

Introduced: 3/18/74  
Referred: Commerce and  
Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE  
BY REQUEST

2 SENATE BILL NO. 478

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 con-  
7 sumer protection; and providing for an effective date."

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

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 AS 45.50.471 is repealed and re-enacted to read:

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

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

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

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

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

24 (4) representing 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) representing that goods are original or new if they  
29 are deteriorated, altered, reconditioned, reclaimed, used, secondhand,

1 or seconds;

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

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

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

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

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

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

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

1 language;

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

5 (15) knowingly making false or misleading statements concern-  
6 ing the need for parts, replacement, or repair service;

7 (16) misrepresenting the authority of a salesman, representa-  
8 tive or agent to negotiate the final terms of a consumer transaction;

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

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

16 (19) using a chain referral sales plan;

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

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

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

25 \* Sec. 2. AS 45.50.481(1) is repealed.

26 \* Sec. 3. AS 45.50.491 is amended to read:

27 Sec. 45.50.491. REGULATIONS. The attorney general [COMMISSIONER  
28 OF COMMERCE], in accordance with the Administrative Procedure Act  
29 (AS 44.62), may adopt regulations interpreting and forms necessary for

1 administering the provisions of secs. 471 - 561 of this chapter.

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

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

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

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

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

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

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

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

29 \* Sec. 5. AS 45.50.521(a) is repealed.

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

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

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

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

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

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

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

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

27       (8) "multi-level distributorship" means a sales plan for  
28 the distribution of goods or services in which promises of rebate or  
29 payment are made to persons, conditioned upon those persons recommending

1 or securing additional persons to assume positions in the sales opera-  
2 tion, and where the rebate or payment is not exclusively conditioned  
3 on or in relation to proceeds from the retail sales of goods.

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