

Offered: 4/1/85
Referred: Rules

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 125 (Judiciary)
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; and adding new causes of
8 action for private business."

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

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

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

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

16 * Sec. 2. AS 45.50.481 is amended to read:

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

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

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

25 (B) does not exempt from regulation the person commit-
26 ting the prohibited act or practice;

27 (C) provides remedies for injured persons equal to or
28 greater than those provided in AS 45.50.471 - 45.50.561; and

29 (D) unless the law is a federal law that preempts

1 state action, provides the state with adequate enforcement and
2 restitution remedies in the public interest similar to those
3 remedies in AS 45.50.501 and 45.50.551;

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

11 (3) an act or transaction regulated under AS 21.36 or
12 AS 06.05 or a regulation adopted [ANY REGULATIONS PROMULGATED] under
13 the authority of either of those chapters.

14 * Sec. 3. AS 45.50.531(a) is amended to read:

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

27 * Sec. 4. AS 45.50.531(b) is amended to read:

28 (b) A person entitled to bring an action under this section may,
29 [AFTER INVESTIGATION BY AND APPROVAL OF THE ATTORNEY GENERAL,] if the

1 unlawful act or practice has caused similar injury to numerous other
2 persons similarly situated and if the person [HE] adequately repre-
3 sents the similarly situated persons, bring an action on behalf of all
4 [HIMSELF AND OTHER] similarly injured and situated persons to recover
5 actual damages. A person planning to bring an action under this
6 subsection shall deliver [FIRST SUBMIT] to the attorney general a copy
7 of the [HIS PROPOSED] complaint when it is filed with the court [, AND
8 HE MAY NOT FILE THE COMPLAINT IN COURT WITHOUT THE ATTORNEY GENERAL'S
9 APPROVAL]. In an action brought under this subsection, the court may
10 in its discretion order, in addition to damages, injunctive or other
11 equitable relief.

12 * Sec. 5. AS 45.50.531(h) is amended to read:

13 (h) A manufacturer or supplier [MANUFACTURERS OR SUPPLIERS] of
14 merchandise, whose [THE] fault [OF WHICH] is the basis for the action
15 under this chapter, is [ARE] liable for the damages assessed to or
16 suffered by a retailer sued or [RETAILERS] charged under this chapter.
17 A retailer has a private cause of action to recover from a
18 manufacturer or supplier under this subsection the actual damages
19 suffered by the retailer if

20 (1) the retailer has given the manufacturer or supplier
21 reasonable notice and a reasonable opportunity to satisfy the
22 customer's claim;

23 (2) the manufacturer or retailer has not satisfied the
24 customer's claim;

25 (3) the retailer satisfies, before the customer files an
26 action in court, a claim of the customer against the manufacturer or
27 supplier arising under this subsection; and

28 (4) the retailer has suffered damage by satisfying the
29 customer's claim.

1 * Sec. 6. AS 45.50.531 is amended by adding a new subsection to read:

2 (i) A business person whose business is injured and who suffers
3 an ascertainable loss of money or real or personal property as a
4 result of a competitor's act or practice declared unlawful by AS 45.-
5 50.471, may bring a civil action to recover actual damages. The jury,
6 or, if the action is tried without a jury, the judge, may, in cases of
7 wilful violation, award up to three times the actual damages sus-
8 tained. In all cases the court may provide equitable relief it con-
9 siders necessary or proper.

10 * Sec. 7. AS 45.50.541 is amended by adding a new subsection to read:

11 (d) In this section, "consumer" means a person who seeks or
12 acquires goods or services, whether or not affixed to real property,
13 by lease or purchase, for personal, family, or household purposes.

14 * Sec. 8. AS 45.50.542 is amended to read:

15 Sec. 45.50.542. WAIVER VOID. A waiver by a person [CONSUMER] of
16 a provision [THE PROVISIONS] of AS 45.50.471 - 45.50.561 that was
17 enacted to protect that person is contrary to public policy and is
18 unenforceable and void.

19 * Sec. 9. AS 45.50 is amended by adding a new section to read:

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

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

23 (10) "person" has the meaning given in AS 01.10.060;

24 (11) "trade or commerce" means the advertising, offering for
25 sale, barter, or distribution of a service or property, tangible or
26 intangible, real, personal, or mixed, or other article, commodity, or
27 thing of value, wherever situated, and includes trade or commerce
28 directly or indirectly affecting the people of the state;

29 (12) "wilful" means that the person committing the act or

1 practice declared unlawful by AS 45.50.471 knew or should have known
2 that the conduct was an unfair or deceptive trade practice or unfair
3 method of competition.
4 * Sec. 11. AS 45.50.561(6) is repealed.