

Introduced: 2/13/84  
Referred: Labor and Commerce  
and Judiciary

1 IN THE SENATE

BY JOSEPHSON

2 SENATE BILL NO. 488

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to unfair trade practices and con-  
7 sumer and business protection."

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

9 \* Section 1. AS 45.50.471(b) is amended by adding new paragraphs to  
10 read:

11 ARTICLE 4. UNFAIR TRADE PRACTICES AND CONSUMER  
12 AND BUSINESS PROTECTION ACT.

13 (26) failing to comply with AS 45.45.105 -- 45.45.110 relat-  
14 ing to unsolicited merchandise;

15 (27) failing to comply with AS 45.45.120 relating to disclo-  
16 sure of funeral costs.

17 \* Sec. 2. AS 45.50.481 is amended to read:

18 Sec. 45.50.481. EXEMPTIONS. Nothing in AS 45.50.471 --  
19 45.50.561 applies to

20 (1) an act or transaction regulated under laws administered  
21 by the state, by any regulatory board or commission, or officer acting  
22 under statutory authority of the state or of the United States, if  
23 [UNLESS] the law regulating the act or transaction

24 (A) prohibits [DOES NOT PROHIBIT] the practices de-  
25 clared unlawful in AS 45.50.471; and

26 (B) does not itself exempt from regulation the person  
27 committing the prohibited act or practice; and

28 (C) provides an adequate private cause of action for  
29 injured persons similar to that provided in AS 45.50.531; and

1                   (D) unless the law is a federal law which preempts  
2 state action, provides the state with adequate enforcement and  
3 restitution remedies in the public interest similar to those  
4 remedies in AS 45.50.501 and 45.50.551;

5                   (2) an act done by the publisher, owner, agent, or employee  
6 of a newspaper, periodical or radio or television station in the  
7 publication or dissemination of an advertisement, when the owner,  
8 agent or employee did not have knowledge of the false, misleading or  
9 deceptive character of the advertisement or did not have a direct  
10 financial interest in the sale or distribution of the advertised  
11 product or service;

12                   (3) an act or transaction regulated under AS 21.36 or  
13 AS 06.05 or any regulations adopted [PROMULGATED] under authority of  
14 those chapters.

15 \* Sec. 3. AS 45.50.495 is amended to read:

16                   Sec. 45.50.495. INVESTIGATIVE POWER OF ATTORNEY GENERAL. (a)  
17 If the attorney general has cause to believe, as a result of com-  
18 plaints, information from other agencies, or inquiries made by the  
19 attorney general's staff, that a person has engaged in, is engaging in  
20 or is about to engage in, an unfair or [A] deceptive trade practice or  
21 unfair method of competition under AS 45.50.471, the attorney general  
22 [HE] may serve a civil investigative demand in writing on any person  
23 who is believed to have in formation, documentary material, or phys-  
24 ical evidence relevant to the alleged or suspected violation. The  
25 attorney general, by serving a civil investigative demand, may

26                   (1) request the person to file a statement or report in  
27 writing, under oath, on forms prescribed by the attorney general  
28 [HIM], setting out all facts and circumstances concerning the sale or  
29 advertisement of goods, services, or property by the person or within

1 the knowledge of the person, and other information considered neces-  
2 sary;

3 (2) examine under oath any person in connection with the  
4 sale or advertisement of goods, services, or property;

5 (3) examine goods or property or sample of the goods,  
6 property, records, books, documents, accounts, or papers considered  
7 [RECORD, BOOK, DOCUMENT, ACCOUNT OR PAPER THAT HE CONSIDERS] necessary  
8 by the attorney general;

9 (4) make true copies of records, books, documents, ac-  
10 counts, or papers examined under (3) of this subsection which may be  
11 offered in evidence in place of the originals in actions brought under  
12 AS 45.50.471 -- 45.50.561; and

13 (5) under an order of the superior court, impound samples  
14 of property which are material to the [HIS] investigation and retain  
15 the sample until proceedings undertaken under AS 45.50.471 -- 45.50.-  
16 561 are completed.

