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Sec. 45.50.531. Private and class actions. (a) A person who purchases or leases goods or services and thereby suffers an ascertainable loss of money or property, real or personal, as a result of another person's act or practice declared unlawful by AS 45.50.471, may bring a civil action in the judicial district in which the seller or lessor resides or has the principal place of business or is doing business, to recover actual damages or \$200, whichever is greater. The jury or, if the action is tried without a jury, the judge may, in cases of wilful violation, award up to three times the actual damages sustained, and in all cases the court may provide equitable relief it considers necessary or proper.

(b) A person entitled to bring an action under this section may, after investigation by and approval of the attorney general, if the unlawful act or practice has caused similar injury to numerous other persons similarly situated and if the person adequately represents the similarly situated persons, bring an action on behalf of the person and other similarly injured and situated persons to recover actual damages. A person planning to bring an action under this subsection shall first submit to the attorney general a copy of the proposed complaint, and the person may not file the complaint in court without the attorney general's approval. In an action brought under this subsection, the court may in its discretion order, in addition to damages, injunctive or other equitable relief.

(c) Upon commencement of an action brought under this section the clerk of the court shall mail a copy of the complaint or other initial pleading to the attorney general and, upon entry of an order or judgment in the action, shall mail a copy of the order or judgment to the attorney general.

(d) In an action brought by a person under this section, the court may award, in addition to the relief provided in this section, reasonable attorney fees and costs.

(e) A permanent injunction or final judgment against a person against whom an action was initiated under AS 45.50.501 is prima facie evidence in an action brought under this section that the person used or employed an act or practice declared unlawful by AS 45.50.471.

(f) A person may not commence an action under this section more than two years after the person discovers or reasonably should have discovered that the loss resulted from an act or practice declared unlawful by AS 45.50.471.

(g) If the court finds for the defendant in an action brought under this section, it may award the defendant an amount equal to the actual costs and attorney fees the defendant incurred in the defense.

(h) Manufacturers or suppliers of merchandise, the fault of which is the basis for the action under this chapter, are liable for the damages assessed to or suffered by retailers charged under this chapter. (§ 2 ch 246 SLA 1970; am § 1 ch 225 SLA 1976)

repealed

*filter
removed*

repealed

P

X

STATE OF ALASKA THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. JUD.	3-24-87	1:30p.m.
H. JUD.	3-11-87	1:30p.m.

DATE: 3-24-87

The Judiciary Committee has considered HB 88

"An Act relating to private causes of action by businesses under the Alaska Unfair Trade Practices and Consumer Protection Act; and providing for an effective date."

RECOMMENDS:

- replace with CS HB 88 (Judiciary) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 11/30/87
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

See C.T. memo

 Chairman's signature

MEMORANDUM

DATE: March 24, 1987
TO: Members, House Judiciary Committee
FROM: Max F. Gruenberg, Jr.
RE: Sectional Analysis of C.S. for HB 88 (Judiciary)

Title

The bill's title has been broadened to cover the changes made in the committee substitute.

Sec. 1

AS 45.50.531(a) has been amended to accomplish the original purpose of the bill, allowing persons whose business is injured by a violation of AS 45.50.471 to bring suit under the act, without creating a new paragraph "(i)." Other changes remove unnecessary language and clarify subsection (a).

Sec. 2

AS 45.50.531(g) is amended to allow actual costs and attorney's fees to either party prevailing in an action brought under this act. Presently only prevailing defendants are entitled to actual costs and fees.

Sec. 3

AS 45.50.531(h) is amended only to clarify the language of this subsection.

Sec. 4

AS 45.50.531(b) has been repealed because class actions are covered under Civil Rule 23 and it is inappropriate and impracticable to require the attorney general's approval for the maintenance of a civil action under this act.

AS 45.50.531(d) is repealed because plaintiff's attorney's fees are now covered by subsection(g).

Letter of Intent to Accompany C.S. HB 88 (Judiciary)

AS 45.50.531 (a) has been amended to allow persons whose business has been injured by a violation of AS 45.50.471 to bring suit under the act.

AS 45.50.531 (b) has been repealed because Civil Rule 23 allows class actions. AS 45.50.531 (b) is not necessary.

