in Alaska. Colorado anticipates paying their designated agent \$174,000 over a three-year period. This amount includes unexpected first year costs for the toll free voice recognition system and unanticipated legal fees for the vendor. (The vendor was named in a federal lawsuit seeking to overturn the No-Call List law.) Louisiana reported spending \$50,000 for their contract with a vendor.

We would expect that at least some of Colorado's start-up costs could be avoided in Alaska by using their experience as much as possible, and by virtue of our smaller size. For example, we would not have the unexpected and expensive volume of toll free calls Colorado's toll free voice recognition system received in the early days because we don't have that many telephone subscribers. Although Connecticut too warned us to expect an initial surge of subscribers wanting to sign up all at once, the number presumably would be smaller.

In the first year, until the data base is up and running and available for purchase, there will be no fees. Once the data base is available for purchase, presumably the initial fees would be needed to pay the designated agent. Accordingly, the department's FY2004 costs are included as general funds. This fiscal note assumes the revenues will be available in the second and subsequent years to pay for the entire program. Whether this assumption proves correct will depend on variables the effect of which are difficult to predict at present. For example, we are unsure of how many telemarketers will purchase the Alaska list and how much the total costs of maintaining the data base and enforcing the program will be. If we assume 100 telemarketers would want to purchase the Alaska list, and the total costs of maintaining the data base and enforcement of its use prove to be as much as \$150,000 per year, annual fees could be as high as \$1,500. Right now we are aware of no state that charges more than \$1,100, and most are in the \$400 to \$500 range. In addition, states around the country are concerned about what effect the advent of a federal No-Call list reported to be implemented this year will have on state No-Call List revenues.

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 4
 Bill Version: CSHB 15(FIN)
 (H) Publish Date: 2/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Telemarketers No-Call Lists RDU Banking, Securities & Corp. (115)
 Component Banking, Securities & Corp.
 Sponsor Representatives Fate, et al
 Requester House Finance Component No. 1233

Expenditures/Revenues (Thousands of Dollars)

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

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

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

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

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

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation does not affect the operations of this department.

Prepared by: Mark Davis, Director Phone (907) 465-2521
 Division Banking, Securities & Corporations Date/Time 2/13/04 2:04 PM
 Approved by: Edgar Blatchford, Commissioner Date 2/13/2004
 Agency Department of Community & Economic Development

FISCAL NOTE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSHB 15(FIN)
(H) Publish Date: 2/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
Title: "An Act relating to fair trade practices and consumer protection, to telephone solicitations, to charitable solicitations..." RDU: CIVIL
Sponsor: Representative Fate Component: Commercial & Fair Business
Requester: House Finance Committee Component No. _____

Expenditures/Revenues (Thousands of Dollars)

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

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

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()	76.6	76.6	76.6	76.6	76.6	76.6
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1007 Interagency Receipts						
1141 RCA Receipts						
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 two general components. First, it amends the Unfair Trade Practices and Consumer Protection Act by creating a state cause of action for violations of the national do-not-call registry. It also amends the Act's do-not call provision (the "black dot law") and provides for its repeal once the establishment and enforcement of the national registry is ensured. In addition, the bill clarifies that "goods or services" covered by the Act include consumer credit transactions and other credit transaction involving an indebtedness secured by a consumer's residence.

The bill also amends the Charitable Solicitations Act (CSA) and Telephone Solicitations Act (TSA) in a number of ways. It requires payment of a fee when charitable organizations, paid solicitors for charitable organizations, and telephone solicitors register, or renew their registrations, with the

Prepared by: Kathryn A. Daughhete, Director Phone 465-3673
Division: Administrative Services Date/Time 2/23/04 8:27 AM
Approved by: Kathryn Daughhete for Gregg D. Renkes, Attorney General Date 2/23/2004
Agency: Department of Law

FISCAL NOTE #5

STATE OF ALASKA
2004 LEGISLATIVE SESSION

BILL NO. CSHB 15(FIN)

ANALYSIS CONTINUATION

Department of Law as required under these Acts.

Paid solicitors for charitable organizations would be required to submit a financial report to the department at the close of each solicitation campaign. The report would include, among other information, the disclosure of gross revenue generated during the campaign and the amount provided to the charity.

In addition, the bill would specifically provide that a person may not provide false information on the registration form filed with the Department, and allow the forms to be submitted either under oath or affirmation or under penalty of unsworn falsification. Thus, prosecution for perjury or unsworn falsification could be pursued if a registrant provided inaccurate information to the Department. The bill also amends the TSA to remove an exemption from registration for solicitations for the sale of magazines, periodicals, sound recordings and books.

Because the bill no longer provides for the creation of a state do not call registry, the expenditures indicated the fiscal note for CSHB 15 STA) are no longer relevant. With the registration fees that would be established in the amendments to the TSA and CSA, it is anticipated that this bill would generate approximately \$76,600 each year. This revenue estimate is based on average fees charged by other states and the number of organizations that submitted registration in 2003:

Charitable organization: $\$40 \times 1,615 = \$64,600$
Paid Solicitors: $\$200 \times 30 = \$ 6,000$
Telephone solicitors: $\$200 \times 30 = \underline{\$ 6,000}$

\$76,600

Affected Statute

AS 45.50.475. Unlawful, unwanted telephone advertisements and solicitations.

