

1 IN THE SENATE

BY MILLER

2 SENATE BILL NO. 352

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. The following laws are repealed: AS 45.50.470 - 45.50.-
9 510.

10 * Sec. 2. AS 45.50 is amended by adding new sections to read:

11 ARTICLE 4. ALASKA CONSUMER PROTECTION ACT.

12 Sec. 45.50.471. DECEPTIVE TRADE PRACTICES PROHIBITED. No person
13 may engage in this state in a trade practice which is defined in this
14 chapter as, or determined under this chapter to be, a deceptive trade
15 practice.

16 Sec. 45.50.481. DECEPTIVE TRADE PRACTICES DEFINED. (a) A person
17 engages in a deceptive trade practice when in the course of his
18 business, vocation or occupation, he

19 (1) falsely passes off property or a service as that of
20 another;

21 (2) knowingly makes a false representation as to the source,
22 sponsorship, approval or certification of property or services;

23 (3) knowingly makes a false representation as to his affil-
24 iation, connection or association with, or certification by another;

25 (4) uses deceptive representations or designations of
26 geographic origin in connection with property or services;

27 (5) knowingly makes a false representation as to the
28 characteristics, ingredients, uses, benefits, alterations or quantities
29 of property or services, or a false representation as to the sponsor-

1 ship, approval, status, affiliation or connection of a person with
2 the property or services;

3 (6) represents that a property is original or new if he
4 knows or should know that it is deteriorated, altered, reconditioned,
5 reclaimed, used or secondhand;

6 (7) represents that a property or service is of a par-
7 ticular standard, quality or grade, or that a property is of a
8 particular style or model, if he knows or should know that it is of
9 another;

10 (8) disparages the property, services or business of
11 another by false or misleading representation of fact;

12 (9) advertises property or services with intent not to
13 sell the property or services as advertised;

14 (10) advertises property or services with the intent not
15 to supply reasonably expectable public demand, unless the advertisement
16 discloses a limitation of quantity;

17 (11) advertises under the guise of obtaining sales per-
18 sonnel when in fact the purpose is to first sell property or services
19 to the sales personnel applicant; or

20 (12) makes false or misleading statements of fact con-
21 cerning the price of property or services, or the reasons for,
22 existence of, or amounts of price reductions.

23 (b) Evidence that a person has engaged in a deceptive trade
24 practice shall be prima facie evidence of intent to injure competition
25 and to destroy or substantially lessen competition.

26 (c) The deceptive trade practices set out in this section are
27 in addition to and do not limit the types of unfair trade practices
28 actionable at common law or under the laws of this state.

29 Sec. 45.50.491. EXCEPTIONS TO THE PROHIBITED TRADE PRACTICES.

1 The provisions of secs. 471 - 570 of this chapter do not apply
2 to

3 (1) actions or transactions permitted under laws admin-
4 istered by a regulatory body or officer acting under the laws of this
5 state or the United States; or

6 (2) acts by the publisher, owner, agent, or employee of a
7 newspaper, periodical, radio or television station, or other advertis-
8 ing medium, in the publication or dissemination of an advertisement,
9 when the publisher, owner, agent or employee has no knowledge of the
10 false, misleading, or deceptive character of the advertisement, and
11 has no direct financial interest in the sale or distribution of the
12 advertised product or service.

13 Sec. 45.50.501. POWERS OF ATTORNEY GENERAL. (a) If the
14 attorney general has cause to believe that a person is engaging in a
15 deceptive trade practice under sec. 481 of this chapter, he may

16 (1) request the person to file a statement or report in
17 writing, under oath, on forms prescribed by him, setting out all facts
18 and circumstances concerning the sale or advertisement of property by
19 the person, and any other information considered necessary;

20 (2) examine under oath any person in connection with the
21 sale or advertisement of any property;

22 (3) examine any property or sample of the property, record,
23 book, document, account or paper that he considers necessary;

24 (4) make true copies of any record, book, document, account,
25 or paper examined under (3) of this subsection, which may be offered
26 in evidence in place of the originals in actions brought under secs.
27 511 and 520 of this chapter; and

28 (5) under an order of the superior court, impound any sample
29 of property which is material to his investigation and retain the

1 sample until all proceedings undertaken under secs. 471 - 570 of this
2 chapter are completed; however, an order may not be issued under this
3 paragraph unless the person under investigation is given full oppor-
4 tunity to be heard and unless the attorney general has proved to the
5 satisfaction of the court that the lawful business activities of the
6 person to whom the order is directed will not be impaired by its is-
7 suance.

8 (b) The attorney general, in addition to other powers conferred
9 on him by this section, may issue subpoenas to require the attendance
10 of witnesses or the production of documents, administer oaths, conduct
11 hearings to aid an investigation or inquiry, and promulgate regulations
12 necessary to administer the provisions of secs. 471 - 570 of this
13 chapter. Service of an order or subpoena shall be made in the same
14 manner as a summons in a civil action in the superior court.

15 Sec. 45.50.511. REMEDIES. (a) If a person fails to cooperate
16 with an investigation under sec. 501 of this chapter or fails to obey
17 a subpoena issued under sec. 501 of this chapter, the attorney general
18 may apply to the superior court for an appropriate order to effect the
19 purposes of secs. 471 - 570 of this chapter. The application shall
20 state that there are reasonable grounds to believe that the order ap-
21 plied for is necessary to terminate or prevent a deceptive trade
22 practice.

