

**State of Alaska
FY2004 Governor's Operating Budget**

**Department of Law
Fair Business Practices
Component Budget Summary**

Component: Fair Business Practices

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Component Mission

Mission statement appears at the department summary and BRU levels.

Component Services Provided

Enforce the state's consumer protection and antitrust laws and exercise the Attorney General's authority under federal antitrust laws.

Provide advice, representation, defense in court proceedings, and legislative and regulations drafting to the following commissions, divisions and corporations within the following departments:

Department of Community and Economic Development: the Regulatory Commission of Alaska (includes representation of staff when staff is designated as an advocate); Division of Insurance (includes representation of staff in administrative enforcement actions); Division of Occupational Licensing (includes representation of division in administrative enforcement actions before the various occupational boards and commissions); Department of Education and Early Development: Professional Teaching Practices Commission (includes representation of staff in disciplinary proceedings).

Component Goals and Strategies

Protect the public by:

1. Investigating violations of consumer protection and antitrust laws and initiating enforcement action in appropriate cases.
2. Providing enforcement support and advice to agencies that monitor compliance of business licensees with statutes prohibiting the sale of tobacco products to minors.
3. Providing legal services and advice to the agencies that monitor insurance companies and licensees, occupational licensees, public utilities, and certified teachers.

Provide representation and legal advice to the agencies, staff, and boards and commissions of the agencies represented by the section.

Assist the represented agencies in negotiating contracts for procuring services.

Key Component Issues for FY2003 – 2004

Alaska is a target state for many types of consumer fraud. Under the terms of the Consumer Protection Act (AS 45.50.471 et seq.), the Attorney General's office is authorized to investigate and bring enforcement action against businesses that engage in unfair or deceptive trade practices. Given the current funding and staffing level and the large areas of enforcement the office is responsible for, it is still forced to turn away many legitimate cases of consumer fraud. Enforcement activities are directed to situations affecting a large number of consumers or involving large dollar amounts, and often there are not enough resources for even those cases. We continue to increase enforcement activity because of additional statutory designated program receipt resources appropriated to this component beginning in FY 2000 and increased again for FY2003.

In the current fiscal year, another full-time investigator will be hired in the Consumer Protection Unit to assist in the investigation and handling of consumer protection and antitrust enforcement matters. This addition will allow the

department to further increase its investigation and enforcement activities relative to consumer protection and antitrust issues. The department also will be better able to maintain its participation in multi-state investigation and enforcement activities involving national companies that have committed unfair or deceptive practices impacting Alaskan consumers. The department will continue to take appropriate steps to ensure receipt of statutory designated program receipts on a regular basis in FY 2004 to help fund the consumer protection program.

With existing resources, the department continues to refine and expand its consumer protection web page that assists consumers in identifying and protecting against fraud. The web page continues to increase the number of consumer complaints received and handled by the department.

In addition to increased actions against businesses engaged in unfair and deceptive trade practices, the department continues to increase its antitrust enforcement efforts. In particular, the department will hire in the current fiscal year another part-time attorney to assist in reviewing collective negotiation agreements between physician groups and health benefit plans. This increase to staff is necessitated by a new law that became effective July 1, 2002 that requires the Attorney General's office to approve such negotiation agreements (Ch. 68, SLA 2002, SB 37). To implement this law, the department needs to adopt regulations to help ensure that the negotiations comply with state and federal antitrust laws.

In the last fiscal year, a fulltime attorney and a part-time paralegal were hired to provide services to the Department of Community and Economic Development's Division of Occupational Licensing. These hires have significantly increased the number of discipline cases brought against holders of professional licenses that are prosecuted by this office on behalf of the Division of Occupational Licensing.

Major Component Accomplishments in 2002

Generally

- Successfully defended a summary suspension order of the Alaska Dental Board that found the dentist represented a clear and immediate danger to public health and safety. The dental board case resulted in a surrender of the dentist's license to practice after five weeks of hearing regarding his dental practices. In that case, the department also successfully defended against a court challenge seeking injunctive relief to reinstate the dentist's license and to stay the hearing on constitutional grounds, which the court rejected.
- Successfully defended two summary suspension orders of the Alaska Medical Board relating to two physicians that were found to be a clear and immediate danger to public health and safety. One case involved a local physician who practiced cosmetic surgery and who was already the subject of an ongoing discipline matter based on allegations of unprofessional and substandard care to 21 patients with respect to liposuction, breast augmentation, and ear, nose and throat procedures. The summary suspension, which was sustained by the hearing officer and the board after a several day hearing, was based on a continuing pattern of failure by the physician to properly assess patients' candidacy for various procedures, to disclose fully to patients the risks of complications, to perform procedures in a manner that would reduce risk, and to provide appropriate post operative care. Later, when the hearing on the underlying discipline commenced, the physician surrendered his license to practice medicine in the state. The other medical board case involved a Nome osteopathic physician whose license was summarily suspended based on evidence that he engaged in inappropriate touching of female patients and based on expert testimony that he likely presented a danger to female patients. The physician sought injunctive relief in court to set aside the suspension, against which the department successfully defended. The physician remains suspended and has not requested an evidentiary hearing.
- Successfully defended on appeal before the superior court a decision of the Nursing Board revoking a nurse's license based on a felony conviction of criminal negligence homicide for withdrawing the life support of a critically ill patient without proper legal and medical authority. The case has not been appealed to the Alaska Supreme Court.
- Successfully defended the decision of the Regulatory Commission of Alaska in a Chugach Electric rate case before in the Alaska Supreme Court. The Court affirmed the power of the Commission to determine whether retail electrical competition should be implemented in Alaska. In a dispute between Chugach Electric and ML&P, a unanimous Court sustained the statutory authority of the RCA to approve in advance competition proposals and rejected the view that federal antitrust law imposed limits on that authority.

