

1 IN THE HOUSE

BY MESSRS. TAYLOR AND MEEKINS

2 HOUSE BILL NO. 121

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act making it unlawful for any person
7 to engage in discriminatory, unfair, des-
8 tructive, fraudulent or other practices
9 with the intent of injuring, destroying
10 or preventing honest and fair competition;
11 and providing for penalties for the viola-
12 tion thereof."

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

14 Section. 1. SHORT TITLE. This Act shall be known as the
15 "Unfair Practices Act".

16 Sec. 2. DEFINITIONS. As used in this Act, words and terms
17 are defined as follows:

18 "Person" includes any person, firm, association, organization,
19 partnership, business trust, company, corporation or municipal or
20 other public corporation;

21 "Sell" includes selling, offering for sale or advertising
22 for sale;

23 "Give" includes giving, offering to give or advertising for
24 the intent to give;

25 "Article or produce" includes any article, product, commodity,
26 thing of value, service or output of a service trade;

27 "Cost" has its usual meaning and in addition as applied to
28 production includes the cost of raw materials, labor and all over-
29 head expenses of the producer, and as applied to distribution

1 means the invoice cost or replacement cost, whichever is lower,
2 of the article or product to the distributor and vendor plus the
3 cost of doing business by said distributor and vendor;

4 "Cost of doing business" or "overhead expense" means all
5 costs of doing business incurred in the conduct of such business
6 and must include without limitation the following items of ex-
7 pense: Labor (including salaries of executives and officers),
8 rent, depreciation, selling cost, maintenance of equipment,
9 delivery costs, credit losses, all types of licenses, taxes, in-
10 surance and advertising;

11 "Loss leader" means any article or product sold at less
12 than cost as herein defined to induce, promote or encourage, the
13 purchase of other merchandise, or which may have the tendency or
14 capacity to mislead or deceive purchasers or prospective pur-
15 chasers, or which diverts trade from or otherwise injures com-
16 petitors;

17 "Vendor", in addition to its usual meaning, includes any
18 person who performs work upon, renovates, alters or improves
19 any personal property belonging to another person;

20 "Ordinary channels of trade" shall mean those ordinary,
21 regular and daily transactions in the mercantile trade whereby
22 title to an article or product, in no way damaged or deterior-
23 ated, is transferred from one person to another, and shall not
24 include sales of bankrupt stocks, closeout goods, dents, sales of
25 goods bought from a business or merchant retiring from business,
26 fire sales and sales of damaged or deteriorated goods, which
27 damage or deterioration results from any cause whatsoever; Pro-
28 vided, that this last listing herein shall not be held to be all
29 inclusive but as an example only.

1 Sec. 3. PRICE CUTTING: ALLOWABLE DIFFERENTIALS AND CUSTOMER
2 CLASSES: EXCEPTED ARTICLES AND SERVICES: REBATES, ETC. It shall
3 be unlawful for any person, engaged in the production, manufac-
4 ture, distribution or sale of any article or product of general
5 use or consumption, with the intent to destroy the competition of
6 any regular established dealer in such article or product, or to
7 prevent the competition of any person, who in good faith intends
8 and attempts to become such dealer, to discriminate between dif-
9 ferent sections of the same community, city, town or village in
10 this state, by selling or furnishing such article or product at
11 a lower price in one such section than in another: Provided,
12 that nothing herein contained shall prevent differentials which
13 make allowances for differences, if any, in the grade, quality
14 or quantity when based and justified in the cost of manufacture,
15 sale or delivery, or the actual cost of transportation from the
16 point of production if a raw product or commodity, or from the
17 point of manufacture if a manufactured product or commodity, or
18 from the point of shipment to the point of destination: Provided
19 further, that nothing herein contained shall prevent a selection
20 of customers or a functional classification by any person of any
21 customer as broker, jobber, wholesaler or retailer or a differ-
22 ential in price for any article or product as between any cus-
23 tomers in different functional classifications. Motion picture
24 films when licensed for exhibition to motion picture houses
25 shall not be deemed to be an article or product under this Act.
26 Neither shall anything in this Act be deemed to apply to any
27 service, article or product for which rates are established
28 under the jurisdiction of any department, agency or commission
29 of the state of Alaska, or any municipal or public corporation

1 thereof and which are sold or furnished by an public utility
2 corporation or by any publicly owned utility or installation
3 and repair services rendered in connection with any such ser-
4 vices, article or products.

5 The prohibition of this Act against locality discrimination
6 shall embrace any scheme of special rebates, collateral contracts
7 or any device of any nature whereby such discrimination is, in
8 substance or fact, effected in violation of the spirit and intent
9 of this section; Provided, however, that nothing in this section
10 shall be construed to prohibit the meeting in good faith of a
11 legal competitive price.

