

Introduced: 2/3/82
Referred: Judiciary

1 IN THE HOUSE

BY METCALFE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 674

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to investigation of violations of
7 AS 45.50.471 by the attorney general."

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

9 * Section 1. AS 45.50.495 is repealed and reenacted to read:

10 Sec. 45.50.495. AUTHORIZING INVESTIGATIVE POWER OF ATTORNEY GENERAL.

11 (a) If the attorney general has cause to believe that a person has
12 engaged in, is engaging in, or is about to engage in, a deceptive trade
13 practice under AS 45.50.471, he may bring an action in the name of the
14 state against the person, seeking the authority to pursue the investiga-
15 tive powers described in (c) of this section. The action may be brought
16 in the superior court in the judicial district in which the person
17 resides or is doing business or has the principal place of business in
18 the state, or, with the consent of the parties, in any other judicial
19 district in the state. The action shall be instituted by filing a
20 complaint in the superior court stating with specificity: (1) the
21 nature of the deceptive practice; (2) the dates on which the deceptive
22 practices occurred or upon what facts are based any assertion that they
23 are likely to occur; (3) the names of all persons who are alleged to
24 have been harmed or will be harmed by the deceptive practice. The
25 superior court shall schedule a hearing no less than 30 days and no more
26 than 60 days from the date of service of the complaint on the person who
27 is the subject of the investigation. All parties to the action shall
28 have the right to subpoena witnesses to attend the hearing.

29 (b) At the conclusion of the hearing held under (a) of this

1 section, the superior court shall issue an order empowering the attorney
2 general with investigative powers listed in (c) of this section only if
3 the attorney general has proven, by a preponderance of the evidence, the
4 following facts:

5 (1) that it is more probable than not that the person who is
6 the subject of the investigation has engaged in, is engaging in, or is
7 about to engage in, a deceptive trade practice under AS 45.50.471; and

8 (2) that the deceptive trade practice is part of a common
9 scheme or mode of operation and is not an isolated or uncommon event.

10 (c) If the superior court enters an order finding probable cause
11 as specified in (b) of this section, the attorney general may then

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

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

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

20 (4) make true copies of records, books, documents, accounts,
21 or papers examined under (3) of this subsection that may be offered in
22 evidence in place of the originals in actions brought under AS 45.50.-
23 471 - 45.50.561; and

24 (5) under an additional order of the superior court, impound
25 samples of property that are material to his investigation and return
26 the sample until proceedings undertaken under AS 45.50.471 - 45.50.561
27 are completed.

28 (d) Service of an order or subpoena under this section shall be
29 made in the same manner as a summons in a civil action in the superior

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court.

(e) The investigative order specified in (c) of this section shall only be effective for a period of 60 days after which the attorney general may seek an additional 60-day renewal of his powers by reinstating an action in superior court and demonstrating by a preponderance of evidence the following:

(1) that the investigative materials obtained so far demonstrate that it is more probable than not that the person has engaged in, is engaging in, or is about to engage in, a deceptive trade practice under AS 45.50.471;

(2) that after due and diligent exercise of his powers the attorney general was unable to obtain all necessary information and documents or other materials pertinent to his investigation; and

(3) the use of an additional 60 days for the investigation would substantially increase the amount of information to him.

(f) If the attorney general fails to prevail in any hearing under this section, the court shall award the defendant an amount equal to the actual costs and attorney fees incurred in his defense.