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Referred: Commerce, State
Affairs and Judiciary

BY THE RULES COMMITTEE
BY REQUEST OF THE
LEGISLATIVE COUNCIL

1 IN THE HOUSE

2 HOUSE BILL NO. 444

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to consumer protection."

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

8 * Section 1. AS 45 is amended by adding a new chapter to read:

9 CHAPTER 90. CONSUMER PROTECTION.

10 Sec. 45.90.010. DECEPTIVE TRADE PRACTICES. (a) A person engages
11 in a deceptive trade practice when in the course of his business,
12 vocation, or occupation, he

13 (1) knowingly passes off goods or services as those of
14 another;

15 (2) knowingly makes a false representation as to the source,
16 sponsorship, approval, or certification of goods or services;

17 (3) knowingly makes a false representation as to affiliation,
18 connection, association with, or certification by another;

19 (4) uses deceptive representations or designations of
20 geographic origin in connection with goods or services;

21 (5) knowingly makes a false representation as to the
22 characteristics, ingredients, uses, benefits, alterations, or quanti-
23 ties of goods or services or a false representation as to the sponsor-
24 ship, approval, status, affiliation, or connection of a person with
25 the goods and services;

26 (6) represents that goods are original or new if he knows
27 or should know that they are deteriorated, altered, reconditioned,
28 reclaimed, used or secondhand;

29 (7) represents that goods or services are of a particular

1 standard, quality, or grade, or that goods are of a particular style
2 or model, if he knows or should know that they are of another;

3 (8) disparages the goods, services, or business of another
4 by false or misleading representation of fact;

5 (9) advertises goods or services with intent not to sell
6 them as advertised;

7 (10) advertises goods or services with intent not to supply
8 reasonably expectable public demand, unless the advertisement discloses
9 a limitation of quantity;

10 (11) advertises under the guise of obtaining sales personnel
11 when in fact the purpose is to first sell a product or service to the
12 sales personnel applicant;

13 (12) makes false or misleading statements of fact concerning
14 the price of goods or services, or the reasons for, existence of, or
15 amounts of price reductions;

16 (13) fails to deliver to the customer at the time of an
17 installment sale of goods or services, a written order, contract, or
18 receipt setting forth the name and address of the seller and the name
19 and address of the organization which he represents, and all of the
20 terms and conditions of the sale, including a description of the goods
21 or services, which shall be stated in readable, clear, and unambiguous
22 language;

23 (14) employs "bait and switch" advertising which consists
24 of an attractive but insincere offer to sell a product or service
25 which the seller in truth does not intend or desire to sell, which
26 advertising is accompanied by one or more of the following practices:

27 (A) refusal to show the product advertised;

28 (B) disparagement in any respect of the advertised
29 product or the terms of sale;

1 (C) requires tie-in sales or other undisclosed condi-
2 tions to be met prior to selling the advertised product or service;

3 (D) refusal to take orders for the product advertised
4 for delivery within a reasonable time;

5 (E) showing or demonstrating a defective product which
6 is unusable or impractical for the purposes set forth in the ad-
7 vertisement;

8 (F) accepting a deposit for the product and subsequently
9 switching the purchase order to a higher priced item; or

10 (G) failure to make deliveries of the product within
11 a reasonable time or to make a refund for the product; or

12 (15) knowingly fails to identify flood damaged or water
13 damaged goods as to such damages.

14 (b) Evidence that a person has engaged in a deceptive trade
15 practice is prima facie evidence of intent to injure competitors and
16 to destroy or substantially lessen competition.

17 (c) The deceptive trade practices listed in (a) of this section
18 are in addition to and do not limit the types of unfair trade practices
19 actionable at common law or under other statutes of this state.

20 Sec. 45.90.020. EXCLUSIONS. (a) This chapter does not apply to

21 (1) conduct in compliance with the order or rules of, or a
22 statute administered by, a federal, state, or local government agency;

23 (2) publishers, including outdoor advertising media,
24 advertising agencies, broadcaster, or printers engaged in the dis-
25 semination of information or reproduction of printed or pictorial
26 matter who publish, broadcast, or reproduce material without knowledge
27 of its deceptive character; or

28 (3) actions or appeals pending on the date that this chapter
29 becomes effective.

1 (b) This chapter shall not be interpreted to apply to the use
2 by a person of any service mark, trademark, certification mark, col-
3 lective mark, trade name, or other trade identification which was used
4 and not abandoned prior to the effective date of this chapter, if the
5 use was in good faith and is otherwise lawful except for the provi-
6 sions of this chapter.

