

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

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/20/98

Referred: Rules

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

**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

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

5           \* **Sec. 4.** AS 45.50.531 is amended by adding new subsections to read:

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

10                   (j) The commissioner of administration shall separately account for money  
 11                   received under (i) of this section that is deposited in the general fund. The annual  
 12                   estimated balance in the account may be appropriated by the legislature for the  
 13                   expenses of the fair business practices section of the Department of Law.

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

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

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

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

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

28                   **Sec. 45.50.536. Mediation.** Notwithstanding the other provisions of  
 29                   AS 45.50.471 - 45.50.561, a civil action under AS 45.50.531 or 45.50.535 may be  
 30                   submitted to mediation under the Alaska Rules of Civil Procedure. The mediation  
 31                   must begin within 30 days after the court's order for mediation. During mediation, the

1 court may, if it is determined appropriate by the court, enjoin the defendant from  
2 engaging in the act or practice that is the subject of the civil action.

3 **Sec. 45.50.537. Attorney fees, costs, and damages.** (a) In an action brought  
4 by a private person under AS 45.50.471 - 45.50.561, a prevailing plaintiff shall be  
5 awarded costs as provided by court rule and full reasonable attorney fees at the  
6 prevailing reasonable rate.

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

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

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

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

22 (2) brought to harass the defendant or to cause unnecessary delay or  
23 needless expense.

24 \* **Sec. 6.** AS 45.50.531(g) is repealed.

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