

2nd  
Amendment

Original sponsor: Miller

Offered: 3/31/70  
Referred: Rules

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR 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; and providing  
7 for an effective date."

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

9 \* Section 1. AS 45.50.470 - 45.50.510 are repealed.

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

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

13 Sec. 45.50.471. UNLAWFUL ACTS AND PRACTICES. (a) 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 when the goods or services do not have  
19 that geographic origin;

20 (3) cause a likelihood of confusion or misunderstanding  
21 as to the source, sponsorship, or approval, or another person's affili-  
22 ation, connection, or association with or certification of goods or  
23 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 prominently  
11 discloses 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 buyer in connection with the sale or advertisement of  
17 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 the conceal-  
21 ment, suppression or omission in connection with the sale or advertise-  
22 ment of goods or services whether or not any person has in fact been  
23 misled, deceived or damaged;

24 (13) fail to deliver to the customer at the time of  
25 an installment sale of goods or services, a written order, con-  
26 tract, or receipt setting out the name and address of the seller  
27 and the name and address of the organization which he represents,  
28 and all of the terms and conditions of the sale, including  
29 a description of the goods or services, which shall be stated in

1 readable, clear, and unambiguous language,

2 (b) Evidence that a person has engaged in an unlawful act or  
3 practice under (a) of this section is prima facie evidence of intent  
4 to injure competitors and to destroy or substantially lessen competi-  
5 tion.

6 (c) The unlawful acts and practices listed in (a) of this section  
7 are in addition to and do not limit the types of unfair trade practices  
8 actionable at common law or under other statutes of this state.

9 Sec. 45.50.481. EXEMPTIONS. Nothing in secs. 471 - 631 of this  
10 chapter applies to

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

14 (2) an act done by the publisher, owner, agent, or  
15 employee of a newspaper, periodical or radio or television station in  
16 the publication or dissemination of an advertisement, when the owner,  
17 agent or employee did not have knowledge of the false, misleading or  
18 deceptive character of the advertisement, did not prepare the advertise-  
19 ment, and did not have a direct financial interest in the sale or distri-  
20 bution of the advertised product or service.

21 Sec. 45.50.491. REGULATIONS. The attorney general may adopt  
22 regulations interpreting and forms necessary for administering the provi-  
23 sions of secs. 471 - 631 of this chapter.

24 Sec. 45.50.501. POWERS OF ATTORNEY GENERAL. When the attorney  
25 general has reason to believe that a person has used or is using  
26 a n a c t or practice declared unlawful in sec. 471 of this chapter,  
27 he may

28 (1) request that person to file a statement or report in  
29 writing under oath or otherwise, on forms prescribed by him, as to all

1 facts and circumstances concerning the sale or advertisement of property  
2 by that person, and other data and information he considers necessary;

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

5 (3) examine any property or sample of it, record, book,  
6 document, account, or paper he considers necessary;

7 (4) make true copies, at the expense of the attorney general,  
8 of any record, book, document, account, or paper examined under (3)  
9 of this section, which copies may be offered into evidence in place of  
10 the originals in actions brought under this chapter; and

11 (5) under an order of a superior court, after a full oppor-  
12 tunity has been given to the accused to be heard and the attorney  
13 general has proved by clear and convincing evidence that the business  
14 activities of the person to whom the order will be directed will not be  
15 impaired, impound a sample of property which is material and retain it  
16 in his possession until completion of the proceedings undertaken under  
17 this chapter.

18 Sec. 45.50.511. SUBPOENAS; HEARING. (a) The attorney general,  
19 in addition to other powers conferred upon him by secs. 471 - 631 of  
20 this chapter, may issue subpoenas to require the attendance of witnesses  
21 or the production of documents, administer oaths, and conduct hearings  
22 in aid of an investigation or inquiry.

23 (b) Service of notice or subpoena may be made in the manner  
24 prescribed by law or the Alaska Rules of Civil Procedure.

