



Representative Lindsey Holmes

House Bill 274 Sponsor Statement

An Act relating to the exemption of certain acts and transactions from the provisions dealing with unfair methods of competition and unfair or deceptive acts or practices.

In 2010, the Department of Law filed suit against two pharmaceutical companies for committing violations of Alaska's Consumer Protection Act ("CPA") for engaging in misleading and deceptive marketing practices. The complaint alleges that Janssen Pharmaceutical Company and Astra Zenica Pharmaceuticals mislead and deceived doctors and others by promoting the antipsychotic drugs Risperdal and Seroques for uses not approved by the federal Food and Drug Administration ("FDA"). In many cases Alaska's Medicaid program paid for these off-label prescriptions.

In October of 2012, the federal court ruled that Alaska's Consumer Protection Act may not apply to the state's claims because the FDA regulates drug labeling. The court relied on AS 45.50.481 which exempts any act or transaction regulated by state or federal law from the CPA. Thus, even though the Food, Drug, and Cosmetic Act does not preempt state law, the court is concerned that AS 45.50.481 may prevent the state from pursuing these claims under the CPA. Although the state strongly disagrees with the court, and has argued against the court's reasoning, the court has suggested very strongly that the state's claims are exempt from the CPA. This creates a potential inadvertent loophole when federal laws may regulate conduct, but do not explicitly preempt state law.

Such a loophole could lead to situations, like the case of off-label prescriptions, where the federal government has a law regulating conduct but does not actually enforce the law to protect consumers. The state takes the position that when no effective enforcement by the federal agencies is taken, then these laws do not effectively "prohibit" the bad conduct, and the state should be allowed to bring CPA claims, even under the existing statute. However, to make the state's intention in AS 45.50.481 crystal clear, the legislature should take action.

House Bill 274 closes this potential loophole by removing the reference to federal law in AS 45.50.481. In cases where federal law preempts state law, the State will still be prevented from pursuing claims. This will, however, ensure the State's ability to defend Alaskan consumers where the federal government is not doing so.

Please join me in supporting HB 274 so that the State of Alaska can more effectively protect Alaskan consumers.