

Introduced: 1/15/70
Referred: Commerce, State
Affairs and Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 446

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 the protection of consumers
7 against fraud and various deceptive sales practices;
8 and providing for an effective date."

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

10 * Section 1. AS 45.50.470 - 510 are repealed and re-enacted to read:

11 ARTICLE 4. UNFAIR TRADE PRACTICES AND CONSUMER
12 PROTECTION LAW.

13 Sec. 45.50.470. UNLAWFUL ACTS AND PRACTICES. It is unlawful
14 for a person to

15 (1) fraudulently convey or transfer goods or services by
16 representing them to be those of another;

17 (2) represent or designate goods or services as having a
18 particular geographic origin where such goods or services do not have
19 such geographic origin;

20 (3) cause a likelihood of confusion or misunderstanding
21 as to the source, sponsorship, or approval of another person's
22 affiliation, connection, or association with or certification of
23 any goods or services;

24 (4) represent that goods or services have sponsorship,
25 approval, characteristics, ingredients, uses, benefits, or quantities
26 that they do not have or that a person has a sponsorship, approval,
27 status, affiliation, or connection that he does not have;

28 (5) represent that goods are original or new if they are
29 deteriorated, altered, reconditioned, reclaimed, used, secondhand,

1 or seconds;

2 (6) represent that goods or services are of a particular
3 standard, quality, or grade, or that goods are of a particular style
4 or model, if they are of another;

5 (7) disparage the goods, services, or business of another
6 by false or misleading representation of fact;

7 (8) advertise goods or services with intent not to sell
8 them as advertised;

9 (9) advertise goods or services with intent not to supply
10 reasonable expectable public demand, unless the advertisement dis-
11 closes a limitation of quantity;

12 (10) make false or misleading statements of fact concerning
13 the reasons for, existence of, or amounts of price reductions;

14 (11) engage in any other conduct creating a likelihood of
15 confusion or of misunderstanding and which misleads, deceives, or
16 damages any person in connection with the sale or advertisement of
17 any goods or services;

18 (12) use or employ any deception, fraud, false pretense,
19 false promise, misrepresentation, or knowingly conceal, suppress, or
20 omit any material fact with intent that others rely upon such
21 concealment, suppression or omission in connection with the sale or
22 advertisement of any goods or services whether or not any person
23 has in fact been misled, deceived or damaged.

24 Sec. 45.50.480. EXEMPTIONS. Nothing in this chapter applies to

25 (1) an act or transaction permitted under laws administered
26 by the state, by any regulatory board or commission, or officer acting
27 under statutory authority of the state or of the United States;

28 (2) an act done by the publisher, owner, agent, or
29 employee of a newspaper, periodical or radio or television station

1 in the publication or dissemination of an advertisement, when the
2 owner, agent or employee did not have knowledge of the false, mis-
3 leading or deceptive character of the advertisement, did not prepare
4 the advertisement, and did not have a direct financial interest in
5 the sale or distribution of the advertised product or service.

6 Sec. 45.50.490. REGULATIONS. The attorney general may make
7 regulations interpreting the provisions of sec. 470 of this chapter.

8 Sec. 45.50.500. RESTRAINING PROHIBITED ACTS. (a) Whenever
9 the attorney general has reason to believe that a person is using,
10 has used, or is about to use any method, act, or practice declared
11 by sec. 10 of this chapter to be unlawful, and that proceedings would
12 be in the public interest, he may bring an action in the name of the
13 state against such person to restrain by temporary or permanent
14 injunction the use of such method, act or practice. The action may
15 be brought in the superior court of the judicial district in which
16 such person resides or has his principal place of business, or,
17 with the consent of the parties, may be brought in the judicial
18 district in which the state capitol is located.

19 (b) The superior court is authorized to issue temporary or
20 permanent injunctions to restrain and prevent violations of this
21 chapter, and such injunctions shall be issued without bond.