AS 45.50.531(d) is repealed because costs and attorney's fees are now covered under AS 45.50.531(g) as amended.

not needed

Adopted

WORK DRAFT

WORK DRAFT

WORK DRAFT

wo0587hB
Bannister
3/23/87

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 88 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to private and class actions under
7 the Alaska Unfair Trade Practices and Consumer Pro-
8 tection Act."

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

10 * Section 1. AS 45.50.531(a) is amended to read:

11 (a) A person who [PURCHASES OR LEASES GOODS OR SERVICES AND
12 THEREBY] suffers an ascertainable loss of money or property [, REAL OR
13 PERSONAL,] as a result of another person's act or practice declared
14 unlawful by AS 45.50.471 [,] may bring a civil action [IN THE JUDICIAL
15 DISTRICT IN WHICH THE SELLER OR LESSOR RESIDES OR HAS THE PRINCIPAL
16 PLACE OF BUSINESS OR IS DOING BUSINESS,] to recover actual damages or
17 \$200, whichever is greater. The court [JURY OR, IF THE ACTION IS
18 TRIED WITHOUT A JURY, THE JUDGE] may, in cases of wilful violation,
19 award up to three times the actual damages sustained. The [, AND IN
20 ALL CASES THE] court may provide other [EQUITABLE] relief it considers
21 necessary and [OR] proper.

22 * Sec. 2. AS 45.50.531(g) is repealed and reenacted to read:

23 (g) In an action brought under this chapter, the court may award
24 the prevailing party, the actual costs and attorney fees incurred by
25 the party. *all or a portion of*

26 * Sec. 3. AS 45.50.531(h) is repealed and reenacted to read:

27 (h) If the basis for the action is the fault of the manufacturer
28 or supplier of the merchandise, the manufacturer or supplier who is at
29 fault is liable for the damages awarded against the retailer under

1 this chapter.

2 * Sec. 4. AS 45.50.531(b) and ~~(d)~~ are repealed.

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wo0587hB
Bannister
3/18/87

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 88 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to private and class actions under
7 the Alaska Unfair Trade Practices and Consumer Pro-
8 tection Act."

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

10 / * Section 1. AS 45.50.531(a) is amended to read:

11 (a) A person who [PURCHASES OR LEASES GOODS OR SERVICES AND
12 THEREBY] suffers an ascertainable loss of money or property, [REAL OR
13 PERSONAL,] as a result of another person's act or practice declared
14 unlawful by AS 45.50.471, may bring a civil action [IN THE JUDICIAL
15 DISTRICT IN WHICH THE SELLER OR LESSOR RESIDES OR HAS THE PRINCIPAL
16 PLACE OF BUSINESS OR IS DOING BUSINESS,] to recover actual damages or
17 \$200, whichever is greater. The court [JURY OR, IF THE ACTION IS
18 TRIED WITHOUT A JURY, THE JUDGE] may, in cases of wilful violation,
19 award up to three times the actual damages sustained. The [, AND IN
20 ALL CASES THE] court may provide other [EQUITABLE] relief it considers
21 necessary and [OR] proper.

22 * Sec. 2. AS 45.50.531(h) is amended to read:

23 (h) Manufacturers or suppliers of merchandise, the fault of
24 which is the basis for the action under this chapter, are liable for
25 the damages awarded against [ASSESSED TO OR SUFFERED BY] retailers
26 [CHARGED] under this chapter.

27 * Sec. 3. AS 45.50.531(b), ^{a-z}(d), [~~and (g)~~] are repealed.
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HOUSE AMENDMENT

1

TO: CS HB 88 (Jud.)

BY: Fettyjohn

Page 1 Line 24

after "party" insert:

"all or a portion of"

Adopted

Submit original amendment to the Chief Clerk.
It will then be numbered and duplicated.

HOUSE AMENDMENT

TO: CS HB 45 (L&C)

BY: Rep. Donley

Page 2, after line 8, insert a new bill section to read:

"* Sec. 4. AS 36.30.930 is amended by adding a new subsection to read:

(3) A person may file a civil action against a person or entity, including the state, an instrumentality of the state, or an officer or employee of the state acting in an official capacity, for damages due to failure to carry out a policy established under this section. A court, in issuing a final order in an action brought under this section, may award costs to the prevailing party."

Renumber remaining sections accordingly.