- Successfully represented the Public Advocacy Section of the Regulatory Commission of Alaska in two large rate cases. One case involved the local natural gas utility that had not had a rate case before the RCA for 15 years. While the utility argued to keep its existing rates, the PAS was successful in arguing for a reduction in base rates of approximately 3.6%. The other case involved a waste utility that was asking for rate increases ranging from 3.8% to 121% for seven of its eight service districts. The PAS was successful in discrediting the waste utility's expert at hearing, resulting in the RCA rejecting in total the utility's rate change requests.
- Successfully prosecuted actions to suspend the tobacco endorsements of four retailers whose employees were convicted of selling tobacco products to a minor. Actions against two of the retailers have resulted in a recommended decisions adopted by the Commissioner of the Department of Community and Economic Development that suspend the retailers' tobacco endorsements for the maximum time allowed under the law. Actions against the other two retailers are awaiting a final decision.
- Provided legal advice and completed the legal review for two large regulation projects for the Alaska Division of Insurance. One project involved 116 pages of regulations establishing standards and requirements for investments of domestic insurance companies. The other project established comprehensive rules and procedures pertaining to viatical settlements. In general terms, a viatical settlement is the sale of a life insurance policy to a third party, when the owner of the policy has a terminal illness and wants additional cash to pay expenses or when the owner can no longer afford the insurance premium and wants a cash benefit from the policy. The regulations and the enabling statutes are designed to help protect against fraud in these transactions. These new regulations include licensing and reporting requirements, fair marketing, and various consumer protection provisions.

Consumer Protection/Antitrust

- Collected approximately \$441,000 in seven consumer protection and antitrust cases (Publishers Clearinghouse, Wade Cook Financial Corp., and Triad Discount Buying Club consumer protection cases, and Vitamins, Contact Lens, Nine West and Mylan antitrust cases). Under settlements in the cases the money is to be used for consumer protection and antitrust enforcement (approximately \$200,000); *cy pres* distribution to state agencies and charitable organizations (\$105,000); restitution to state Medicaid/CAMA agency (\$80,000); and deposit into the general fund (\$57,000). In addition, injunctive relief remains in effect against the entities reforming their business practices and thousands of dollars in consumer redress were reimbursed to Alaska consumers for restitution.
- Collected \$50,000 in settlement of a consumer protection action against a local car dealer for various advertising, warranty, and Truth in Lending Act violations.
- Helped draft and sponsor two important pieces of consumer protection legislation that became law this year. The Business Opportunity Bill is aimed at protecting consumers who are often scammed by sellers of fraudulent business opportunities who promise huge returns for envelope stuffing, medical billing, internet businesses, and the like. The legislation requires disclosure of information to allow consumers to make informed investment choices and gives the department an important enforcement mechanism by requiring sellers to register before conducting business in the state. The Auto Dealers Act represents the most significant auto dealer legislation in Alaska to date and contains substantial consumer protection provisions. The bill generally covers auto dealer/manufacturer relationships (i.e. buying back inventory when a dealer fails, who can take over a dealership, where disputes should be held, when and where another dealer can open a lot, etc.) and has a large section on prohibited dealer practices. That section includes provisions governing advertising practices, warranty disclosures, used car inspections, bailment agreements, and selling practices.
- Completed investigation and initiated four consumer protection lawsuits. In *SOA v. City Mortgage Corporation and James Crawford*, the state has alleged violations of the Consumer Protection Act, common law fraud, and conversion in the handling of escrow accounts, promotional travel certificates, and mortgage payments. Trial is set for October 2003. In *SOA v. Dennis Lee, d/b/a. United Community Services*, the state has alleged that Lee engaged in deceptive advertising in promoting "revolutionary" technologies in Alaska. The state obtained a temporary restraining order to prevent Lee from soliciting for dealerships, memberships, or investments in Alaska. Trial on the complaint is set for March 2003. In *SOA v. Northern Lights Tours and Heinz Schulz*, the state has alleged that defendants deceptively marketed and sold travel services to consumers across the country and defrauded small businesses in Alaska. A motion for a default judgment is pending in superior court. In *SOA v. Payless Auto*, the state has alleged that the car rental company violated the Consumer Protection Act by charging customers more for repair of damage to rental cars than the company actually paid for the repair. The state has evidence of about \$200,000 in overcharges for the last five years. Trial is set for March 2003.

