

AMENDMENT #5

BY SEN.

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OFFERED IN THE SENATE
TO: SCS CSHB 287(FIN)

1 Page 1, line 3, following "refineries;":

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

5

6 Page 5, line 26:

7 Insert new bill sections to read:

8 **"* Sec. 6.** AS 45.50.471(b) is amended by adding a new paragraph to read:

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

11 *** Sec. 7.** AS 45.50 is amended by adding a new section to read:

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

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

17 (1) motor fuel used in an engine for the propulsion of a motor vehicle,
18 as that term is defined in AS 28.90.990, or an aircraft;

19 (2) fuel for space heating; and

20 (3) diesel fuel.

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

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

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

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

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

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

22 (g) In this section,

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

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

31 (3) "retailer" means a person in the state who is engaged in the

1 business of selling at retail an energy resource described in (b) of this section."

2

3 Renumber the following bill sections accordingly.

4

5 Page 6, line 8:

6 Delete "sec. 7"

7 Insert "sec. 9"