25 Sec. 45.50.521. REMEDIES. If a person fails to cooperate with an  
26 investigation provided for in sec. 501 of this chapter, or fails to  
27 obey a subpoena provided for in sec. 511 of this chapter, the attorney  
28 general may apply to the superior court for an appropriate order to  
29 carry out the purposes of secs. 471 - 631 of this chapter. This

1 application shall state that there are reasonable grounds to believe  
2 that the order is necessary to terminate or prevent an act or practice  
3 declared unlawful in sec. 471 of this chapter. If the court is satis-  
4 fied with the reasonable grounds, it may in its order

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

7 (2) require the attendance of or the production of documents  
8 by the person; and

9 (3) grant other or further relief necessary to obtain  
10 compliance by the person.

11 Sec. 45.50.531. RESTRAINING PROHIBITED ACTS. (a) When the  
12 attorney general has reason to believe that a person has used, is  
13 using, or is about to use an act or practice declared unlawful in  
14 sec. 471 of this chapter, and that proceedings would be in the public  
15 interest, he may bring an action in the name of the state against the  
16 person to restrain by temporary or permanent injunction the use of the  
17 act or practice. The action may be brought in the superior court in  
18 the judicial district in which the person resides or has his principal  
19 place of business, or, with the consent of the parties, may be brought  
20 in the judicial district in which the state capitol is located.

21 (b) The superior court is authorized to issue temporary or perma-  
22 nent injunctions to restrain and prevent violations of secs. 471 - 631  
23 of this chapter, and these injunctions shall be issued without bond.

24 Sec. 45.50.541. ASSURANCES OF VOLUNTARY COMPLIANCE. In the  
25 administration of secs. 471 - 631 of this chapter, the attorney general  
26 may accept an assurance of voluntary compliance with respect to any  
27 act or practice considered to be violative of secs. 471 - 631 of  
28 this chapter from a person who has engaged or was about to engage  
29 in such an act or practice. Such an assurance shall be in

1 writing and shall be filed with and is subject to the approval of the  
2 superior court in the judicial district in which the alleged violator  
3 resides or has his principal place of business, or in which the state  
4 capitol is located. Such an assurance of voluntary compliance is not  
5 considered an admission of violation for any purpose. Matters closed  
6 in this way may at any time be reopened by the attorney general for  
7 further proceedings in the public interest, under sec. 531 of this  
8 chapter.

9 Sec. 45.50.551. WHEN INFORMATION AND EVIDENCE CONFIDENTIAL AND  
10 NONADMISSIBLE. (a) The attorney general may not release information  
11 or evidence, obtained by him under the provisions of secs. 471 - 631  
12 of this chapter, to a district attorney or his investigator or to a  
13 law enforcement officer for use in a criminal prosecution. The informa-  
14 tion or evidence produced by the attorney general under secs. 471 - 631  
15 of this chapter is not admissible in evidence in a criminal prosecution.  
16 The provisions of this subsection do not prevent the attorney general  
17 from disclosing to a district attorney or law enforcement officer the  
18 fact of the commission of a crime by a person, nor does it prevent a  
19 district attorney or his investigator or a law enforcement officer from  
20 independently producing or obtaining the same or similar facts, informa-  
21 tion, or evidence for use in a criminal prosecution.

22 (b) Subject to the provisions of sec. 531(a) of this chapter,  
23 the attorney general may not make public the name of a person alleged  
24 to have committed an act or practice declared unlawful in sec. 471 of  
25 this chapter during an investigation conducted by him under secs. 471 -  
26 631 of this chapter, nor are the records of investigations or intelli-  
27 gence information of the attorney general obtained under secs. 471 - 631  
28 of this chapter considered public records available for inspection by  
29 the general public. However, the attorney general is not prevented

1 from issuing public statements describing or warning of a course of  
2 conduct or a conspiracy which constitutes or will constitute an unlawful  
3 act or practice, whether on a local, state, regional, or national  
4 basis.

