

Sec. 45.50.531. Private and class actions.

(a) A person who suffers an ascertainable loss of money or property as a result of another person's act or practice declared unlawful by AS 45.50.471 may bring a civil action to recover for each unlawful act or practice three times the actual damages or \$500, whichever is greater. 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.

(b) *[Repealed, Sec. 4 ch 31 SLA 1987].*

(c) Upon commencement of an action brought under this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of an order or judgment in the action, shall mail a copy of the order or judgment to the attorney general.

(d) *[Repealed, Sec. 4 ch 31 SLA 1987].*

(e) A permanent injunction or final judgment against a person against whom an action was initiated under AS 45.50.501 is prima facie evidence in an action brought under this section that the person used or employed an act or practice declared unlawful by AS 45.50.471.

(f) A person may not commence an action under this section more than two years after the person discovers or reasonably should have discovered that the loss resulted from an act or practice declared unlawful by AS 45.50.471.

(g) *[Repealed, Sec. 6 ch 96 SLA 1998].*

(h) If the basis for the action is the fault of the manufacturer or supplier of the merchandise, the manufacturer or supplier who is at fault is liable for the damages awarded against the retailer under this section.

(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.

History -

(Sec. 2 ch 246 SLA 1970; am Sec. 1 ch 225 SLA 1976; am Sec. 1 - 4 ch 31 SLA 1987; am Sec. 3, 4, 6 ch 96 SLA 1998)

Revisors Notes -

In subsections (g) and (h), the word "section" was substituted for "chapter" in 1987 to correct a manifest error.

Decisions -

Opportunity to cure technical pleading deficiency. - Although defendant is a New Jersey corporation with its principal place of business in Ohio and plaintiffs failed to set forth in their amended complaint the essential allegation that defendant was "doing business" in Alaska within the meaning of subsection (a) of this section, dismissing the claim on the basis of this technicality was inappropriate; leave to amend the complaint should have been granted in order to afford the plaintiffs the opportunity to cure their technical pleading deficiency. *Shooshanian v. Wagner*, 672 P.2d 455 (Alaska 1983).

Timeliness of claims. - The timeliness of a municipality's claim under the Unfair Trade Practices Act is governed by AS 09.10.120, not subsection (f) of this section. *City of Fairbanks v. Amoco Chem. Co.*, 952 P.2d 1173 (Alaska 1998).

Consumer's claim that a car dealership violated Alaska's Unfair Trade Practices and Consumer Protection Act by charging fees and costs not included in a vehicle's advertised sale price, including a document preparation fee, was time-barred because the limitations period under (f) began to run when the consumer discovered, or reasonably should have discovered, that the car dealership's conduct caused a

loss and not when the consumer discovered that the conduct was illegal. *Weimer v. Cont'l Car & Truck, LLC*, 237 P.3d 610 (Alaska 2010).

Failure to show monetary damages. - In alleging that the competitor's ads had the capacity to deceive or confuse a buyer in connection with the advertisement of services, as prohibited by AS 45.50.471(b)(11), the complaint was sufficient to defeat a motion to dismiss for failure to state a claim, but a review of the factual support for these claims provided a strong basis for the superior court's finding that the action was frivolous and brought to harass the defendants, where plaintiffs never produced credible evidence that the central theme of the ads was unfair or deceptive; they did not produce even one person who had read the ads and could testify to any confusion; and they produced no evidence that they had suffered any monetary damage, as required for a private action under subsection (a) of this section. *Garrison v. Dixon*, 19 P.3d 1229 (Alaska 2001).

Where Medicaid recipient's complaint against a hospital and a financial services corporation pleaded a claim for damages, but his briefing stated that he did not suffer actual damages, it was not necessary to consider whether any claim for damages was time-barred. *Smallwood v. Cent. Peninsula Gen. Hosp.*, 151 P.3d 319 (Alaska 2006).

Punitive damages under subsections (a) and (i). - Subsection (i)'s mention of "punitive damages" simply refers to punitive damages awarded as "other remedies available" under subsection (a)'s second sentence. *Kenai Chrysler Ctr., Inc. v. Denison*, 167 P.3d 1240 (Alaska 2007).

Abuse of discretion. - The superior court improperly dismissed plaintiff anesthesiologist's claims resulting from the termination of his privileges at defendant hospital where his complaint alleged facts which, if proven, were sufficient to state a claim for unreasonable restraint of trade, group boycott, attempted monopolization, unfair trade practices, defamation, breach of oral contract, interference with a prospective economic advantage, and intentional infliction of emotional distress. *Odom v. Fairbanks Mem. Hosp., Lutheran Health Sys.*, 999 P.2d 123 (Alaska 2000).

Applied in *Swenson Trucking & Excavating, Inc. v. Truckweld Equip. Co.*, 604 P.2d 1113 (Alaska 1980); *State v. First Nat'l Bank*, 660 P.2d 406 (Alaska 1982).

Cited in *O.K. Lumber Co. v. Providence Wash. Ins. Co.*, 759 P.2d 523 (Alaska 1988); *Pierce v. Catalina Yachts, Inc.*, 2 P.3d 618 (Alaska 2000); *Casciola v. F. S. Air Serv.*, 120 P.3d 1059 (Alaska 2005); *Compton v. Kittleson*, 171 P.3d 172 (Alaska 2007); *Neese v. State*, 218 P.3d 983 (Alaska 2009); *Pepper v. Routh Crabtree, APC*, 219 P.3d 1017 (Alaska 2009).

Collateral Refs -

Consumer class action based on fraud or misrepresentations, 53 ALR3d 534.

Right to private action under state consumer protection act, 62 ALR3d 169.

Reasonableness of offer of settlement under state deceptive trade practice and consumer protection acts, 90 ALR3d 1350.