

HB

88

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.

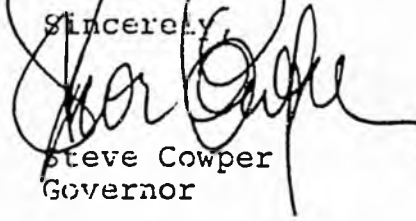
Consumers have a private cause of action for violations of Alaska's Unfair Trade Practices and Consumer Protection Act (UTP Act) but businesses do not, even if harmed by the unfair or deceptive acts or practices of a competitor. Therefore, under present law, only the state (by the attorney general) can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

243 88 11/30/87

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						
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REVENUE						
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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 Phone : 465-3672
 Division : Administrative Services Date : 11/05/86
 Approved by Commissioner : Richard I. Pegues / For
Harold M. Brown, Attorney General Date : 11/05/86
 Agency : Department of Law

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.