17 (b) A civil investigative demand shall

18 (1) state the general subject matter of the investigation  
19 and the applicable provisions of law;

20 (2) describe the class or classes of documentary material  
21 to be produced with reasonable specificity so as to permit the materi-  
22 al to be readily identified;

23 (3) prescribe a return date within which the documentary  
24 material must be produced or on which the person whose testimony is  
25 sought shall appear; and

26 (4) identify the members of the attorney general's staff to  
27 whom the material or testimony is to be made available [THE ATTORNEY  
28 GENERAL, IN ADDITION TO OTHER POWERS CONFERRED ON HIM BY THIS SECTION,  
29 MAY ISSUE SUBPOENAS TO REQUIRE THE ATTENDANCE OF WITNESSES OR THE

1 PRODUCTION OF DOCUMENTS OR OTHER PHYSICAL EVIDENCE, ADMINISTER OATHS,  
2 AND CONDUCT HEARINGS TO AID AN INVESTIGATION OR INQUIRY. SERVICE OF  
3 AN ORDER OR SUBPOENA SHALL BE MADE IN THE SAME MANNER AS A SUMMONS IN  
4 A CIVIL ACTION IN THE SUPERIOR COURT].

5 (c) Service of a civil investigative demand may be made by

6 (1) delivering an executed copy of the demand to the person  
7 to be served or to a partner or to any officer or agent authorized by  
8 appointment or by law to receive service of process on behalf of the  
9 person;

10 (2) delivering an executed copy of the demand to the prin-  
11 cipal place of business of the person to be served;

12 (3) mailing by certified mail an executed copy of the  
13 demand, addressed to the person to be served, to the person's princi-  
14 pal place of business; or

15 (4) delivering an executed copy of the demand to the person  
16 to be served, in accordance with the requirements set out in the Rules  
17 of Court for service of subpoenas in civil actions.

18 (d) Documentary material and testimony demanded under the pro-  
19 visions of this section must be made available during normal business  
20 hours at the office of the attorney general, or at other times and  
21 places agreed upon by the person served and the attorney general.

22 (e) No later than the workday preceding the return date spec-  
23 ified in the demand, or within 10 days after the demand has been  
24 served, whichever date is sooner, the person served may deliver to the  
25 attorney general's staff, identified under (b)(4) of this section, a  
26 written request, stating good cause, to extend the return date or to  
27 modify or set aside the demand. The attorney general shall grant or  
28 deny the request within five days after receipt or by the end of the  
29 work day preceding the return date, whichever date is sooner.

1           (f) If the attorney general denies a request made under (e) of  
2 this section, the person upon whom the demand was served may, within  
3 seven days after the denial, file a petition in the superior court,  
4 stating good cause, to extend the return date or to modify or set  
5 aside the demand.

6           (g) A person on whom a demand is served under this section shall  
7 comply with the terms of the demand unless a court order entered under  
8 (f) of this section provides otherwise. If a person fails to comply  
9 with a demand served under this section, or if satisfactory question-  
10 ing or reproduction of documentary material cannot be completed be-  
11 cause of the refusal of the person served, the attorney general may  
12 petition in the superior court for an order for enforcement of this  
13 section. Disobedience of a court order entered under this section  
14 shall be punished as contempt of court.

15 \* Sec. 4. AS 45.50.501 is amended to read:

16           Sec. 45.50.501. RESTRAINING PROHIBITED ACTS AND OBTAINING RESTI-  
17 TUTION. (a) When the attorney general has reason to believe that a  
18 person has used, is using, or is about to use an act or practice  
19 declared unlawful in AS 45.50.471, and that proceedings would be in  
20 the public interest, the attorney general [HE] may bring an action in  
21 the name of the state against the person to restrain by temporary,  
22 preliminary, or permanent order or injunction the use of the act or  
23 practice. The action may be brought in the superior court in

24           (1) the judicial district in which the person resides, [OR]  
25 is doing business, or maintains a [HAS HIS] principal place of busi-  
26 ness in Alaska;

27           (2) the judicial district of the attorney general's choice  
28 if the person is not located in Alaska but is subject to personal  
29 jurisdiction under AS 09.05.015; [,] or

1           (3) [,] with the consent of the parties, [IN] any other  
2 judicial district in the state.

