

SENATE BILL NO. 28

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY SENATORS WIELECHOWSKI, ELLIS, AND FRENCH

Introduced: 1/19/11

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act making sales of and offers to sell certain energy resources at prices that are**
2 **unconscionable an unlawful act or practice under the Alaska Unfair Trade Practices**
3 **and Consumer Protection Act."**

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 *** Section 1.** AS 45.50.471(b) is amended by adding a new paragraph to read:

6 (58) violating AS 45.50.483 (sales of certain energy resources by
7 refiners, distributors, and retailers).

8 *** Sec. 2.** AS 45.50 is amended by adding a new section to read:

9 **Sec. 45.50.483. Sales of certain energy resources by Alaska refiners,**
10 **distributors, and retailers.** (a) A refiner, distributor, or retailer may not sell or offer
11 to sell an energy resource described in (b) of this section at a price that is
12 unconscionable.

13 (b) The provisions of this section apply only to sales of

14 (1) motor fuel used in an engine for the propulsion of a motor vehicle,

1 as that term is defined in AS 28.90.990, or an aircraft;

2 (2) fuel for space heating; and

3 (3) diesel fuel.

4 (c) If the attorney general believes that a refiner, distributor, or retailer has
5 engaged in or is engaging in a violation of (a) of this section, the attorney general shall
6 initiate an investigation under AS 45.50.495.

7 (d) In addition to the civil penalties authorized by AS 45.50.551, the attorney
8 general may recover, on behalf of the state, a civil penalty of not less than 10 times the
9 economic benefit obtained by the refiner, distributor, or retailer through the conduct of
10 the refiner, distributor, or retailer that violated or violates this section.

11 (e) Only the attorney general may bring an action to enforce this section. In an
12 action to enforce this section in which the attorney general is the prevailing party, the
13 attorney general may recover attorney fees and costs as authorized by
14 AS 45.50.537(d). The provisions of AS 45.50.531 and 45.50.535 do not apply to
15 authorize a person

16 (1) who suffers an ascertainable loss of money or property as a result
17 of the act of a refiner, distributor, or retailer declared unlawful by this section to bring
18 a civil action to recover for each unlawful act; or

19 (2) who was the victim of an unlawful act under this section, whether
20 or not the person suffered actual damages, to bring an action to obtain an injunction
21 prohibiting the refiner, distributor, or retailer from continuing to engage in the act that
22 is made unlawful by this section.

23 (f) In an action to enforce this section, a refiner, distributor, or retailer has the
24 right to submit evidence that the price charged by the refiner, distributor, or retailer
25 that is alleged to be unconscionable was attributable to additional reasonable costs
26 incurred in connection with the sale of the energy resource by the refiner, distributor,
27 or retailer.

28 (g) In this section,

29 (1) "distributor" means a person or corporation other than a refiner
30 who is engaged in the sale, assignment, or distribution of an energy resource described
31 in (b) of this section to one or more retailers for sale through retail outlets;

1 (2) "refiner" means a company, corporation, or individual who owns or
2 controls, or controls through a substantially owned subsidiary, partnership, or joint
3 venture, a refinery used for the production of an energy resource described in (b) of
4 this section having total annual sales that exceed 1,000,000 gallons of all of those
5 energy resources;

6 (3) "retailer" means a person in the state who is engaged in the
7 business of selling at retail an energy resource described in (b) of this section.