5 Sec. 45.50.561. ADDITIONAL PUBLIC RELIEF. The court may make  
6 additional orders or judgments that are necessary to restore to any  
7 person in interest any money or property, real or personal, which may  
8 have been acquired by means of an act or practice declared to be un-  
9 lawful by sec. 471 of this chapter. Such an order or judgment may  
10 include either or both the appointment of a receiver or the revocation  
11 of a license, certificate or permit authorizing that person to engage  
12 in business in this state.

13 Sec. 45.50.571. POWERS OF RECEIVER. When a receiver is appointed  
14 by the court under this chapter, he may sue for, collect, receive and  
15 take into possession all the goods and chattels, rights and credits,  
16 money and choses in action, bills, notes and property of every descrip-  
17 tion, derived by means of an act or practice declared unlawful by  
18 sec. 471 of this chapter, including property with which this property  
19 has been mingled if it cannot be identified in kind because of the com-  
20 mingling, and to sell, convey, and assign it and hold and dispose of the  
21 proceeds thereof under the direction of the court. A person who has  
22 suffered damages as a result of an act or practice declared unlawful  
23 by sec. 471 of this chapter and submits proof to the satisfaction of  
24 the court that he has in fact been damaged, may participate with  
25 general creditors in the distribution of the assets to the extent he  
26 has sustained out-of-pocket losses. In the case of a partnership or  
27 business entity, the receiver shall settle the estate and distribute  
28 the assets under the direction of the court. The court has jurisdiction  
29 of all questions arising in the proceedings and may make such orders

1 and judgments in them as may be required.

2 Sec. 45.50.581. PRIVATE AND CLASS ACTIONS. (a) A person who pur-  
3 chases or leases goods or services primarily for personal, family or  
4 household purposes and thereby suffers an ascertainable loss of money or  
5 property, real or personal, as a result of the use or employment by an-  
6 other person of an act or practice declared unlawful by sec. 471 of this  
7 chapter, may bring a civil action in the judicial district in which the  
8 seller or lessor resides or has his principal place of business or is  
9 doing business, to recover actual damages or \$200, whichever is greater.  
10 The court may, in its discretion in cases of wilful violation, award up  
11 to three times the actual damages sustained and in all cases may provide  
12 equitable relief it considers necessary or proper.

13 (b) A person entitled to bring an action under this section may,  
14 after investigation by and approval of the attorney general, if the un-  
15 lawful act or practice has caused similar injury to numerous other  
16 persons similarly situated and if he adequately represents the similarly  
17 situated persons, bring an action on behalf of himself and other simi-  
18 larly injured and situated persons to recover actual damages. A person  
19 planning to bring an action under this subsection shall first submit to  
20 the attorney general a copy of his proposed complaint, and he may not  
21 file the complaint in court without the attorney general's approval.  
22 In an action brought under this subsection, the court may in its discre-  
23 tion order, in addition to damages, injunctive or other equitable  
24 relief.

25 (c) Upon commencement of an action brought under this section the  
26 clerk of court shall mail a copy of the complaint or other initial plead-  
27 ing to the attorney general and, upon entry of an order or judgment in  
28 the action, shall mail a copy of the order or judgment to the attorney  
29 general.

1 (d) In an action brought by a person under this section, the court  
2 may award, in addition to the relief provided in this section, reason-  
3 able attorney fees and costs.

4 (e) A permanent injunction or final judgment against a person  
5 against whom an action was instigated under sec. 531 of this chapter is  
6 prima facie evidence in an action brought under this section that the  
7 person used or employed an act or practice declared unlawful by sec.  
8 471 of this chapter.

9 (f) No person may commence an action under this section more than  
10 two years after he discovers that his loss resulted from an act or  
11 practice declared unlawful by sec. 471 of this chapter.

