

SENATE CS FOR CS FOR HOUSE BILL NO. 203(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 5/8/98

Referred: Rules

Sponsor(s): REPRESENTATIVES DYSON, Cowdery, Porter, James, Rokeberg, Hudson, Croft

SENATORS Kelly, Duncan, Ellis, Taylor, Halford, Donley, Sharp, Pearce, Mackie

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to actions for unlawful trade practices."

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

3 * Section 1. AS 09.60.015 is amended by adding a new subsection to read:

4 (c) This section is subject to AS 45.50.537.

5 * Sec. 2. AS 45.50.473(c) is amended to read:

6 (c) A violation of this section constitutes an unfair or deceptive act or practice
7 under AS 45.50.471. It [NOTWITHSTANDING AS 45.50.531(a), IT] is presumed
8 that actual damages to the consumer under AS 45.50.531(a) are equal to the cost of
9 the service provided plus \$200. Additional damages must be proved.

10 * Sec. 3. AS 45.50.531(a) is amended to read:

11 (a) A person who suffers an ascertainable loss of money or property as a result
12 of another person's act or practice declared unlawful by AS 45.50.471 may bring a
13 civil action to recover for each unlawful act or practice three times the actual
14 damages or \$500 [\$200], whichever is greater. [THE COURT MAY, IN CASES OF
15 WILFUL VIOLATION, AWARD UP TO THREE TIMES THE ACTUAL DAMAGES

SUSTAINED.] The court may provide other relief it considers necessary and proper.
Nothing in this subsection prevents a person who brings an action under this subsection from pursuing other remedies available under other law, including common law.

* **Sec. 4.** AS 45.50.531 is amended by adding a new subsection to read:

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

* **Sec. 5.** AS 45.50 is amended by adding new sections to read:

Sec. 45.50.535. Private injunctive relief. (a) Subject to (b) of this section and in addition to any right to bring an action under AS 45.50.531 or other law, any person who was the victim of the unlawful act, whether or not the person suffered actual damages, may bring an action to obtain an injunction prohibiting a seller or lessor from continuing to engage in an act or practice declared unlawful under AS 45.50.471.

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

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

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

Sec. 45.50.536. Mediation. Notwithstanding the other provisions of AS 45.50.471 - 45.50.561, a civil action under AS 45.50.531 or 45.50.535 may be submitted to mediation under the Alaska Rules of Civil Procedure. The mediation must begin within 30 days after the court's order for mediation. During mediation, the court may, if it is determined appropriate by the court, enjoin the defendant from engaging in the act or practice that is the subject of the civil action.

Sec. 45.50.537. Attorney fees, costs, and damages. (a) In an action brought by a private person under AS 45.50.471 - 45.50.561, a prevailing plaintiff shall be

1 awarded costs as provided by court rule and full reasonable attorney fees at the
2 prevailing reasonable rate.

3 (b) Unless the action is found to be frivolous, in an action brought by a private
4 person under AS 45.50.471 - 45.50.561, a prevailing defendant shall be awarded
5 attorney fees and costs as provided by court rule. If the action is found to be
6 frivolous, the attorney fees to be awarded to the defendant shall be full reasonable
7 attorney fees at the prevailing reasonable rate.

8 (c) Notwithstanding the other provisions of this section, in an action brought
9 by a private person under AS 45.50.471 - 45.50.561, if the plaintiff is not the
10 prevailing party and if the court finds that the action was brought by the plaintiff to
11 obtain a competitive business advantage, the court shall award a prevailing defendant
12 costs as provided by court rule, full reasonable attorney fees at the prevailing
13 reasonable rate, and any damages suffered by the prevailing defendant as a result of
14 the plaintiff's allegations.

15 (d) In this section, "frivolous" means

16 (1) not reasonably based on evidence or on existing law or a reasonable
17 extension, modification, or reversal of existing law; or

18 (2) brought to harass the defendant or to cause unnecessary delay or
19 needless expense.

20 * **Sec. 6.** AS 45.50.531(g) is repealed.

21 * **Sec. 7.** AS 45.50.536, enacted by sec. 5 of this Act, only applies to causes of action that
22 accrue on or after the effective date of this Act.