

Introduced: 2/4/74
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 *CS* HOUSE BILL NO. 543 *Jud am S*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to unfair trade practices and
7 consumer protection; and providing for an effective
8 date."

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

10 * Section 1. AS 45.50.471 is repealed and re-enacted to read:

11 Sec. 45.50.471. UNLAWFUL ACTS AND PRACTICES. (a) Unfair
12 methods of competition and unfair or deceptive acts or practices in
13 the conduct of trade or commerce are declared to be unlawful.

14 (b) The terms "unfair methods of competition" and "unfair or
15 deceptive acts or practices" include, but are not limited to, the
16 following acts:

17 (1) fraudulently conveying or transferring goods or services
18 by representing them to be those of another;

19 (2) falsely representing or designating the geographic
20 origin of goods or services;

21 (3) causing a likelihood of confusion or misunderstanding
22 as to the source, sponsorship, or approval, or another person's
23 affiliation, connection, or association with or certification of
24 goods or services;

25 (4) representing that goods or services have sponsorship,
26 approval, characteristics, ingredients, uses, benefits, or quantities
27 that they do not have or that a person has a sponsorship, approval,
28 status, affiliation, or connection that he does not have;

29 (5) representing that goods are original or new if they

1 are deteriorated, altered, reconditioned, reclaimed, used, second-
2 hand, or seconds;

3 (6) representing that goods or services are of a particular
4 standard, quality, or grade, or that goods are of a particular style
5 or model, if they are of another;

6 (7) disparaging the goods, services, or business of another
7 by false or misleading representation of fact;

8 (8) advertising goods or services with intent not to sell
9 them as advertised;

10 (9) advertising goods or services with intent not to
11 supply reasonable expectable public demand, unless the advertisement
12 prominently discloses a limitation of quantity;

13 (10) making false or misleading statements of fact con-
14 cerning the reasons for, existence of, or amounts of price reductions;

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

19 (12) using or employing deception, fraud, false pretense,
20 false promise, misrepresentation, or knowingly concealing, suppressing,
21 or omitting a material fact with intent that others rely upon the
22 concealment, suppression or omission in connection with the sale or
23 advertisement of goods or services whether or not a person has in fact
24 been misled, deceived or damaged;

25 (13) failing to deliver to the customer at the time of an
26 installment sale of goods or services, a written order, contract, or
receipt setting out the name and address of the seller and the name
and address of the organization which he represents, and all of the
29 terms and conditions of the sale, including a description of the goods

1 or services, which shall be stated in readable, clear, and unambiguous
2 language;

3 (14) representing that an agreement confers or involves
4 rights, remedies or obligations which it does not confer or involve,
5 or which are prohibited by law;

6 (15) knowingly making false or misleading statements con-
7 cerning the need for parts, replacement, or repair service;

8 (16) misrepresenting the authority of a salesman, repre-
9 sentative or agent to negotiate the final terms of a consumer trans-
10 action;

11 (17) basing a charge for repair in whole or in part on a
12 guaranty or warranty rather than on the actual value of the actual
13 repairs made or work to be performed on the item without stating
14 separately the charges for the work and the charge for the guaranty
15 or warranty, if any;

16 (18) disconnecting, turning back or resetting the odometer
17 of a vehicle to reduce the number of miles indicated;

18 (19) using a chain referral sales plan;

19 (20) selling or offering to sell a right of participation
20 in a multi-level distributorship.

21 (c) The unlawful acts and practices listed in (b) of this section
22 are in addition to and do not limit the types of unlawful acts and
23 practices actionable at common law or under other state statutes.

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

27 * Sec. 2. AS 45.50.481(1) is repealed.

28 * Sec. 3. AS 45.50.491 is amended to read:

29 Sec. 45.50.491. REGULATIONS. The attorney general [COMMISSIONER

1 OF COMMERCE], in accordance with the Administrative Procedure Act
2 (AS 44.62), may adopt regulations interpreting and forms necessary for
3 administering the provisions of secs. 471 - 561 of this chapter.

4 * Sec. 4. AS 45.50 is amended by adding a new section to read:

5 Sec. 45.50.495. INVESTIGATIVE POWER OF ATTORNEY GENERAL. (a) If
6 the attorney general has cause to believe that a person has engaged in,
7 is engaging in or is about to engage in, a deceptive trade practice
8 under sec. 471 of this chapter, he may

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

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

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

17 (4) make true copies of records, books, documents, accounts,
18 or papers examined under (3) of this subsection which may be offered
19 in evidence in place of the originals in actions brought under secs.
20 471 - 561 of this chapter; and

21 (5) under an order of the superior court, impound samples of
22 property which are material to his investigation and retain the sample
23 until proceedings undertaken under secs. 471 - 561 of this chapter
24 are completed.

25 (b) The attorney general, in addition to other powers conferred
26 on him by this section, may issue subpoenas to require the attendance
27 of witnesses or the production of documents or other physical evidence,
28 administer oaths, and conduct hearings to aid an investigation or
29 inquiry. Service of an order or subpoena shall be made in the same

1 manner as a summons in a civil action in the superior court.

2 * Sec. 5. AS 45.50.521(a) is repealed.

3 * Sec. 6. AS 45.50 is amended by adding a new section to read:

4 Sec. 45.50.542. WAIVER. A waiver by a consumer of the provisions
5 of secs. 471 - 561 of this chapter is contrary to public policy and is
6 unenforceable and void.

7 * Sec. 7. AS 45.50 is amended by adding a new section to read:

8 Sec. 45.50.545. INTERPRETATION. It is the intent of the
9 legislature that in interpreting sec. 471 of this chapter that due
10 consideration and great weight be given the interpretations of Section
11 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)) made
12 by the Federal Trade Commission and the federal courts.

13 * Sec. 8. AS 45.50.561 is amended by adding new paragraphs to read:

14 (5) "chain referral sales plan" means a sale or offer to
15 sell of goods, merchandise, or anything of value, which uses the sales
16 technique, plan, arrangement, or agreement in which the buyer or
17 prospective buyer is offered the opportunity to purchase merchandise
18 or goods and in connection with the purchase receives the seller's
19 promise or representation that the buyer will have the right to receive
20 compensation or consideration in any form for furnishing to the seller
21 the names of other prospective buyers if receipt of the compensation
22 or consideration is contingent upon the occurrence of an event sub-
23 sequent to the time the buyer purchases the merchandise or goods;

24 (6) "consumer" means a natural person who seeks or acquires
25 goods or services by lease or purchase;

26 (7) "knowingly" means actual awareness of the falsity or
27 deception, but actual awareness may be inferred where objective mani-
28 festations indicate that a person acted with actual awareness;

29 (8) "multi-level distributorship" means a sales plan for

1 the distribution of goods or services in which promises of rebate or
2 payment are made to persons, conditioned upon those persons recom-
3 mending or securing additional persons to assume positions in the sales
4 operation, and where the rebate or payment is not exclusively con-
5 ditioned on or in relation to proceeds from the retail sales of goods.

6 * Sec. 9. This Act takes effect on the day after its passage and
7 approval or on the day it becomes law without approval.