**Submit original amendment to the Chief Clerk.
It will then be numbered and duplicated.**

Introduced: 1/30/87
Referred: Labor & Commerce
and Judiciary

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE HOUSE

2 HOUSE BILL NO. 88

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to private causes of action by
7 businesses under the Alaska Unfair Trade Practices
8 and Consumer Protection Act; and providing for an
9 effective date."

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

11 * Section 1. AS 45.50.531 is amended by adding a new subsection to
12 read:

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

21 * Sec. 2. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).

define:

granted

*Who awards damages
judge or
jury*

HOUSE COMMITTEE REPORT

2/37

(7)

Date referred: 1/30/87

FURTHER REFERRALS: Judiciary

DATE: 2/26/87

The Labor & Commerce Committee has considered HB 88

"An Act relating to private causes of action by businesses under the Alaska Unfair Trade Practices and Consumer Protection Act; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(S):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published 1/30/87
- zero with analysis

SIGNING DO PASS:

W. Paul Douley

Cliff Dawson

John A. Broun

John F. Johnson

SIGNING OTHER RECOMMENDATIONS:

Walt Furman

W. Paul Douley
Chairman's signature

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 29, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill that makes clear the right of a business to bring a private civil action to enjoin, or to recover for damages caused by, a competitor's unfair trade practice.

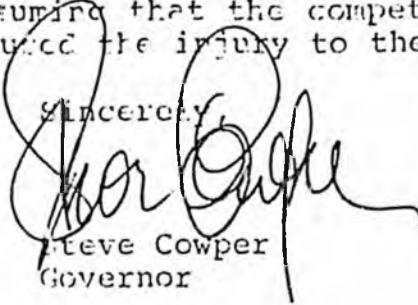
Consumers have a private cause of action for violations of Alaska's Unfair Trade Practices and Consumer Protection Act (UTP Act) but businesses do not, even if harmed by the unfair or deceptive acts or practices of a competitor. Therefore, under present law, only the state (by the attorney general) can bring an action for injunctive relief to stop the unfair trade practices. Private enforcement by businesses aids the attorney general's enforcement efforts.

Specifically, this bill amends AS 45.50.531 to provide that a business that is injured has a private cause of action against the competitor. This cause of action may be inferred in the current UTP Act, but, in order to enhance the rights of private business competitors to guard their own place in the market against unfair competition, a clearly spelled-out private cause of action for the injured competitor is needed. Businesses that often have the resources to pursue private causes of action should not have to depend on state action to stop unfair practices by their competitors.

This would be a desirable change in the statute from a budgetary viewpoint as well. In a slowdown economy, the need for additional state enforcement efforts might also increase; coupled with decreases in revenue, adequate enforcement levels may not be possible. To some extent, this problem might be avoided by allowing private enforcement of the Act. Regularly the consumer protection section of the Department of Law receives calls and complaints from businesses that are concerned about the actions

of their competitors. While the state may act on those cases to stop any violations of law, the state is not, nor should it be, in a position to recover any damages for the honest competitor that is harmed. Nevertheless, the honest competitor should have a remedy that would encourage the seeking of such damages, assuming that the competitor could prove that the violations caused the injury to the business.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name and title.

Steve Cowper
Governor

MS 88 1/30/87

STATE OF ALASKA 1987 LEGISLATIVE SESSION FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No. : _____
Title: "...relating to private causes of action by businesses under the Alaska Unfair Trade Practices & Cons. Prot. Act"
Sponsor: House Rules/Request of the Gov.
Requestor: Office of the Governor
Date of Request: November 3, 1986

FISCAL DETAIL

Agency Affected: Department of Law
BRU: Consumer Protection
Components: Consumer Protection

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS :

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

- Please see attached. -

Prepared by: Richard I. Pegues, Director
Division: Administrative Services

Phone: 465-3672
Date: 11/05/86

Approved by Commissioner: Richard I. Pegues / For / Harold M. Brown, (Attorney General)
Agency: Department of Law

Date: 11/05/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. _____

This bill amends AS 45.50.531 to provide that a business, that is injured by a competitor's unfair trade practice, has a private cause of action against that competitor, under Alaska's Unfair Trade Practices and Consumer Protection Act. Currently, only the state can bring an action to stop unfair trade practices. In view of substantial reductions to the state's consumer protection program, extending a private cause of action to businesses, to cure unfair trade violations, will help avoid some of the increase in unfair trade practices that often occurs during an economic downturn.