

Introduced: 2/20/69
Referred: Commerce and
Judiciary

1 IN THE SENATE

BY RADER

2 SENATE BILL NO. 181

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to price and service discrimination."

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

8 * Section 1. AS 45.50 is amended by adding new sections to read:

9 ARTICLE 5. PRICE AND SERVICE DISCRIMINATION.

10 Sec. 45.50.550. PRICE AND SELECTION OF CUSTOMERS. (a) No person
11 engaged in commerce may, in the course of that commerce, either
12 directly or indirectly, discriminate in price between different pur-
13 chasers of commodities of like grade and quality

14 (1) where a purchase involved in the discrimination is in
15 commerce;

16 (2) where the commodities are sold for use, consumption or
17 resale within the state; and

18 (3) where the effect of the discrimination may be to sub-
19 stantially lessen competition or tend to create a monopoly in any line
20 of commerce or to injure, destroy or prevent competition with a person
21 who either grants or knowingly receives the benefit of the discrimina-
22 tion, or with customers of either of them.

23 (b) This section does not prohibit differentials which only
24 make allowance for differences in the cost of manufacture, sale or
25 delivery resulting from the different methods or quantities in which
26 the commodities are sold or delivered. However, the Public Service
27 Commission may, after investigation and a hearing open to all inter-
28 ested parties, establish and revise quantity limits as to particular
29 commodities or classes of commodities when it finds that available

1 purchasers in greater quantities are so few as to render differentials
2 based on their scarcity unjustly discriminatory or conducive of
3 monopoly; differentials based on differences in quantity greater than
4 those established by the commission are not permitted.

5 (c) This section does not prohibit a person engaged in selling
6 goods, wares, or merchandise in commerce from selecting his own cus-
7 tomers in bona fide transactions which are not in restraint of trade.
8 This section does not prohibit price changes from time to time in re-
9 sponse to changing conditions affecting the market for or the market-
10 ability of the goods, wares or merchandise concerned, such as but not
11 limited to actual or imminent deterioration of perishable goods,
12 obsolescence of seasonal goods, distress sales under court process, or
13 sales in good faith in discontinuance of business in the goods con-
14 cerned.

15 Sec. 45.50.560. BURDEN OF REBUTTING PRIMA-FACIE CASE OF DIS-
16 CRIMINATION. Upon proof being made, at a hearing upon a charge of a
17 violation of sec. 550 of this chapter, that there has been discrimina-
18 tion in price or services or facilities furnished, the burden of re-
19 butting the prima-facie case, by showing justification, is upon the
20 person charged. In addition to cost and changing conditions affording
21 bases for justification, a seller may rebut the prima-facie case by
22 showing that his lower price or the furnishing of services or facili-
23 ties to a purchaser was made in good faith to meet an equally low
24 price of a competitor or the services or facilities furnished by a
25 competitor. Unless justification is affirmatively shown, the commis-
26 sion is authorized to issue an order terminating the discrimination.

27 Sec. 45.50.570. PAYMENT OR ACCEPTANCE OF COMMISSION, BROKERAGE
28 OR OTHER COMPENSATION. No person engaged in commerce may, in the
29 course of that commerce, give or receive anything of value as a

1 commission, brokerage, allowance, discount or other compensation,
2 except for services rendered in connection with the sale or purchase
3 of goods, wares, or merchandise either to the other party to the
4 transaction or to an agent or other intermediary in the transaction
5 where the intermediary is acting on behalf of, or is subject to the
6 direct or indirect control of, any party to the transaction other
7 than the person by whom that compensation is given.

8 Sec. 45.50.580. PAYMENT FOR SERVICES OR FACILITIES FOR PROCESSING
9 OR SALE. No person engaged in commerce may, in the course of that
10 commerce, pay anything of value for the benefit of a customer of his
11 in consideration for services or facilities furnished by or through
12 the customer in connection with the processing, handling, sale, or
13 offering for sale of any products or commodities manufactured, sold,
14 or offered for sale by the person, unless the consideration is available
15 on proportionately equal terms to all other customers competing in the
16 distribution of those products or commodities.

17 Sec. 45.50.590. FURNISHING SERVICES OR FACILITIES FOR PROCESSING,
18 HANDLING, ETC. No person may discriminate in favor of one purchaser
19 over another purchaser of a commodity bought for resale, with or
20 without processing, by furnishing or contributing to the furnishing
21 of services or facilities connected with the processing, handling,
22 sale, or offering for sale of the commodity so purchased upon terms not
23 accorded to all purchasers on proportionately equal terms.

24 Sec. 45.50.600. INDUCING OR RECEIVING DISCRIMINATORY PRICE. No
25 person engaged in commerce may, in the course of that commerce,
26 knowingly induce or receive a discrimination in price which is pro-
27 hibited by secs. 550 - 630 of this chapter.

28 Sec. 45.50.610. DISCRIMINATION IN REBATES, DISCOUNTS OR ADVER-
29 TISING SERVICE CHARGES: UNDERSELLING. (a) No person engaged in

1 commerce may, in the course of that commerce

2 (1) be a party to or assist in a sale contract or trans-
3 action which, to his knowledge, discriminates against competitors of
4 the purchaser by giving a discount, rebate, allowance, or advertising
5 service charge to the purchaser beyond that available at the time of
6 the transaction to the competitors in respect of a sale of goods of
7 like grade, quality, and quantity;

8 (2) sell goods in any part of the state at prices lower
9 than those charged by him elsewhere in the state, for the purpose of
10 destroying competition; or

11 (3) sell goods at unreasonably low prices for the purpose
12 of destroying competition.

13 (b) A person who violates a provision of this section is,
14 upon conviction, punishable by a fine of not more than \$5,000, or by
15 imprisonment for not more than one year, or by both.

16 Sec. 45.50.620. COOPERATIVE ASSOCIATIONS. Nothing in secs. 550 -
17 630 of this chapter prevents a cooperative association from returning
18 to its members, producers, or consumers the whole, or any part of,
19 the net earnings or surplus resulting from its trading operations, in
20 proportion to their purchases or sales from, to, or through the
21 association.

22 Sec. 45.50.630. EXEMPTION OF NONPROFIT INSTITUTIONS. Nothing in
23 secs. 550 - 630 of this chapter applies to purchases of supplies for
24 their own use by schools, colleges, universities, public libraries,
25 churches, hospitals, and charitable institutions not operated for
26 profit.
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