7 Sec. 45.90.030. POWERS OF ATTORNEY GENERAL. When the attorney
8 general has cause to believe that a person has engaged in or is
9 engaging in a deceptive trade practice listed in sec. 10 of this
10 chapter, he may

11 (1) request that person to file a statement or report in
12 writing under oath or otherwise, on forms prescribed by him, as to all
13 facts and circumstances concerning the sale or advertisement of
14 property by that person, and such other data and information as he may
15 consider necessary;

16 (2) examine under oath a person in connection with the
17 sale or advertisement of any property;

18 (3) examine any property or sample of it, record, book,
19 document, account, or paper as he may consider necessary;

20 (4) make true copies, at the expense of the attorney
21 general, of any record, book, document, account, or paper examined
22 under (3) of this section, which copies may be offered into evidence
23 in lieu of the originals in actions brought under this chapter; and

24 (5) under an order of a superior court, after a full
25 opportunity has been given to the accused to be heard and the attorney
26 general has proved by clear and convincing evidence that the business
27 activities of the person to whom the order will be directed will not
28 be impaired, impound a sample of property which is material and retain
29 it in his possession until completion of the proceedings undertaken

1 under this chapter.

2 Sec. 45.90.040. SUBPOENAS, HEARING AND RULES. (a) The attorney
3 general, in addition to other powers conferred upon him by this chapter,
4 may issue subpoenas to require the attendance of witnesses or the pro-
5 duction of documents, administer oaths, conduct hearings in aid of
6 an investigation or inquiry, and prescribe the forms and promulgate the
7 rules necessary to administer the provisions of this chapter.

8 (b) Service of notice or subpoena may be made in the manner
9 prescribed by law or the Alaska rules of civil procedure.

10 Sec. 45.90.050. REMEDIES. If a person fails to cooperate with
11 an investigation provided for in sec. 30 of this chapter, or fails to
12 obey a subpoena provided for in sec. 40 of this chapter, the attorney
13 general may apply to a superior court for an appropriate order to carry
14 out the purposes of this chapter. This application shall state that
15 there are reasonable grounds to believe that the order is necessary to
16 terminate or prevent a deceptive trade practice as defined in sec. 10
17 of this chapter. If the court is satisfied with the reasonable grounds,
18 it may in its order

19 (1) grant injunctive relief restraining the sale or ad-
20 vertisement of property by a person;

21 (2) require the attendance of or the production of documents
22 by the person; and

23 (3) grant such other or further relief as is necessary to
24 obtain compliance by the person.

25 Sec. 45.90.060. RESTRAINING ORDERS, INJUNCTIONS, AND ASSURANCES
26 OF DISCONTINUANCE. (a) When the attorney general has cause to believe
27 that a person has engaged in or is engaging in a deceptive trade prac-
28 tice listed in sec. 10 of this chapter, he may apply for and obtain,
29 in an action in a superior court, a temporary restraining order, or

1 injunction, or both, under the Alaska rules of civil procedure, pro-
2 hibiting the person from continuing the practices, or engaging in it,
3 or doing an act in furtherance of it. The court may make the orders
4 or judgments that are necessary to prevent the use by the person of the
5 deceptive trade practice, or which is necessary to restore to another
6 person money or real or personal property which may have been acquired
7 by means of the deceptive trade practice.

8 (b) When the attorney general has the authority under this chapter
9 to institute a civil action, he may as a part of the action or in lieu
10 of it, accept an assurance of discontinuance of a deceptive trade prac-
11 tice listed in sec. 10 of this chapter. This assurance may include a
12 stipulation for the voluntary payment by the alleged violator of the
13 costs of investigation and the action or proceeding by the attorney
14 general and the amount necessary to restore to a person the money or
15 property which may have been acquired by the alleged violator by means
16 of the deceptive trade practice. An assurance of discontinuance accepted
17 by the attorney general and stipulation filed with the court as a part
18 of an action or proceeding is confidential to the parties to the action
19 or proceeding and to the court and its employees, but upon final judg-
20 ment by the court that (1) a temporary restraining order or injunction
21 obtained under (a) of this section has been violated, or (2) an assurance
22 of discontinuance accepted under this subsection has been violated, or
23 (3) a person has engaged in the same deceptive trade practice as had
24 before been enjoined under a final permanent injunction obtained under
25 (a) of this section, or (4) a person has engaged in the same deceptive
26 trade practice which he had before agreed to discontinue by acceptance of
27 an assurance of discontinuance under this subsection, the assurance of
28 discontinuance or stipulation is considered a public record and open to
29 inspection by any person. Proof by a preponderance of evidence of a

1 violation of an assurance is prima facie evidence of a deceptive trade
2 practice for the purposes of civil action or proceeding thereafter by
3 the attorney general, whether a new action or a subsequent motion or
4 petition in a pending action or proceeding.