22 Sec. 45.50.510. ASSURANCES OF VOLUNTARY COMPLIANCE. In the
23 administration of this chapter, the attorney general may accept an
24 assurance of voluntary compliance with respect to any method, act
25 or practice deemed to be violative of this chapter from any person
26 who has engaged or was about to engage in such method, act or
27 practice. Any such assurance shall be in writing and be filed with
28 and subject to the approval of the superior court of the judicial
29 district in which the alleged violator resides or has his principal

1 place of business, or in which the state capitol is located. Such
2 assurance of voluntary compliance shall not be considered an
3 admission of violation for any purpose. Matters thus closed may
4 at any time be reopened by the attorney general for further proceedings
5 in the public interest, pursuant to sec. 30.

6 Sec. 45.50.520'. ADDITIONAL PUBLIC RELIEF. The court may make
7 such additional orders or judgments as may be necessary to restore
8 to any person in interest any money or property, real or personal,
9 which may have been acquired by means of any act or practice declared
10 to be unlawful by sec. 10 of this chapter. Such orders or judgments
11 may include either or both the appointment of a receiver or the
12 revocation of a license, certificate or permit authorizing that
13 person to engage in business in this state.

14 Sec. 45.50.530. POWERS OF RECEIVER. When a receiver is
15 appointed by the court pursuant to this chapter, he shall have the
16 power to sue for, collect, receive and take into possession all the
17 goods and chattels, rights and credits, moneys and choses in action,
18 bills, notes and property of every description, derived by means of
19 any practice declared to be illegal and prohibited by this chapter,
20 including property with which such property has been mingled if it
21 cannot be identified in kind because of such commingling, and to
22 sell, convey, and assign the same and hold and dispose of the proceeds
23 thereof under the direction of the court. A person who has suffered
24 damages as a result of a practice declared unlawful by sec. 470 of
25 this chapter and submits proof to the satisfaction of the court that
26 he has in fact been damaged, may participate with general creditors
27 in the distribution of the assets to the extent he has sustained
28 out-of-pocket losses. In the case of a partnership or business
29 entity, the receiver shall settle the estate and distribute the assets

1 under the direction of the court. The court shall have jurisdiction
2 of all questions arising in such proceedings and may make such orders
3 and judgments therein as may be required.

4 Sec. 45.50.540. PRIVATE AND CLASS ACTIONS. (a) A person who
5 purchases or leases goods or services primarily for personal, family
6 or household purposes and thereby suffers any ascertainable loss of
7 money or property, real or personal, as a result of the use or
8 employment by another person of a method, act or practice declared
9 unlawful by sec. 10 of this chapter, may bring a civil action in the
10 judicial district in which the seller or lessor resides or has his
11 principal place of business or is doing business, to recover actual
12 damages. The court may, in its discretion, award up to three times
13 the actual damages sustained and may provide such equitable relief
14 as it deems necessary or proper.

15 (b) A person entitled to bring an action under this section
16 may, if the unlawful method, act or practice has caused similar
17 injury to numerous other persons similarly situated and if they
18 adequately represent such similarly situated persons, bring an action
19 on behalf of themselves and other similarly injured and situated
20 persons to recover damages as provided in (a) of this section. In
21 an action brought under this section, the court may in its discretion
22 order, in addition to damages, injunctive or other equitable relief.

23 (c) Upon commencement of an action brought under this section
24 the clerk of court shall mail a copy of the complaint or other
25 initial pleading to the attorney general and, upon entry of any
26 judgment or decree in the action, shall mail a copy of such judgment
27 or decree to the attorney general.

28 (d) In an action brought by a person under this section, the
29 court may award, in addition to the relief provided in this section,

1 reasonable attorney's fees and costs.

2 (e) A permanent injunction or final judgment against a person
3 against whom an action was instigated under sec. 30 of this chapter
4 shall be prima facie evidence that such person used or employed a
5 method, act or practice declared unlawful by sec. 10 of this chapter
6 in an action brought under this section.

