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1 IN THE SENATE

BY THE FINANCE COMMITTEE

2 2d 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."

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

8 * Section 1. AS 45.50.470 - 45.50.510 are repealed.

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

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

12 Sec. 45.50.471. UNLAWFUL ACTS AND PRACTICES. (a) It is unlawful
13 for a person to

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

16 (2) falsely represent or designate the geographic origin
17 of any goods or services;

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

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

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

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

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

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

8 (9) advertise goods or services with intent not to supply
9 reasonable expectable public demand, unless the advertisement promi-
10 nently discloses a limitation of quantity;

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

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

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

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

1 (b) Evidence that a person has engaged in an unlawful act or prac-
2 tice under (a) of this section is prima facie evidence of intent to in-
3 jure competitors and to destroy or substantially lessen competition.

4 (c) The unlawful acts and practices listed in (a) of this section
5 are in addition to and do not limit the types of unlawful acts and prac-
6 tices actionable at common law or under other statutes of this state.

7 (d) When a person is tried under the criminal provisions of this
8 chapter for engaging in an unlawful act or practice under this chapter,
9 it must be shown that he acted knowingly and with intent.

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

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

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

22 Sec. 45.50.491. REGULATIONS. The attorney general, in accordance
23 with the Administrative Procedure Act, (AS 44.62) may adopt regulations
24 interpreting and forms necessary for administering the provisions of
25 secs. 471 - 631 of this chapter.

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

29 (1) request that person to file a statement or report in

1 writing under oath or otherwise, on forms prescribed by him, as to all
2 facts and circumstances concerning the sale or advertisement of
3 services, goods or property by that person, and other data and informa-
4 tion he considers necessary;

5 (2) examine under oath a person in connection with the sale
6 or advertisement of any services, goods or property;

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

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

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

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

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

27 Sec. 45.50.521. REMEDIES. If a person fails to cooperate with an
28 investigation provided for in sec. 501 of this chapter, or fails to
29 obey a subpoena provided for in sec. 511 of this chapter, the attorney

1 general may apply to the superior court for an appropriate order to
2 carry out the purposes of secs. 471 - 631 of this chapter. This
3 application shall state that there are reasonable grounds to believe
4 that the order is necessary to terminate or prevent an act or practice
5 declared unlawful in sec. 471 of this chapter. If the court is satis-
6 fied with the reasonable grounds, it may in its order

7 (1) grant injunctive relief restraining the sale or advertise-
8 ment of services, goods or property by a person;

9 (2) require the attendance of or the production of documents
10 by the person; and

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

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

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

26 Sec. 45.50.541. ASSURANCES OF VOLUNTARY COMPLIANCE. In the
27 administration of secs. 471 - 631 of this chapter, the attorney general
28 may accept an assurance of voluntary compliance with respect to any
29 act or practice considered to be violative of secs. 471 - 631 of

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

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

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

1 of this chapter considered public records available for inspection by
2 the general public. However, the attorney general is not prevented
3 from issuing public statements describing or warning of a course of
4 conduct or a conspiracy which constitutes or will constitute an unlaw-
5 ful act or practice, whether on a local, state, regional, or national
6 basis.

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

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

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

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

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

27 (c) Upon commencement of an action brought under this section the
28 clerk of court shall mail a copy of the complaint or other initial
29 pleading to the attorney general and, upon entry of an order or

1 judgment in the action, shall mail a copy of the order or judgment to
2 the attorney general.

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

6 (e) A permanent injunction or final judgment against a person
7 against whom an action was instigated under sec. 531 of this chapter is
8 prima facie evidence in an action brought under this section that the
9 person used or employed an act or practice declared unlawful by sec.
10 471 of this chapter.

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

14 (g) If the court finds for the defendant in an action brought
15 under this section, it may award the defendant an amount equal to the
16 actual costs and attorney fees he incurred in his defense.

17 (h) Manufacturers or suppliers of merchandise, the fault of which
18 is the basis for the action under this chapter, are liable for the
19 damages assessed to or suffered by retailers charged under this chapter.

20 Sec. 45.50.591. LIABILITY FOR ACTIONS OF EMPLOYEE. (a) The
21 provisions of secs. 471 - 631 of this chapter apply to a person whose
22 employees engage in an act or practice declared unlawful in sec. 471
23 of this chapter. However, if an employee engages in an unlawful act
24 or practice under sec. 471 of this chapter without the knowledge, per-
25 mission or authorization of his employer and if the employer immediately
26 offers to make full restitution in cash, goods or services equal in
27 value to the amount expended by the consumer, the employer shall not
28 be liable in a civil action under this chapter.

29 (b) A written code of conduct specifying the unlawful acts and

1 practices under sec. 471 of this chapter, supplied by the employer and
2 signed by his employees, shall be prima facie evidence of the intent
3 of the employer to comply with the provisions of this chapter.

4 Sec. 45.50.601. NON-NEGOTIABILITY OF CONSUMER PAPER. (a) If a
5 contract for sale or lease of consumer goods or services on credit
6 entered into between a retail seller and a retail buyer requires or
7 involves the execution of a promissory note or instrument or other
8 evidence of indebtedness of the buyer, the note, instrument or evidence
9 of indebtedness shall have printed on its face the words "consumer
10 paper", and the note, instrument or evidence of indebtedness with the
11 words "consumer paper" printed on it is not a negotiable instrument
12 within the meaning of Uniform Commercial Code (AS 45.05).

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

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

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

1 recovery of the penalties.

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

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

12 Sec. 45.50.621. FORFEITURE OF CORPORATE FRANCHISE. Upon petition
13 by the attorney general, the court may, in its discretion, order the
14 dissolution or suspension or forfeiture of franchise of any corporation
15 which violates the terms of an injunction issued under sec. 531 of this
16 chapter.

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

18 (1) "advertising" includes the attempt directly or
19 indirectly by publication, dissemination, solicitation, endorsement or
20 circulation, display in any manner, including solicitation or dissemi-
21 nation by mail, telephone or door to door contacts, or in any other
22 way, to induce directly or indirectly a person to enter or not enter
23 into an obligation or acquire title or interest in any merchandise
24 or to increase the consumption of it or to make a loan;

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

29 (3) "examination" of documentary material includes the

1 inspection, study, or copying of the material, and the taking of
2 testimony under oath or acknowledgment in respect of documentary
3 material or copy of it;

4 (4) "seconds" means manufactured items having flaws or
5 consisting of a standard quantity or quality less than the manufacturer's
6 quality standard.

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