

Original Sponsors: Rules
Committee by Request of
the Governor

Offered: 3/29/74
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

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CS FOR HOUSE BILL NO. 543

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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EIGHTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to unfair trade practices and

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consumer protection; and providing for an effective

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date."

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

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 AS 45.50.471 is repealed and re-enacted to read:

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Sec. 45.50.471. UNLAWFUL ACTS AND PRACTICES. (a) Unfair

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methods of competition and unfair or deceptive acts or practices in
the conduct of trade or commerce are declared to be unlawful.

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(b) The terms "unfair methods of competition" and "unfair or

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deceptive acts or practices" include, but are not limited to, the
following acts:

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(1) fraudulently conveying or transferring goods or services

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by representing them to be those of another;

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(2) falsely representing or designating the geographic

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origin of goods or services;

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(3) causing a likelihood of confusion or misunderstanding

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as to the source, sponsorship, or approval, or another person's

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affiliation, connection, or association with or certification of
goods or services;

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(4) representing that goods or services have sponsorship,

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approval, characteristics, ingredients, uses, benefits, or quantities

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that they do not have or that a person has a sponsorship, approval,

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status, affiliation, or connection that he does not have;

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(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
27 receipt setting out the name and address of the seller and the name
28 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 by inducing or
19 attempting to induce a consumer to enter into a contract by offering
20 a rebate, discount, commission, or other consideration, contingent
21 upon the happening of a future event, on the condition that the
22 consumer either sells, or gives information or assistance for
23 the purpose of leading to a sale by the seller of the same or related
24 goods;

25 (20) selling or offering to sell a right of participation
26 in a chain distributor scheme.

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

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

4 * Sec. 2. AS 45.50.481(1) is amended to read:

5 (1) an act or transaction regulated [PERMITTED] under laws
6 administered by the state, by any regulatory board or commission, or
7 officer acting under statutory authority of the state of the United
8 States, unless the law regulating the act or transaction does not
9 prohibit the practices declared unlawful in sec. 471 of this chapter;

10 * Sec. 3. AS 45.50.481 is amended by adding a new paragraph to read:

11 (3) an act or transaction regulated under AS 21.36 or AS 06.05
12 or any regulations promulgated under authority of those chapters.

13 * Sec. 4. AS 45.50.491 is amended to read:

14 Sec. 45.50.491. REGULATIONS. The attorney general [COMMISSIONER
15 OF COMMERCE], in accordance with the Administrative Procedure Act (AS
16 44.62), may adopt regulations interpreting and forms necessary for
17 administering the provisions of secs. 471 - 561 of this chapter.

18 * Sec. 5. AS 45.50 is amended by adding a new section to read:

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

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

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

29 (3) examine property or sample of the property, record,

1 book, document, account or paper that he considers necessary;

2 (4) make true copies of records, books, documents, accounts,
3 or papers examined under (3) of this subsection which may be offered
4 in evidence in place of the originals in actions brought under secs.
5 471 - 561 of this chapter; and

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

10 (b) The attorney general, in addition to other powers conferred
11 on him by this section, may issue subpoenas to require the attendance
12 of witnesses or the production of documents or other physical evidence,
13 administer oaths, and conduct hearings to aid an investigation or
14 inquiry. Service of an order or subpoena shall be made in the same
15 manner as a summons in a civil action in the superior court.

16 * Sec. 6. AS 45.50.521(a) is repealed.

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

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

21 * Sec. 8. AS 45.50 is amended by adding a new section to read:

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

27 * Sec. 9. AS 45.50.551(c) is amended to read:

28 (c) A person who engages in a course of conduct declared unlawful
29 by sec. 471 of this chapter is, upon conviction, punishable by a fine

1 of not more than \$10,000 or by imprisonment for not more than one year
2 or by both, but this subsection does not limit any other provision of
3 secs. 471 - 561 of this chapter.

4 * Sec. 10. AS 45.50.561 is amended by adding new paragraphs to read:

5 (5) "chain distributor scheme" means a sales device whereby
6 a person, upon condition that he make an investment, is granted a
7 license or right to solicit or recruit for profit one or more addition-
8 al persons who are also granted a license or right upon condition of
9 making an investment and may further perpetuate the chain of persons
10 who are granted a license or right upon the condition of investment; a
11 limitation as to the number of persons who may participate, or the
12 presence of additional conditions affecting eligibility for the license
13 or right to solicit or recruit or the receipt of profit from these
14 does not change the identity of the scheme as a chain distributor
15 scheme; as used in this paragraph, "investment" means acquisition, for
16 a consideration other than personal services, of tangible or intangible
17 property, and includes but is not limited to franchises, business
18 opportunities and services; "investment" does not include sales demon-
19 stration equipment and materials furnished at cost for use in making
20 sales and not for resale;

21 (6) "consumer" means a person who seeks or acquires goods
22 or services by lease or purchase;

23 (7) "knowingly" means actual awareness of the falsity or
24 deception, but actual awareness may be inferred where objective mani-
25 festations indicate that a person acted with actual awareness.

26 * Sec. 11. This Act takes effect on the day after its passage and
27 approval or on the day it becomes law without approval.
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