7 Sec. 45.50.550. NON-NEGOTIABILITY OF CONSUMER PAPER. (a) If
8 a contract for sale or lease of consumer goods or services on credit
9 entered into between a retail seller and a retail buyer requires or
10 involves the execution of a promissory note or instrument or other
11 evidence of indebtedness of the buyer, such note, instrument or
12 evidence of indebtedness shall have printed on its face the words
13 "consumer paper," and such note, instrument or evidence of indebted-
14 ness with the words "consumer paper" printed thereon is not a
15 negotiable instrument within the meaning of Uniform Commercial Code
16 (AS 45.05).

17 (b) Notwithstanding the absence of such notice on a note,
18 instrument or evidence of indebtedness arising out of a consumer
19 credit sale or consumer lease as described in this section, an
20 assignee of the rights of the seller or lessor is subject to all
21 claims and defenses of the buyer or lessee against the seller or
22 lessor arising out of the sale or lease. An agreement to the
23 contrary is of no force or effect in limiting the rights of a consumer.

24 (c) The assignee's liability under this section may not exceed
25 the amount owing to the assignee at the time the claim or defense is
26 asserted against the assignee.

27 Sec. 45.50.560. PENALTIES. (a) A person who violates the
28 terms of an injunction or restraining order issued under sec. 500
29 of this chapter shall forfeit and pay to the state a civil penalty

1 of not more than \$25,000 per violation. For the purposes of this
2 section, the superior court of a judicial district issuing an
3 injunction shall retain jurisdiction, and the cause shall be continued,
4 and in such cases the attorney general acting in the name of the state
5 may petition for recovery of such penalties.

6 (b) In an action brought under sec. 500 of this chapter, if the
7 court finds that a person is using or has used a method, act or
8 practice declared unlawful by sec. 10 of this chapter, the attorney
9 general, upon petition to the court, may recover, on behalf of the
10 state, a civil penalty of not exceeding \$5,000 per violation.

11 (c) A person who engages in a course of conduct declared un-
12 lawful by sec. 500 of this chapter shall, upon conviction, be fined
13 not more than \$10,000, imprisoned for not more than one year, or
14 both, but nothing in this subsection shall limit any other provision
15 of this chapter.

16 Sec. 45.50.570. FORFEITURE OF CORPORATE FRANCHISE. Upon
17 petition by the attorney general, the court may, in its discretion,
18 order the dissolution or suspension or forfeiture of franchise of
19 any corporation which violates the terms of an injunction issued
20 under sec. 500 of this chapter.

21 Sec. 45.50.580. DEFINITIONS. In secs. 470 - 570 of this
22 chapter

23 (1) "trade" and "commerce" mean the advertising, offering
24 for sale, sale, or distribution of any service and any property,
25 tangible or intangible, real, personal or mixed, and any other
26 article, commodity, or thing of value wherever situate, and includes
27 any trade or commerce directly or indirectly affecting the people of
28 this state;

29 (2) "documentary material" means the original or a copy of

1 a book, record, report, memorandum, paper, communication, tabulation,
2 map, chart, photograph, mechanical transcription, or other tangible
3 document or recording, wherever situate;

4 (3) "examination" of documentary material includes the
5 inspection, study, or copying of any such material, and the taking
6 of testimony under oath or acknowledgment in respect of any such
7 documentary material or copy thereof;

8 (4) "seconds" means manufactured items having flaws or
9 consisting of a standard quantity or quality less than the
10 manufacturer's quality standard;

11 (5) "advertising" includes the attempt directly or
12 indirectly by publication, dissemination, solicitation, endorsement
13 or circulation, display in any manner, including solicitation or
14 dissemination by mail, telephone or door to door contacts, in any
15 other way induce directly or indirectly any person to enter or not
16 enter into any obligation or acquire any title or interest in any
17 merchandise or to increase the consumption thereof or to make any
18 loan.

19 * Sec. 2. This Act takes effect on the day after its passage and
20 approval or on the day it becomes law without approval.
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