5 Sec. 45.90.070. WHEN INFORMATION AND EVIDENCE CONFIDENTIAL AND
6 NONADMISSIBLE. (a) The attorney general shall not release informa-
7 tion or evidence, obtained by him under the provisions of this chapter,
8 to a district attorney or his investigator or to a law enforcement
9 officer for use in a criminal prosecution. The information or evidence
10 produced by the attorney general under this chapter is not admissible
11 in evidence in a criminal prosecution. The provisions of this sub-
12 section shall not be construed to prevent the attorney general from
13 disclosing to a district attorney or law enforcement officer the fact
14 of the commission of a crime by a person, nor shall it be construed
15 to prevent a district attorney or his investigator or a law enforcement
16 officer from independently producing or obtaining the same or similar
17 facts, information, or evidence for use in a criminal prosecution.

18 (b) Subject to the provisions of sec. 60(a) of this chapter,
19 the attorney general shall not make public the name of a person
20 alleged to have committed a deceptive trade practice during an in-
21 vestigation conducted by him under this chapter, nor shall the records
22 of investigations or intelligence information of the attorney general
23 obtained under this chapter be considered public records available for
24 inspection by the general public. However, the attorney general is
25 not prevented from issuing public statements describing or warning of
26 a course of conduct or a conspiracy which constitutes or will consti-
27 tute a deceptive trade practice, whether on a local, state, regional,
28 or national basis.

29 Sec. 45.90.080. CIVIL PENALTIES. A person who violates a court

1 order or injunction issued under this chapter shall pay to the
2 general fund a civil penalty or not more than \$10,000. For the
3 purposes of this section, the court issuing an order or injunction
4 shall retain jurisdiction and the cause shall be continued. When there
5 has been a violation, the attorney general may petition the court for
6 the recovery of this civil penalty. This civil penalty is in addition
7 to other penalties or remedies available for the enforcement of the
8 provisions of this Act and of court orders and injunctions.

9 Sec. 45.90.090. DAMAGES. The provisions of this chapter are
10 available to a person in a civil action for a claim against a person
11 who has acquired money or real or personal property by means of a
12 deceptive trade practice listed in sec. 10 of this chapter. Costs
13 shall be allowed to the prevailing party unless the court otherwise
14 directs. The court may award attorneys' fees to the prevailing party.

15 Sec. 45.90.100. DEFINITIONS. In this chapter

16 (1) "advertisement" includes the attempt by publication,
17 dissemination, solicitation, or circulation, visual, oral, or written,
18 to induce directly or indirectly any person to enter into any obliga-
19 tion or to acquire any title or interest in any property;

20 (2) "article" means a product as distinguished from a
21 trademark, label, or distinctive dress in packaging;

22 (3) "certification mark" means a mark used in connection
23 with the goods or services of a person other than the certifier to
24 indicate geographic origin, material, mode of manufacture, quality,
25 accuracy, or other characteristics of the goods or services or to
26 indicate that the work or labor on the goods or services was performed
27 by members of a union or other organization;

28 (4) "collective mark" means a mark used by members of a
29 cooperative, association, or other collective group or organization

1 to identify goods or services and distinguish them from those of others,
2 or to indicate membership in the collective group or organization;

3 (5) "mark" means a word, name, symbol, device, or any
4 combination of a word, name, symbol, or device in any form or arrange-
5 ment;

6 (6) "person" means an individual, corporation, business
7 trust, estate, trust, partnership, unincorporated association, two or
8 more of any of them having a joint or common interest, or any other
9 legal or commercial entity;

10 (7) "service mark" means a mark used by a person to identify
11 services and to distinguish them from the services of others;

12 (8) "trademark" means a mark used by a person to identify
13 goods and to distinguish them from the goods of others;

14 (9) "trade name" means a word, name, symbol, device, or any
15 combination of a word, name, symbol or device in any form or arrange-
16 ment used by a person to identify his business, vocation, or occupation,
17 and to distinguish it from the business, vocation, or occupation of
18 others;

19 (10) "property" means any real or personal property, or both
20 real and personal property, intangible property, or services;

21 (11) "sale" means any sale, offer for sale, or attempt to
22 sell any property for any consideration.
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