3           (b) When the attorney general brings an action under (a) of this  
4 section the attorney general may, as parens patriae on behalf of  
5 persons who are injured by the unlawful act or practice, seek restitu-  
6 tion, rescission, or other equitable or legal remedies in order to  
7 restore the status quo.

8           (c) In an action brought under (b) of this section, the attorney  
9 general shall, before trial of the action, give notice of the action  
10 to injured persons by publication, in the manner and with the content  
11 the court may direct. If the court finds that notice given solely by  
12 publication would deny due process of law to a person or persons, the  
13 court may direct further notice, by the state or the defendant, to  
14 those persons according to the circumstances of the case.

15           (d) A person on whose behalf an action is brought under (b) of  
16 this section may elect to exclude from adjudication the portion of the  
17 state claim for monetary relief attributable to him. The person shall  
18 file notice of that election with the court in the manner specified in  
19 the notice given under (c) of this section.

20           (e) The final judgment, except a judgment by consent, in an  
21 action under (b) of this section

22           (1) is res judicata as to a claim for restitution or  
23 rescission, but not necessarily as to a claim for damages, by a person  
24 on whose behalf the action was brought and who did not elect to be  
25 excluded from the action; and

26           (2) is not res judicata as to a claim by a person on whose  
27 behalf the action was brought but who elected to be excluded from the  
28 action.

29           (f) In an action brought under (b) of this section, the court

1 shall exclude from any monetary relief an amount which duplicates an  
2 award made by a court for the same injury, or which is allocable to a  
3 person who elected exclusion under (d) of this section.

4 (g) Nothing in this section may be construed to cause an action  
5 brought by the attorney general under (b) of this section to be con-  
6 sidered a class action subject to the Rules of Court for class  
7 actions. Further, the requirements for notice and election of exclu-  
8 sion in this section may not be interpreted so as to delay the court's  
9 granting of a request by the attorney general for any preliminary  
10 orders in the action under (a), (h), or (i) of this section.

11 (h) In an action brought under this section, when the attorney  
12 general demonstrates to the court that a person has used, is using, or  
13 is about to use an act or practice declared unlawful in AS 45.50.471,  
14 the court shall grant a preliminary injunction to restrain the use of  
15 the act or practice pending final disposition of the case.

16 (i) The court may make additional preliminary orders or judg-  
17 ments that are necessary to restore to any person [IN INTEREST] any  
18 money or real or personal property, [REAL OR PERSONAL,] which may have  
19 been acquired by means of an act or practice declared to be unlawful  
20 by AS 45.50.471. Such additional orders may include,

21 (1) prejudgment attachment of, or appointment of a receiver  
22 to manage money or property adequate to provide restitution;

23 (2) reformation of contracts or deeds; and

24 (3) all other equitable or legal remedies.

25 \* Sec. 5. AS 45.50.531(a) is amended to read:

26 (a) A person who purchases or leases any item of value in trade  
27 or commerce for use and not for resale, [GOODS OR SERVICES] and who  
28 thereby suffers an ascertainable loss of money or real or personal  
29 property[, REAL OR PERSONAL,] as a result of another person's act or

1 practice declared unlawful by AS 45.50.471, may bring a civil action  
2 [IN THE JUDICIAL DISTRICT IN WHICH THE SELLER OR LESSOR RESIDED OF HAS  
3 HIS PRINCIPAL PLACE OF BUSINESS OR IS DOING BUSINESS,] to recover  
4 actual damages or \$200, whichever is greater. The jury, or, if the  
5 action is tried without a jury, the judge, may, in cases of willful  
6 violation, award up to three times the actual damages sustained. In  
7 [, AND IN] all cases the court may provide equitable relief it consid-  
8 ers necessary or proper.

