

Original sponsor: Miller

Offered: 2/9/70
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR 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 The following laws are repealed: AS 45.50.470 - 45.50.510.

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

10 ARTICLE 4. ALASKA CONSUMER PROTECTION ACT.

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

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

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

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

22 (3) knowingly makes a false representation as to his affili-
23 ation, connection or association with, or certification by another;

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

26 (5) knowingly makes a false representation as to the
27 characteristics, ingredients, uses, benefits, alteration or quantities
28 of property or services, or a false representation as to the sponsor-
29 ship, approval, status, affiliation or connection of a person with

1 the property or services;

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

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

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

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

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

15 (11) advertises under the guise of obtaining sales personnel
16 when in fact the purpose is to first sell property or services to the
17 sales personnel applicant; or

18 (12) makes false or misleading statements of fact concerning
19 the price of property or services, or the reasons for, existence of,
20 or amounts of price reductions.

21 (b) The deceptive trade practices set out in this section are
22 in addition to and do not limit the types of unfair trade practices
23 actionable at common law or under the laws of this state.

24 Sec. 45.50.491. EXCEPTIONS TO THE PROHIBITED TRADE PRACTICES.
25 The provisions of secs. 471 -570 of this chapter do not apply to

26 (1) actions or transactions permitted under laws administered
27 by a regulatory body or officer acting under the laws of this state or
28 the United States; or

29 (2) acts by the publisher, owner, agent, or employee of a

1 newspaper, periodical, radio or television station, or other advertising
2 medium, in the publication or dissemination of an advertisement, when the
3 publisher, owner, agent or employee has no knowledge of the false, mis-
4 leading, or deceptive character of the advertisement, and has no direct
5 financial interest in the sale or distribution of the advertised product
6 or service.

7 Sec. 45.50.501. RESTRAINING ORDERS AND INJUNCTIONS. If the attorney
8 general has cause to believe that a person is engaging in a deceptive
9 trade practice under sec. 481 of this chapter, he may apply for and
10 obtain, in an action in the superior court, a temporary restraining
11 order or injunction, or both, prohibiting the person from continuing or
12 engaging in a deceptive trade practice. The court may make any order
13 or judgment necessary to prevent the use or employment by the person of
14 a deceptive trade practice, or necessary to restore to any other person
15 money or property which may have been acquired by means of a deceptive
16 trade practice.

17 Sec. 45.50.511. VOLUNTARY COMPLIANCE. (a) When the attorney
18 general has authority to institute a civil action or other proceeding
19 under secs. 471 - 570 of this chapter, in lieu of or as part of that
20 action or proceeding, he may accept an assurance of discontinuance of
21 a deceptive trade practice under sec. 481 of this chapter. The assur-
22 ance may include a stipulation for the voluntary payment by the
23 alleged violator of the costs of the investigation and actions or pro-
24 ceedings by the attorney general, and any amount necessary to restore
25 to a person the money or property which may have been acquired by the
26 alleged violator by means of the deceptive trade practice. An assur-
27 ance of discontinuance and a stipulation accepted by the attorney
28 general and filed with the superior court as a part of an action or
29 proceeding under secs. 471 - 570 of this chapter shall be confidential

1 to the parties involved, the court and its employees.

2 (b) Upon final judgment by the court that

3 (1) a temporary restraining order or injunction obtained
4 under sec. 501 of this chapter has been violated;

5 (2) an assurance of discontinuance accepted under (a) of
6 this section has been violated;

7 (3) a person has engaged in the same deceptive trade
8 practice as had been previously enjoined by a final permanent injunc-
9 tion obtained under sec. 501 of this chapter; or

10 (4) a person has engaged in the same deceptive trade prac-
11 tice which he had previously agreed to discontinue by giving an as-
12 surance of discontinuance under (a) of this section, the assurance of
13 discontinuance or stipulation shall be considered a public record and be
14 open to inspection by any person.

15 Sec. 45.50.520. CIVIL PENALTIES. A person who violates a court or-
16 der or injunction issued under secs. 471 - 570 of this chapter shall for-
17 feit and pay to the state a penalty of not more than \$10,000. For the
18 purposes of this section, the court issuing the order or injunction shall
19 retain jurisdiction and the cause shall be continued. When a violation
20 occurs, the attorney general may petition the court for the recovery of
21 the penalty. A penalty under this subsection is in addition to any other
22 penalty or remedy available for the enforcement of the provisions of
23 secs. 471 - 570 of this chapter and of any court order or injunction.

24 Sec. 45.50.530. PRIVATE AND CLASS ACTIONS. (a) The provisions
25 of secs. 471 - 570 of this chapter are available to any person in a
26 civil action for a claim against any person who has acquired money or
27 property by means of a deceptive trade practice under sec. 481 of this
28 chapter. An injured person may recover actual damages or \$200, which-
29 ever is greater. The court may, in its discretion, award additional

1 damages and may provide any equitable relief it considers necessary.

2 (b) A person entitled to bring an action under (a) of this sec-
3 tion may, if the unlawful method, act or practice has caused similar
4 injury to numerous persons similarly situated and if the person ade-
5 quately represents the similarly situated persons, bring a class action
6 and recover actual damages. The court may, in its discretion, award
7 additional damages and may provide any equitable relief it considers
8 necessary.

9 (c) In an action brought by a person under this section the
10 court may award, in addition to the relief provided in this section,
11 reasonable attorney's fees and costs.

12 (d) A permanent injunction or final judgment against a person
13 against whom an action was instigated under sec. 501 of this chapter
14 shall be prima facie evidence that the person engaged in a deceptive
15 trade practice under sec. 481 of this chapter.

16 Sec. 45.50.540. LIABILITY FOR ACTIONS OF EMPLOYEE. The provisions
17 of this chapter apply to a person whose employees engage in deceptive
18 trade practices under sec. 481 of this chapter.

19 Sec. 45.50.550. NONNEGOTIABILITY OF CONSUMER PAPER. (a) If a
20 contract for sale or lease of consumer goods or services on credit
21 entered into between a retail seller and a retail buyer requires or
22 involves the execution of a promissory note or instrument or other
23 evidence of indebtedness of the buyer, the note, instrument or evidence
24 of indebtedness shall have printed on its face the words "consumer
25 paper," and the note, instrument or evidence of indebtedness with the
26 words "consumer paper" printed on it is not a negotiable instrument
27 within the meaning of Uniform Commercial Code (AS 45.05).

28 (b) Notwithstanding the absence of a notice on a note, instrument
29 or evidence of indebtedness arising out of a consumer credit sale or

1 consumer lease as described in this section, an assignee of the rights
2 of the seller or lessor is subject to all claims and defenses of the
3 buyer or lessee against the seller or lessor arising out of the sale
4 or lease. An agreement to the contrary is of no force or effect in
5 limiting the rights of a consumer.

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

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

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

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

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

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

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