- Increased investigations of fraudulent telemarketers and charitable organizations. Currently there are four active investigations of paid solicitors and two active telemarketing investigations. As a result of a now-completed investigation of a paid solicitor, the company entered into an assurance of voluntary compliance and paid a civil penalty of \$4000 for violations of our “black dot” law and for failing to make required disclosures during telephone solicitations.

Statutory and Regulatory Authority

AS 44.23.020

Fair Business Practices
Component Financial Summary

All dollars in thousands

	FY2002 Actuals	FY2003 Authorized	FY2004 Governor
Non-Formula Program:			
Component Expenditures:			
71000 Personal Services	1,346.2	1,404.2	1,483.4
72000 Travel	11.9	15.1	15.6
73000 Contractual	176.5	542.7	425.8
74000 Supplies	18.2	54.2	57.7
75000 Equipment	19.4	16.2	16.2
76000 Land/Buildings	0.0	0.0	0.0
77000 Grants, Claims	0.0	0.0	0.0
78000 Miscellaneous	0.0	0.0	0.0
Expenditure Totals	1,572.2	2,032.4	1,998.7
Funding Sources:			
1004 General Fund Receipts	409.6	541.4	498.2
1005 General Fund/Program Receipts	1.0	50.0	50.0
1007 Inter-Agency Receipts	958.1	960.0	967.0
1108 Statutory Designated Program Receipts	203.5	481.0	483.5
Funding Totals	1,572.2	2,032.4	1,998.7

Fair Business Practices

Proposed Changes in Levels of Service for FY2004

A consumer protection attorney is added in the Fair Business Practices component funded from a line-item transfer of statutory designated program receipts added in FY 2003. The attorney will enhance the consumer protection and antitrust efforts of the State by adding more resources to help educate the public about consumer fraud and protection from fraud, and advocating for the public by enforcing existing consumer protection laws. The additional staff resources will also make possible expansion of the State's involvement in class-action consumer protection and antitrust lawsuits that resolve areas of nation-wide public concern. The resolution of these cases often results in settlement monies received by the State which help fund this function in the Department of Law. Currently all such proceeds are earmarked for consumer protection in this agency and the addition of this attorney position is made possible by increases in the level of those receipts.

Summary of Component Budget Changes

From FY2003 Authorized to FY2004 Governor

All dollars in thousands

	<u>General Funds</u>	<u>Federal Funds</u>	<u>Other Funds</u>	<u>Total Funds</u>
FY2003 Authorized	591.4	0.0	1,441.0	2,032.4
Adjustments which will continue current level of service:				
-To Governmental Affairs to adjust vacancy by fund source ADN# 0330132	-18.5	0.0	0.0	-18.5
-To Legislation/Regulations to adjust vacancy by fund source ADN# 0330132	-3.0	0.0	0.0	-3.0
-Annualize FY2003 COLA Increase for GG/GP/SS Bargaining Units	0.0	0.0	2.1	2.1
-\$75 per Month Health Insurance Increase for Non-covered Staff	4.8	0.0	7.4	12.2
-To Commercial Section to adjust vacancy by fund source	-26.5	0.0	0.0	-26.5
FY2004 Governor	548.2	0.0	1,450.5	1,998.7

Fair Business Practices

Personal Services Information

	Authorized Positions		Personal Services Costs	
	<u>FY2003</u> <u>Authorized</u>	<u>FY2004</u> <u>Governor</u>		
Full-time	17	18	Annual Salaries	1,172,236
Part-time	2	2	Premium Pay	0
Nonpermanent	0	0	Annual Benefits	355,628
			<i>Less 2.91% Vacancy Factor</i>	(44,464)
			Lump Sum Premium Pay	0
Totals	19	20	Total Personal Services	1,483,400

Position Classification Summary

Job Class Title	Anchorage	Fairbanks	Juneau	Others	Total
Assoc Attorney I	3	0	0	0	3
Assoc Attorney II	2	0	0	0	2
Attorney III	1	0	0	0	1
Attorney IV	8	0	1	0	9
Attorney V	1	0	0	0	1
Law Office Assistant I	2	0	0	0	2
Law Office Assistant II	1	0	0	0	1
Paralegal II	1	0	0	0	1
Totals	19	0	1	0	20