(a) A person is in violation of AS 45.50.471_(b)(41) if the person

(1) engages in the telephone solicitation of a residential telephone customer of a telecommunications company and the customer is identified in the telephone directory as not wishing to receive telephone solicitations; or

(2) originates a telephone call using an automated or recorded message as a telephonic advertisement or solicitation.

(b) A local exchange telecommunications company and a company that provides a telephone directory on behalf of a local exchange telecommunications company shall provide for the identification in the telephone directory of those residential customers who do not wish to receive telephone solicitations. The local exchange telecommunications company may impose a reasonable charge for identification in the directory. The charge shall be based on the cost of providing the identification and is subject to the approval of the Regulatory Commission of Alaska.

(c) A local exchange telecommunications company shall, upon request, provide to a person who engages in telephone solicitation a list of all telephone numbers identified in the telephone directory as residential customers who do not wish to receive telephone solicitations. If possible and if requested by the person who engages in telephone solicitations, this list shall be provided in computer readable format. The local exchange telephone company may impose a reasonable charge for the list. The charge shall be based on the cost of providing the list and is subject to the approval of the Regulatory Commission of Alaska.

(d) A person who employs individuals to engage in telephone solicitations is not liable for the violation of this section if an employee solicits a residential telephone customer who is identified in the telephone directory as not wishing to receive telephone solicitations if the person established that

(1) the person has adopted and implemented written procedures to comply with (a) of this section including corrective actions where appropriate,

(2) the person has trained its personnel in the procedures established under (1) of this subsection;

(3) the call that violated this section was made contrary to the procedures and policies established by the person; and

(4) calls on behalf of the person that result in violations of this section are infrequent.

(e) An individual who solicits a residential telephone customer who is identified in the telephone directory as not wishing to receive telephone solicitations is not liable for the violation of this section if the individual establishes that the individual did not intend to make a call in violation of this section and did not recklessly disregard information or policies and procedures that would have avoided the improper call.

(f) Local exchange telecommunications companies shall inform residential customers of the provisions of this section. Notification may be made by

(1) annual inserts in the billing statements mailed to residential customers; or

(2) conspicuous publication of the notice in the consumer information pages of local telephone directories.

(g) In this section,

(1) "charitable organization" has the meaning given in AS 45.68.900_;

(2) "customer" means a residential telephone customer of a telecommunications company;

(3) "telephone solicitation"

(A) means the solicitation by a person by telephone of a customer at the residence of the customer for the purpose of encouraging the customer to purchase property, goods, or services, or make a donation;

(B) does not include

(i) calls made in response to a request or inquiry by the called customer or communication made during a call made by the customer;

(ii) calls made by a charitable organization, a public agency, or volunteers on behalf of the charitable organization or public agency to members of the organization or agency or to persons who, within the last 24 months, have made a donation to the organization or agency or expressed an interest in making a donation;

(iii) calls limited to soliciting the expression of ideas, opinions, or votes;

(iv) business-to-business calls; or

(v) a person soliciting business from prospective purchasers who have, within the last 24 months, purchased from the person making the solicitation or from the business enterprise for which the person is calling but only if the person or business enterprise has not received a written request from the prospective purchaser asking that telephone solicitations cease; the person or business enterprise is presumed to have received a written request no later than 10 days after the prospective purchaser mailed it, properly addressed and with the appropriate postage.

(a) In AS 45.50.471- 45.50.561

(1) "advertising" includes the attempt directly or indirectly by publication, dissemination, solicitation, endorsement, or circulation, display in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the consumption of it or to make a loan;

(2) "cemetery lot" means a lot, plot, space, grave, niche, mausoleum, crypt, vault, or columbarium, used or intended to be used for the interment of human remains;

(3) "chain distributor scheme" means a sales device whereby a person, upon condition that the person make an investment, is granted a license or right to solicit or recruit for profit one or more additional persons who are also granted a license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted a license or right upon the condition of investment; a limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility for the license or right to solicit or recruit or the receipt of profit from these does not change the identity of the scheme as a chain distributor scheme; as used in this paragraph, "investment" means acquisition, for a consideration other than personal services, of tangible or intangible property, and includes but is not limited to franchises, business opportunities and services; "investment" does not include sales demonstration equipment and materials furnished at cost for use in making sales and not for resale;

(4) "consumer" means a person who seeks or acquires goods or services by lease or purchase;

(5) "dealing in hearing aids" has the meaning given in AS 08.55.200;

(6) "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate;

(7) "examination" of documentary material includes the inspection, study, or copying of the material, and the taking of testimony under oath or acknowledgment in respect of documentary material or copy of it;

(8) "fresh" means a condition of food that has never been frozen;

(9) "hearing aid" has the meaning given in AS 08.55.200;

(10) "knowingly" means actual awareness of the falsity or deception, but actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness;

(11) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard.

(b) AS 45.50.471- 45.50.561 may be cited as the Alaska Unfair Trade Practices and Consumer Protection Act.