

Original sponsor: Miller

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1 IN THE SENATE BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR 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 AS 45.50.470 - 45.50.510 are repealed.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 as
19 to the source, sponsorship, or approval, or another person's affilia-
20 tion, connection, or association with or certification of goods or
21 services;

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

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

29 (6) represent that goods or services are of a particular

1 standard, quality, or grade, or that goods are of a particular style
2 or model, if they are of another;

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

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

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

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

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

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

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

29 (b) The unlawful acts and practices listed in (a) of this section

1 are in addition to and do not limit the types of unlawful acts and
2 practices actionable at common law or under other statutes of this
3 state.

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

7 Sec. 45.50.481. EXEMPTIONS. Nothing in secs. 471 - 561 of this
8 chapter applies to

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

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

19 Sec. 45.50.491. REGULATIONS. The commissioner of commerce, in
20 accordance with the Administrative Procedure Act (AS 44.62), may adopt
21 regulations interpreting and forms necessary for administering the
22 provisions of secs. 471 - 561 of this chapter.

23 Sec. 45.50.501. RESTRAINING PROHIBITED ACTS. (a) When the
24 attorney general has reason to believe that a person has used, is using,
25 or is about to use an act or practice declared unlawful in sec. 471
26 of this chapter, and that proceedings would be in the public interest,
27 he may bring an action in the name of the state against the person to
28 restrain by injunction the use of the act or practice. The action may
29 be brought in the superior court in the judicial district in which the

1 person resides or is doing business or has his principal place of
2 business in Alaska, or, with the consent of the parties, in any
3 other judicial district in the state.

4 (b) The court may make additional orders or judgments that are
5 necessary to restore to any person in interest any money or property,
6 real or personal, which may have been acquired by means of an act
7 or practice declared to be unlawful by sec. 471 of this chapter.

8 Sec. 45.50.511. ASSURANCES OF VOLUNTARY COMPLIANCE. In the
9 administration of secs. 471 - 561 of this chapter, the attorney general
10 may accept an assurance of voluntary compliance with respect to any
11 act or practice considered to be violative of secs. 471 - 561 of
12 this chapter from a person who has engaged or was about to engage in
13 such an act or practice. Such an assurance shall be in writing and
14 shall be filed with and is subject to the approval of the superior
15 court in the judicial district in which the alleged violator resides
16 or is doing business or has his principal place of business in Alaska.
17 Such an assurance of voluntary compliance is not considered an admis-
18 sion of violation for any purpose. Matters closed in this way may
19 at any time be reopened by the attorney general for further proceedings
20 in the public interest, under sec. 501 of this chapter.

21 Sec. 45.50.521. WHEN INFORMATION AND EVIDENCE CONFIDENTIAL AND
22 NONADMISSIBLE. (a) The attorney general may not release information
23 or evidence, obtained by him under the provisions of secs. 471 - 561
24 of this chapter, to a district attorney or his investigator or to a
25 law enforcement officer for use in a criminal prosecution. The infor-
26 mation or evidence produced by the attorney general under secs. 471 -
27 561 of this chapter is not admissible in evidence in a criminal prosecu-
28 tion. The provisions of this subsection do not prevent the attorney
29 general from disclosing to a district attorney or law enforcement

1 officer the fact of the commission of a crime by a person, nor does
2 it prevent a district attorney or his investigator or a law enforcement
3 officer from independently producing or obtaining the same or similar
4 facts, information, or evidence for use in a criminal prosecution.

5 (b) Subject to the provisions of sec. 501(a) of this chapter,
6 the attorney general may not make public the name of a person alleged
7 to have committed an act or practice declared unlawful in sec. 471 of
8 this chapter during an investigation conducted by him under secs. 471 -
9 561 of this chapter, nor are the records of investigation or intelli-
10 gence information of the attorney general obtained under secs. 471 -
11 561 of this chapter considered public records available for inspection
12 by the general public. However, the attorney general is not prevented
13 from issuing public statements describing or warning of a course of
14 conduct or a conspiracy which constitutes or will constitute an unlaw-
15 ful act or practice, whether on a local, state, regional, or national
16 basis.