9 \* Sec. 6. AS 45.50.531(b) is amended to read:

10 (b) A person entitled to bring an action under this section may,  
11 [AFTER INVESTIGATION BY AND APPROVAL OF THE ATTORNEY GENERAL,] if the  
12 unlawful act or practice has caused similar injury to numerous other  
13 persons similarly situated and if the person [HE] adequately repre-  
14 sents the similarly situated persons, bring an action on behalf of all  
15 [HIMSELF AND OTHER] similarly injured and situated persons to recover  
16 actual damages. A person planning to bring an action under this  
17 subsection shall deliver [FIRST SUBMIT] to the attorney general a copy  
18 of the [HIS PROPOSED] complaint when it is filed with the court [, AND  
19 HE MAY NOT FILE THE COMPLAINT IN COURT WITHOUT THE ATTORNEY GENERAL'S  
20 APPROVAL]. In an action brought under this subsection, the court may  
21 in its discretion order, in addition to damages, injunctive or other  
22 equitable relief.

23 \* Sec. 7. AS 45.50.531(h) is amended to read:

24 (h) Manufacturers or suppliers of merchandise, the fault of  
25 which is the basis for the action under this chapter, are liable for  
26 the damages assessed to or suffered by retailers sued or charged under  
27 this chapter. When a retailer suffers damages due to satisfying,  
28 without legal action, a claim by a customer which would have been  
29 actionable under this chapter, the manufacturer or supplier of

1 merchandise may be liable for those damages to the retailer, if after  
2 reasonable notice from the retailer and opportunity to satisfy the  
3 customer's claim, the manufacturer or supplier fails to satisfy the  
4 customer's claim. A retailer has a private cause of action to recover  
5 damages from a manufacturer or supplier under this subsection.

6 \* Sec. 8. AS 45.50.531 is amended by adding new subsections to read:

7 (i) A business person whose business is injured and who suffers  
8 an ascertainable loss of money or real or personal property as a  
9 result of a competitor's act or practice declared unlawful by AS 45.-  
10 50.471, may bring a civil action to recover actual damages. The jury,  
11 or, if the action is tried without a jury, the judge, may, in cases  
12 of willful violation, award up to three times the actual damages sus-  
13 tained. In all cases the court may provide equitable relief it con-  
14 sidered necessary or proper.

15 (j) A person entitled to bring an action under this section  
16 shall file the action in the judicial district where the defendant  
17 resides, is doing business, or maintains a principal place of business  
18 in Alaska. However, if the defendant is not located in Alaska but is  
19 subject to personal jurisdiction under AS 09.05.015, the action shall  
20 be filed in the judicial district where the plaintiff resides or  
21 maintains a principal place of business.

22 \* Sec. 9. AS 45.50.541 is amended by adding a new subsection to read:

23 (d) In this section, "consumer" means a person who seeks or  
24 acquires goods or services, whether separate or affixed to real prop-  
25 erty, by lease or purchase, for personal, family, or household pur-  
26 poses.

27 \* Sec. 10. AS 45.50.542 is amended to read:

28 Sec. 45.50.542. WAIVER. A waiver by a person [CONSUMER] of a  
29 substantive provision [THE PROVISIONS] of AS 45.50.471 -- 45.50.561

1 which was enacted to protect that person is contrary to public policy  
2 and is unenforceable and void.

3 \* Sec. 11. AS 45.50 is amended by adding a new section to read:

4 Sec. 45.50.560. SHORT TITLE. AS 45.50.471 -- 45.50.561 may be  
5 cited as the Unfair Trade Practices Act.

6 \* Sec. 12. AS 45.50.561 is amended by adding new paragraphs to read:

7 (9) "person" has the meaning given to it in AS 01.10.-  
8 060(7);

9 (10) "trade or commerce" means the advertising, offering for  
10 sale, sale, barter, or distribution of any services or any property,  
11 tangible or intangible, real, personal, or mixed, and any other arti-  
12 cle, commodity, or thing of value wherever situated, and includes any  
13 trade or commerce directly or indirectly affecting the people of this  
14 state;

15 (11) "willful" means that the person committing the act or  
16 practice declared unlawful by AS 45.50.471 knew or should have known  
17 that the conduct was an unfair or deceptive trade practice or unfair  
18 method of competition.

19 \* Sec. 13. AS 45.50.561(6) is repealed.  
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