

Introduced: 1/25/85  
Referred: Judiciary

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 125

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act revising the Alaska Unfair Trade Practices  
7 and Consumer Protection Act; adding new causes of  
8 action for private business; and providing for an  
9 effective date."

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

11 \* Section 1. AS 09.40.010(a) is amended to read:

12 (a) At any time after an action has been commenced the plaintiff  
13 may make application to the court to have the property of the defen-  
14 dant attached as security for the satisfaction of a judgment that may  
15 be recovered in the following cases:

16 (1) in an action upon an express or implied contract for  
17 the payment of money if the contract is neither secured by mortgage,  
18 lien, nor pledge upon real or personal property, or, if secured, the  
19 security is insufficient to satisfy a judgment that may be recovered  
20 by the plaintiff;

21 (2) in an action upon an express or implied contract  
22 against a defendant not residing in the state;

23 (3) in an action for the collection of a state tax or  
24 license fee;

25 (4) in an action brought under AS 45.50.501 regarding  
26 unlawful trade acts and practices.

27 \* Sec. 2. AS 45.50.471(b) is amended to read:

28 ARTICLE 4. UNFAIR TRADE PRACTICES AND CONSUMER

29 AND BUSINESS PROTECTION ACT.

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

4           (1) fraudulently conveying or transferring goods or ser-  
5 vices by representing them to be those of another;

6           (2) falsely representing or designating the geographic  
7 origin of goods or services;

8           (3) causing a likelihood of confusion or misunderstanding  
9 as to the source, sponsorship, or approval, or another person's affil-  
10 iation, connection, or association with or certification of goods or  
11 services;

12           (4) representing that goods or services have sponsorship,  
13 approval, characteristics, ingredients, uses, benefits, or quantities  
14 that they do not have or that a person has a sponsorship, approval,  
15 status, affiliation, or connection that he does not have;

16           (5) representing that goods are original or new if they are  
17 deteriorated, altered, reconditioned, reclaimed, used, secondhand, or  
18 seconds;

19           (6) representing that goods or services are of a particular  
20 standard, quality, or grade, or that goods are of a particular style  
21 or model, if they are of another;

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

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

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

29           (10) making false or misleading statements of fact

1 concerning the reasons for, existence of, or amounts of price  
2 reductions;

3 (11) engaging in any other conduct creating a likelihood of  
4 confusion or of misunderstanding and which misleads, deceives or  
5 damages a buyer or a competitor in connection with the sale or adver-  
6 tisement of goods or services;

7 (12) using or employing deception, fraud, false pretense,  
8 false promise, misrepresentation, or knowingly concealing, suppress-  
9 ing, or omitting a material fact with intent that others rely upon the  
10 concealment, suppression or omission in connection with the sale or  
11 advertisement of goods or services whether or not a person has in fact  
12 been misled, deceived or damages;

13 (13) failing to deliver to the customer at the time of an  
14 installment sale of goods or services, a written order, contract, or  
15 receipt setting out the name and address of the seller and the name  
16 and address of the organization which he represents, and all of the  
17 terms and conditions of the sale, including a description of the goods  
18 or services, which shall be stated in readable, clear, and unambiguous  
19 language;

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

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

25 (16) misrepresenting the authority of a salesman, represen-  
26 tative or agent to negotiate the final terms of a consumer trans-  
27 action;

28 (17) basing a charge for repair in whole or in part on a  
29 guaranty or warranty rather than on the actual value of the actual

1 repairs made or work to be performed on the item without stating  
2 separately the charges for the work and the charge for the guaranty or  
3 warranty, if any;

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

6 (19) using a chain referral sales plan by inducing or at-  
7 tempting to induce a consumer to enter into a contract by offering a  
8 rebate, discount, commission, or other consideration, contingent upon  
9 the happening of a future event, on the condition that the consumer  
10 either sells, or gives information or assistance for the purpose of  
11 leading to a sale by the seller of the same or related goods;

12 (20) selling or offering to sell a right of participation in  
13 a chain distributor scheme;

14 (21) selling, falsely representing or advertising meat, fish  
15 or poultry which has been frozen as fresh food;

16 (22) failing to comply with AS 45.02.350;

17 (23) failing to comply with AS 45.45.13- -- 45.45.240;

18 (24) counseling, consulting or arranging for future services  
19 relating to the disposition of a body upon death whereby certain  
20 personal property, not including cemetery lots and markers, will be  
21 furnished or the professional services of a funeral director or  
22 embalmer will be furnished, unless the person receiving money or  
23 property deposits the money or property, and money or property is  
24 received, within five days of its receipt, in a trust in a financial  
25 institution whose deposits are insured by an instrumentality of the  
26 federal government designating the institution as the trustee as a  
27 separate trust in the name only of the person on whose behalf the  
28 arrangements are made with a provision that the money or property may  
29 only be applied to the purchase of designated merchandise or services

1 and should the money or property deposited and any accrued interest  
2 not be used for the purposes intended on the death of the person on  
3 whose behalf the arrangements are made, all money or property in the  
4 trust shall become part of his estate; upon demand by the person on  
5 whose behalf the arrangements are made, all money or property in the  
6 trust including accrued interest, shall be paid to him; this paragraph  
7 does not prohibit the charging of a separate fee for consultation,  
8 counseling or arrangement services if the fee is disclosed to the  
9 person making the arrangement; any arrangement under this paragraph  
10 which would constitute a contract of insurance under AS 21 is subject  
11 to the provisions of AS 21;

12 (25) failing to comply with the terms of the Alaska Gasoline  
13 Products Leasing Act (AS 45.50.800 -- 45.50.850);

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

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

18 \* Sec. 3. AS 45.50.481 is amended to read:

19 Sec. 45.50.481. EXEMPTIONS. Nothing in AS 45.50.471 --  
20 45.50.561 applies to

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

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

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

29 (C) provides an adequate private cause of action for

1 injured persons similar to that provided in AS 45.50.531; and

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

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

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

16 \* Sec. 4. AS 45.50.495 is amended to read:

17 Sec. 45.50.495. INVESTIGATIVE POWER OF ATTORNEY GENERAL. (a)

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

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

1 advertisement of goods, services, or property by the person or within  
2 the knowledge of the person, and other information considered neces-  
3 sary;

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

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

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

14 (5) under an order of the superior court, impound samples  
15 of goods or property which are material to the [HIS] investigation and  
16 retain the sample until proceedings undertaken under AS 45.50.471 --  
17 45.50.561 are completed.