17 Sec. 45.50.531. PRIVATE AND CLASS ACTIONS. (a) A person who
18 purchases or leases goods or services and thereby suffers an ascertain-
19 able loss of money or property, real or personal, as a result of
20 another person's act or practice declared unlawful by sec. 471 of this
21 chapter, may bring a civil action in the judicial district in which
22 the seller or lessor resides or has his principal place of business
23 or is doing business, to recover actual damages or \$200, whichever is
24 greater. The jury or, if the action is tried without a jury, the
25 judge may, in cases of wilful violation, award up to three times the
26 actual damages sustained, and in all cases the court may provide
27 equitable relief it considers necessary or proper.

28 (b) A person entitled to bring an action under this section may,
29 after investigation by and approval of the attorney general, if the

1 unlawful act or practice has caused similar injury to numerous other
2 persons similarly situated and if he adequately represents the similarly
3 situated persons, bring an action on behalf of himself and other simi-
4 larly injured and situated persons to recover actual damages. A person
5 planning to bring an action under this subsection shall first submit
6 to the attorney general a copy of his proposed complaint, and he may
7 not file the complaint in court without the attorney general's approval.
8 In an action brought under this subsection, the court may in its dis-
9 cretion order, in addition to damages, injunctive or other equitable
10 relief. Also, in an action brought under this subsection, the plaintiff
11 shall post bond of not less than \$5,000 and which is sufficient to
12 cover costs and attorney fees which may be awarded under (g) of this
13 section.

14 (c) Upon commencement of an action brought under this section the
15 clerk of the court shall mail a copy of the complaint or other initial
16 pleading to the attorney general and, upon entry of an order or judg-
17 ment in the action, shall mail a copy of the order or judgment to
18 the attorney general.

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

22 (e) A permanent injunction or final judgment against a person
23 against whom an action was initiated under sec. 501 of this chapter
24 is prima facie evidence in an action brought under this section that the
25 person used or employed an act or practice declared unlawful by sec.
26 471 of this chapter.

27 (f) No person may commence an action under this section more than
28 two years after he discovers or reasonably should have discovered that
29 his loss resulted from an act or practice declared unlawful by sec. 471

1 of this chapter.

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

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

8 Sec. 45.50.541. NON-NEGOTIABILITY OF CONSUMER PAPER. (a) If a
9 contract for sale or lease of consumer goods or services on credit
10 entered into between a retail seller and a retail buyer requires or
11 involves the execution of a promissory note or instrument or other
12 evidence of indebtedness of the buyer, the note, instrument or evidence
13 of indebtedness shall have printed on its face the words "consumer
14 paper", and the note, instrument or evidence of indebtedness with the
15 words "consumer paper" printed on it is not a negotiable instrument
16 within the meaning of Uniform Commercial Code (AS 45.05).

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

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

27 Sec. 45.50.551. PENALTIES. (a) A person who violates the terms
28 of an injunction or restraining order issued under sec. 501 of this
29 chapter shall forfeit and pay to the state a civil penalty of not more

1 than \$25,000 per violation. For the purposes of this section, the
2 superior court in a judicial district issuing an injunction retains
3 jurisdiction, and the cause shall be continued, and in these cases the
4 attorney general acting in the name of the state may petition for
5 recovery of the penalties.

6 (b) In an action brought under sec. 501 of this chapter, if the
7 court finds that a person is using or has used an act or practice
8 declared unlawful by sec. 471 of this chapter, the attorney general,
9 upon petition to the court, may recover, on behalf of the state, a
10 civil penalty of not exceeding \$5,000 per violation.

11 (c) A person who engages in a course of conduct declared unlawful
12 by sec. 471 of this chapter is, upon conviction, punishable by a fine
13 of not more than \$10,000,

14 . but this subsection does not limit any other provision of
15 secs. 471 - 561 of this chapter.

16 Sec. 45.50.561. DEFINITIONS. In secs. 471 - 561 of this chapter

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

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

28 (3) "examination" of documentary material includes the
29 inspection, study, or copying of the material, and the taking of

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testimony under oath or acknowledgement in respect of documentary material or copy of it;

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