12 Sec. 4. LIABILITY OF OFFICERS OR AGENTS: SUFFICIENCY OF
13 ALLEGATION AND PROOF. Any person who either as director, officer
14 or agent of any firm or corporation or as agent of any person
15 violating the provisions of this Act, assists or aids, directly
16 or indirectly, in such violation shall be responsible therefor
17 equally with the person, firm or corporation for whom or which
18 he acts.

19 In the prosecution of any person as officer, director or
20 agent, it shall be sufficient to allege and prove the unlawful
21 intent of the person, firm or corporation for whom or which he
22 acts.

23 Sec. 5. PRICE CUTTING PRACTICES FORBIDDEN: GENERALLY.
24 It shall be unlawful for any person engaged in business within
25 this state to sell any article or product at less than the cost
26 thereof to such vendor, or give away any article or product, for
27 the purpose of injuring competitors or destroying competition,
28 or to use any article or product as a "loss leader", or in con-
29 nection with any sale to make or give, or to offer to make or

1 give, any special or secret rebate, payment, allowance, refund,
2 commission or unearned discount, whether in the form of money or
3 otherwise, or to secretly extend to certain purchasers special
4 services or privileges not extended to all purchasers purchasing
5 upon like terms and conditions, or to make or enter into any
6 collateral contract or device of any nature, whereby a sale below
7 cost is affected, to the injury of a competitor, and where the
8 same destroys or tends to destroy competition.

9 Sec. 6. ESTABLISHING COST: FORCED SALE STOCKS. In estab-
10 lishing the cost of a given article or product to the distributor
11 and vendor, the invoice cost of said article or product purchased
12 at a forced, bankrupt, closeout sale, or other sale outside of
13 the ordinary channels of trade may not be used as a basis for
14 justifying a price lower than one based upon the replacement cost
15 as of date of said sale of said article or product replaced
16 through the ordinary channels of trade, unless said article or
17 product is kept separate from goods purchased in the ordinary
18 channels of trade and unless said article or product is adver-
19 tised and sold as merchandise purchased at a forced, bankrupt,
20 closeout sale, or by means other than through the ordinary chan-
21 nels of trade, and said advertising shall state the conditions
22 under which said goods were so purchased, and the quantity of such
23 merchandise to be sold or offered for sale.

24 Sec. 7. INJUNCTIONS, CIVIL SUITS AND CRIMINAL PROSECUTIONS:
25 EVIDENCES OF INTENT AND OF SALE BELOW COST. In any injunction
26 proceeding or in the prosecution of any person as officer, dir-
27 ector or agent, it shall be sufficient to allege and prove the
28 unlawful intent of the person, firm or corporation for whom or
29 which he acts; and in any civil or criminal proceeding under this

1 Act, where a particular trade or industry, of which the person,
2 firm or corporation complained against is a member, has an estab-
3 lished cost survey for the locality and vicinity in which the
4 offense is committed, the said cost survey shall be deemed com-
5 petent evidence to be used in proving the costs of the person,
6 firm or corporation complained against within the provisions of
7 this Act; and in any such action proof of one or more acts of
8 selling or giving away any article or product below cost or at
9 discriminatory prices, together with proof of the injurious effect
10 of such act shall be presumptive evidence of the purpose or in-
11 tent to injure competitors or destroy competition; and in any
12 such action where it is alleged and shown that the person com-
13 plained against is selling, below his cost of doing business,
14 and said person is including labor at less than the prevailing
15 wage scale in the trade in which such person is engaged for the
16 locality or vicinity in which he is doing business, evidence of
17 such prevailing wage scale shall be admissible to prove the in-
18 tent or purpose of such person to violate the provisions of this
19 Act, or in any such action where it appears that persons are em-
20 ployed or performing services without compensation for any per-
21 son so complained against, such services shall be charged as an
22 expense of the business in which rendered and at the rate of the
23 wage for the services rendered prevailing at the time of the
24 service at the place where rendered.

25 Sec. 8. SALES EXCEPTED. The provisions of this Act shall
26 not apply to any sale made:

27 (1) In closing out in good faith the owner's stock
28 or any part thereof for the purpose of discontinuing his trade
29 in any such article or product and in the case of the sale of

1 seasonal goods or to the bona fide sale of perishable goods to
2 prevent loss to the vendor by spoilage or depreciation:

3 Provided, notice is given to the public thereof;

4 (2) When the goods are damaged or deteriorated in
5 quality, and notice is given to the public thereof;

6 (3) By an officer acting under the orders of any
7 court;

8 (4) In an endeavor made in good faith to meet the
9 legal prices of a competitor as herein defined selling the same
10 article or product, in the same locality or trade area, and in
11 the ordinary channels of trade as herein defined; or in an
12 endeavor made in good faith by a manufacturer, selling an article
13 or product of his manufacture, in a transaction and sale to a
14 wholesaler or retailer for resale to meet the legal prices of a
15 competitor selling the same or a similar or comparable article
16 or product, in the same locality or trade area and in the ordin-
17 ary channels of trade as herein defined.