18 (b) A civil investigative demand must

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

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

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

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

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

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

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

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

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

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

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

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

1 work day preceding the return date, whichever date is sooner.

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

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

16 \* Sec. 5. AS 45.50.501 is amended to read:

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

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

28 (2) the judicial district of the attorney general's choice  
29 if the person is not located in Alaska but is subject to personal

1 jurisdiction under AS 09.05.015; [,] or

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

4 (b) In addition to actions brought under (a) of this section,  
5 the attorney general may, under the circumstances described in (a),  
6 and in a judicial district as described in (a), as parens patriae on  
7 behalf of persons who are injured by an unlawful act or practice,  
8 bring an action seeking restitution, rescission, or other equitable or  
9 legal remedies in order to restore the status quo. In an action  
10 brought under this subsection, the attorney general may also seek the  
11 relief described in (a) of this section.

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

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

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

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

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

4           (f) In an action brought under (b) of this section, the court  
5 shall exclude from any monetary relief an amount which duplicates an  
6 award made by a court for the same injury, or which is allocable to a  
7 person who elected exclusion under (d) of this section.

8           (g) Nothing in this section causes an action brought by the  
9 attorney general under (b) of this section to be considered a class  
10 action subject to the Rules of Court for class actions. Further, the  
11 requirements for notice and election of exclusion in this section may  
12 not be interpreted so as to delay the court's granting of a request by  
13 the attorney general for any preliminary orders in the action under  
14 (a), (h), or (i) of this section.

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

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

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

27           (2) reformation of contracts or deeds; and

28           (3) all other equitable or legal remedies.

29 \* Sec. 6. AS 45.50.531(a) is amended to read:

1           (a) A person who purchases or leases any item of value in trade  
2 or commerce for use and not for resale, [GOODS OR SERVICES] and who  
3 thereby suffers an ascertainable loss of money or real or personal  
4 property[, REAL OR PERSONAL,] as a result of another person's act or  
5 practice declared unlawful by AS 45.50.471, may bring a civil action  
6 [IN THE JUDICIAL DISTRICT IN WHICH THE SELLER OR LESSOR RESIDES OR HAS  
7 HIS PRINCIPAL PLACE OF BUSINESS OR IS DOING BUSINESS,] to recover  
8 actual damages or \$200, whichever is greater. The jury, or, if the  
9 action is tried without a jury, the judge, may, in cases of wilful  
10 violation, award up to three times the actual damages sustained. In  
11 [, AND IN] all cases the court may provide equitable relief it consid-  
12 ers necessary or proper.

13 \* Sec. 7. AS 45.50.531(b) is amended to read:

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

27 \* Sec. 8. AS 45.50.531(h) is amended to read:

28           (h) Manufacturers or suppliers of merchandise, the fault of  
29 which is the basis for the action under this chapter, are liable for

1 the damages assessed to or suffered by retailers sued or charged under  
2 this chapter. When a retailer suffers damages due to satisfying,  
3 without legal action, a claim by a customer which would have been  
4 actionable under this chapter, the manufacturer or supplier of mer-  
5 chandise may be liable for those damages to the retailer, if after  
6 reasonable notice from the retailer and opportunity to satisfy the  
7 customer's claim, the manufacturer or supplier fails to satisfy the  
8 customer's claim. A retailer has a private cause of action to recover  
9 damages from a manufacturer or supplier under this subsection.

10 \* Sec. 9. AS 45.50.531 is amended by adding new subsections to read:

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

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

26 \* Sec. 10. AS 45.50.541 is amended by adding a new subsection to read:

27 (d) In this section, "consumer" means a person who seeks or  
28 acquires goods or services, whether separate or affixed to real prop-  
29 erty, by lease or purchase, for personal, family, or household

1 purposes.

2 \* Sec. 11. AS 45.50.542 is amended to read:

3 Sec. 45.50.542. WAIVER. A waiver by a person [CONSUMER] of a  
4 substantive provision [THE PROVISIONS] of AS 45.50.471 -- 45.50.561  
5 which was enacted to protect that person is contrary to public policy  
6 and is unenforceable and void.

7 \* Sec. 12. AS 45.50 is amended by adding a new section to read:

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

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

11 (10) "person" has the meaning given to it in AS 01.10.-  
12 060(7);

13 (11) "trade or commerce" means the advertising, offering for  
14 sale, barter, or distribution of any service or any property, tangible  
15 or intangible, real, personal, or mixed, and any other article, com-  
16 modity, or thing of value, wherever situated, and includes any trade  
17 or commerce directly or indirectly affecting the people of this state;

18 (12) "wilful" means that the person committing the act or  
19 practice declared unlawful by AS 45.50.471 knew or should have known  
20 that the conduct was an unfair or deceptive trade practice or unfair  
21 method of competition.

22 \* Sec. 14. AS 45.50.561(6) is repealed.

23 \* Sec. 15. This Act takes effect immediately in accordance with AS 01.-  
24 10.070(c).