12 Sec. 45.50.591. LIABILITY FOR ACTIONS OF EMPLOYEE. The provisions  
13 of secs. 471 - 631 of this chapter apply to a person whose employees  
14 engage in an act or practice declared unlawful in sec. 471 of this  
15 chapter.

16 Sec. 45.50.601. NON-NEGOTIABILITY OF CONSUMER PAPER. (a) If a  
17 contract for sale or lease of consumer goods or services on credit  
18 entered into between a retail seller and a retail buyer requires or  
19 involves the execution of a promissory note or instrument or other  
20 evidence of indebtedness of the buyer, the note, instrument or evidence  
21 of indebtedness shall have printed on its face the words "consumer  
22 paper," and the note, instrument or evidence of indebtedness with the  
23 words "consumer paper" printed on it is not a negotiable instrument  
24 within the meaning of Uniform Commercial Code (AS 45.05).

25 (b) Notwithstanding the absence of such a notice on a note,  
26 instrument or evidence of indebtedness arising out of a consumer credit  
27 sale or consumer lease as described in this section, an assignee of the  
28 rights of the seller or lessor is subject to all claims and defenses of  
29 the buyer or lessee against the seller or lessor arising out of the

1 sale or lease. An agreement to the contrary has no effect in limiting  
2 the rights of a consumer.

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

6 Sec. 45.50.611. PENALTIES. (a) A person who violates the terms  
7 of an injunction or restraining order issued under sec. 531 of this  
8 chapter shall forfeit and pay to the state a civil penalty of not more  
9 than \$25,000 per violation. For the purposes of this section, the  
10 superior court in a judicial district issuing an injunction retains  
11 jurisdiction, and the cause shall be continued, and in these cases the  
12 attorney general acting in the name of the state may petition for  
13 recovery of the penalties.

14 (b) In an action brought under sec. 531 of this chapter, if the  
15 court finds that a person is using or has used an act or practice  
16 declared unlawful by sec. 471 of this chapter, the attorney general,  
17 upon petition to the court, may recover, on behalf of the state, a  
18 civil penalty of not exceeding \$5,000 per violation.

19 (c) A person who engages in a course of conduct declared unlawful  
20 by sec. 471 of this chapter is, upon conviction, punishable by a fine  
21 of not more than \$10,000, or imprisonment for not more than one year,  
22 or by both, but this subsection does not limit any other provision of  
23 secs. 471 - 631 of this chapter.

24 Sec. 45.50.621. FORFEITURE OF CORPORATE FRANCHISE. Upon petition by  
25 the attorney general, the court may, in its discretion, order the dis-  
26 solution or suspension or forfeiture of franchise of any corporation  
27 which violates the terms of an injunction issued under sec. 531 of this  
28 chapter.

29 Sec. 45.50.631. DEFINITIONS. In secs. 471 - 631 of this chapter

1 (1) "advertising" includes the attempt directly or indirectly  
2 by publication, dissemination, solicitation, endorsement or circulation,  
3 display in any manner, including solicitation or dissemination by mail,  
4 telephone or door to door contacts, or in any other way, to induce  
5 directly or indirectly a person to enter or not enter into an obligation  
6 or acquire title or interest in any merchandise or to increase the  
7 consumption of it or to make a loan;

8 (2) "documentary material" means the original or a copy of  
9 a book, record, report, memorandum, paper, communication, tabulation,  
10 map, chart, photograph, mechanical transcription, or other tangible  
11 document or recording, wherever situate;

12 (3) "examination" of documentary material includes the  
13 inspection, study, or copying of the material, and the taking of  
14 testimony under oath or acknowledgment in respect of documentary  
15 material or copy of it;

16 (4) "seconds" means manufactured items having flaws or con-  
17 sisting of a standard quantity or quality less than the manufacturer's  
18 quality standard.

19 \* Sec. 3. This Act takes effect on the day after its passage and approval  
20 or on the day it becomes law without approval.  
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