18 Sec. 9. PRICE CUTTING CONTRACTS VOID. Any contract, express
19 or implied, made by any person in violation of any of the provi-
20 sions of this Act is declared to be an illegal contract and no
21 recovery thereon shall be had.

22 Sec. 10. PRICE CUTTING: INJUNCTION: CIVIL ACTION: DAMAGES.
23 Any person may maintain an action to enjoin a continuance of
24 any act or acts in violation of any of the provisions of this Act
25 and, if injured thereby, for the recovery of damages. If, in
26 such action, the court shall find that the defendant is violating
27 or has violated any of the provisions of this Act, it shall en-
28 join the defendant from a continuance thereof. It shall not be
29 necessary that actual damages to the plaintiff be alleged or

1 proved. In addition to such injunctive relief, the plaintiff in
2 said action shall be entitled to recover from the defendant the
3 amount of the actual damages, if any, sustained by him. Commence-
4 ment, pendency or conclusion of a civil action for injunction
5 and/or damages shall not affect criminal liability.

6 Sec. 11. PENALTIES FOR VIOLATIONS. Violation of the pro-
7 visions of this Act shall constitute a misdemeanor; and any per-
8 son, whether as principal, agent, officer or director, for him-
9 self, or for another person, or for any firm or corporation, or
10 any corporation, who or which shall violate any of the provisions
11 of this Act shall be guilty of a misdemeanor for each single
12 violation and upon conviction thereof, shall be punished by a
13 fine of not less than one hundred (\$100.00) dollars nor more
14 than one thousand (\$1,000.00) dollars, or by imprisonment not
15 exceeding six (6) months or by both; and any criminal action
16 shall not affect the right of any person to bring a civil action
17 under Sec. 10 hereof.

18 Sec. 12. SOLICITATION OR COLLUSION TO VIOLATE ACT: CIVIL
19 OR CRIMINAL LIABILITY. Solicitation by, or collusion or joint
20 participation between any wholesaler, manufacturer, distributor,
21 jobber, contractor, broker, or retailer to violate any of the
22 provisions of this Act or the use of any threat, intimidation or
23 boycott to effectuate the violation of the Act shall make all
24 persons participating in such solicitation, collusion or joint
25 participation subject to civil or criminal liability under this
26 Act.

27 Sec. 13. PROOF OF COSTS. In any civil or criminal action,
28 proof of average over-all cost of doing business for any parti-
29 cular inventory period when added to the cost of production of

1 each article or product, as to a producer, or invoice or replace-
2 ment cost, whichever is lower, of each article or product, as to
3 a distributor, shall be presumptive evidence of cost, and proof
4 of transportation tariffs when fixed and approved by any department,
5 agency or commission of the State of Alaska shall be presumptive
6 evidence of delivery cost, as to any article or product involved
7 in any such action.

8 Sec. 14. INJUNCTION IN NAME OF STATE. The Attorney General,
9 in the judicial district in which the superior court has juris-
10 diction, and the prosecuting attorneys, in their respective judi-
11 cial districts in which the superior court has jurisdiction,
12 shall have power to institute and maintain an action in the name
13 of the State of Alaska to restrain and enjoin any person from
14 performing or continuing the performance of any act or conduct
15 which is prohibited herein.

16 Sec. 15. SEVERABILITY. If any section, sentence, clause or
17 phrase of this Act is for any reason held to be unconstitutional,
18 such decision shall not affect the validity of the remaining
19 portions of this Act. The legislature hereby declares that it
20 would have passed this Act, and each section, sentence, clause
21 or phrase thereof, irrespective of the fact that any one or more
22 sections, sentences, clauses or phrases be declared unconstitu-
23 tional.

24 Sec. 16. CONSTRUCTION. The legislature declares that the
25 purpose of this Act is to safeguard the public against the
26 creation or perpetuation of monopolies and to foster and en-
27 courage competition, by prohibiting unfair, dishonest, deceptive,
28 destructive, fraudulent and discriminatory practices by which
29 fair and honest competition is destroyed or prevented. This Act

1 shall be liberally construed that its beneficial purposes may be
2 subserved.

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