23 (b) If the court is satisfied that there are reasonable grounds
24 to issue an order, it may

25 (1) grant injunctive relief restraining the sale or adver-
26 tisement of the property used in the deceptive trade practice;

27 (2) require the attendance of, or the production of docu-
28 ments by, any person;

29 (3) grant any other relief that may be necessary to obtain

1 the compliance of the person.

2 Sec. 45.50.520. RESTRAINING ORDERS AND INJUNCTIONS. If the at-
3 torney general has cause to believe that a person is engaging in a
4 deceptive trade practice under sec. 481 of this chapter, he may apply
5 for and obtain, in an action in the superior court, a temporary re-
6 straining order or injunction, or both, prohibiting the person from
7 continuing or engaging in a deceptive trade practice. The court may
8 make any order or judgment necessary to prevent the use or employment
9 by the person of a deceptive trade practice, or necessary to restore
10 to any other person money or property which may have been acquired by
11 means of a deceptive trade practice.

12 Sec. 45.50.530. VOLUNTARY COMPLIANCE. (a) When the attorney
13 general has authority to institute a civil action or other proceeding
14 under secs. 471 - 570 of this chapter, in lieu of or as part of that
15 action or proceeding, he may accept an assurance of discontinuance of
16 a deceptive trade practice under sec. 481 of this chapter. The as-
17 surance may include a stipulation for the voluntary payment by the
18 alleged violator of the costs of the investigation and actions or pro-
19 ceedings by the attorney general, and any amount necessary to restore
20 to a person the money or property which may have been acquired by the
21 alleged violator by means of the deceptive trade practice. An assur-
22 ance of discontinuance and a stipulation accepted by the attorney
23 general and filed with the superior court as a part of an action or
24 proceeding under secs. 471 - 570 of this chapter shall be confidential
25 to the parties involved, the court and its employees.

26 (b) Upon final judgment by the court that (1) a temporary re-
27 straining order or injunction obtained under sec. 520 of this chapter
28 has been violated; (2) an assurance of discontinuance accepted under
29 (a) of this section has been violated; (3) a person has engaged in the

1 same deceptive trade practice as had been previously enjoined by a
2 final permanent injunction obtained under sec. 520 of this chapter; or
3 (4) a person has engaged in the same deceptive trade practice which he
4 had previously agreed to discontinue by giving an assurance of dis-
5 continuance under (a) of this section, the assurance of discontinuance
6 or stipulation shall be considered a public record and be open to
7 inspection by any person.

8 (c) Proof by a preponderance of evidence of a violation of an
9 assurance of discontinuance shall constitute prima facie evidence of a
10 deceptive trade practice for the purposes of any civil action or pro-
11 ceeding brought by the attorney general, whether in a new action or on
12 a subsequent motion or petition in a pending action or proceeding.

13 Sec. 45.50.540. CIVIL AND CRIMINAL PENALTIES. (a) A person who
14 violates a court order or injunction issued under secs. 471 - 570 of
15 this chapter shall forfeit and pay to the state a penalty of not more
16 than \$10,000. For the purposes of this section, the court issuing the
17 order or injunction shall retain jurisdiction and the cause shall be
18 continued. When a violation occurs, the attorney general may petition
19 the court for the recovery of the penalty. A penalty under this sub-
20 section is in addition to any other penalty or remedy available for the
21 enforcement of the provisions of secs. 471 - 570 of this chapter and of
22 any court order or injunction.

23 (b) A person who engages in a deceptive trade practice under sec.
24 481 of this chapter is guilty of a misdemeanor and upon conviction
25 is punishable by a fine of not more than \$1,000, or by imprisonment
26 for not more than one year, or by both.

27 Sec. 45.50.550. PRIVATE AND CLASS ACTIONS. (a) The provisions
28 of secs. 471 - 570 of this chapter are available to any person in a
29 civil action for a claim against any person who has acquired money or

1 property by means of a deceptive trade practice under sec. 481 of this
2 chapter. An injured person may recover actual damages or \$200, which-
3 ever is greater. The court may, in its discretion, award punitive
4 damages and may provide any equitable relief it considers necessary.

5 (b) A person entitled to bring an action under (a) of this sec-
6 tion may, if the unlawful method, act or practice has caused similar
7 injury to numerous persons similarly situated and if the person ade-
8 quately represents the similarly situated persons, bring a class action
9 and recover damages as provided in (a) of this section.

10 Sec. 45.50.560. DEFINITIONS. In secs. 471 - 570 of this chapter,
11 unless the context otherwise requires

12 (1) "advertisement" includes the attempt by publication,
13 dissemination, solicitation, or circulation, either visual, oral or
14 written, to induce directly or indirectly a person to enter into an
15 obligation or to acquire title or interest in property;

16 (2) "property" means real property, personal property, in-
17 tangible property, mixed property, or any other article, commodity or
18 thing of value, or services;

19 (3) "sale" means sale of, offer to sell, or attempt to sell
20 property for consideration;

21 (4) "trade" means the advertising, sale, offering for sale,
22 attempted sale, or distribution of services or property, tangible, in-
23 tangible, real, personal or mixed, or any other article, commodity, or
24 thing of value wherever situated, and includes any trade or commerce
25 directly or indirectly affecting the people of this state.

26 Sec. 45.50.570. SHORT TITLE. Secs. 471 - 570 of this chapter
27 may be cited as the Alaska Consumer Protection Act.
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