

HB

203

SENATE COMMITTEE REPORT

DATE: 5/6/98

FURTHER:

DATE TURNED
IN TO OFFICE: 5-8-98

Judiciary Committee considered CS FOR HOUSE BILL NO. 203(JUD)

"An Act relating to actions for unlawful trade practices."

and recommends:

- be replaced with SEN CS FOR HB HB 203 (JUD)
- adopt previous _____ CS _____
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to the _____ Committee

- Senate Bill:**
 same title
 new title
House Bill:
 same title
 technical title
 new: SCR# _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>[Signature]</i>	<input checked="" type="checkbox"/>	<i>[Signature]</i>	<input checked="" type="checkbox"/>		
CHAIR: <i>[Signature]</i>	<input checked="" type="checkbox"/>	CHAIR:			

NEW FISCAL NOTE(S):

Department Date Zero Fiscal

PREVIOUS FISCAL NOTE(S):*

Department Date Zero Fiscal

Law - CIVIL DIV.	1-28-98	<input checked="" type="checkbox"/>	

APPROPRIATION -- no fiscal note

*Include fiscal notes accompanying Governor's bill

CORRECTION

Discard CS HB 203 (J4D)

and retain this corrected version.

CS FOR HOUSE BILL NO. 203(JUD)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/20/98

Referred: Rules

Sponsor(s): REPRESENTATIVES DYSON, Cowdery, Porter, James, Rokeberg, Hudson

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to actions for unlawful trade practices."

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

3 * Section 1. AS 09.60.015 is amended by adding a new subsection to read:

4 (c) This section is subject to AS 45.50.537.

5 * Sec. 2. AS 45.50.473(c) is amended to read:

6 (c) A violation of this section constitutes an unfair or deceptive act or practice
 7 under AS 45.50.471. It [NOTWITHSTANDING AS 45.50.531(a), IT] is presumed
 8 that actual damages to the consumer under AS 45.50.531(a) are equal to the cost of
 9 the service provided plus \$200. Additional damages must be proved.

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

11 (a) A person who suffers an ascertainable loss of money or property as a result
 12 of another person's act or practice declared unlawful by AS 45.50.471 may bring a
 13 civil action to recover for each unlawful act or practice three times the actual
 14 damages or \$500 [\$200], whichever is greater. [THE COURT MAY, IN CASES OF
 15 WILFUL VIOLATION, AWARD UP TO THREE TIMES THE ACTUAL DAMAGES

1 SUSTAINED.] The court may provide other relief it considers necessary and proper.
 2 Nothing in this subsection prevents a person who brings an action under this
 3 subsection from pursuing other remedies available under other law, including
 4 common law.

5 * Sec. 4. AS 45.50.531 is amended by adding new subsections to read:

6 (i) If a person receives an award of punitive damages under (a) of this section,
 7 the court shall require that 50 percent of the award be deposited into the general fund
 8 of the state under AS 09.17.020(j). This subsection does not grant the state the right
 9 to file or join a civil action to recover punitive damages.

10 (j) The commissioner of administration shall separately account for money
 11 received under (i) of this section that is deposited in the general fund. The annual
 12 estimated balance in the account may be appropriated by the legislature for the
 13 expenses of the fair business practices section of the Department of Law.

14 * Sec. 5. AS 45.50 is amended by adding new sections to read:

15 **Sec. 45.50.535. Private injunctive relief.** (a) Subject to (b) of this section
 16 and in addition to any right to bring an action under AS 45.50.531 or other law, any
 17 person who was the victim of the unlawful act, whether or not the person suffered
 18 actual damages, may bring an action to obtain an injunction prohibiting a seller or
 19 lessor from continuing to engage in an act or practice declared unlawful under
 20 AS 45.50.471.

21 (b) A person may not bring an action under (a) of this section unless

22 (1) the person first provides written notice to the seller or lessor who
 23 engaged in the unlawful act or practice that the person will seek an injunction against
 24 the seller or lessor if the seller or lessor fails to promptly stop the unlawful act or
 25 practice; and

26 (2) the seller or lessor fails to promptly stop the unlawful act or
 27 practice after receiving the notice.

28 **Sec. 45.50.536. Mediation.** Notwithstanding the other provisions of
 29 AS 45.50.471 - 45.50.561, a civil action under AS 45.50.531 or 45.50.535 may be
 30 submitted to mediation under the Alaska Rules of Civil Procedure. The mediation
 31 must begin within 30 days after the court's order for mediation. During mediation, the

1 court may, if it is determined appropriate by the court, enjoin the defendant from
2 engaging in the act or practice that is the subject of the civil action.

3 **Sec. 45.50.537. Attorney fees, costs, and damages.** (a) In an action brought
4 by a private person under AS 45.50.471 - 45.50.561, a prevailing plaintiff shall be
5 awarded costs as provided by court rule and full reasonable attorney fees at the
6 prevailing reasonable rate.

7 (b) Unless the action is found to be frivolous, in an action brought by a private
8 person under AS 45.50.471 - 45.50.561, a prevailing defendant shall be awarded
9 attorney fees and costs as provided by court rule. If the action is found to be
10 frivolous, the attorney fees to be awarded to the defendant shall be full reasonable
11 attorney fees at the prevailing reasonable rate.

12 (c) Notwithstanding the other provisions of this section, in an action brought
13 by a private person under AS 45.50.471 - 45.50.561, if the plaintiff is not the
14 prevailing party and if the court finds that the action was brought by the plaintiff to
15 obtain a competitive business advantage, the court shall award a prevailing defendant
16 costs as provided by court rule, full reasonable attorney fees at the prevailing
17 reasonable rate, and any damages suffered by the prevailing defendant as a result of
18 the plaintiff's allegations.

19 (d) In this section, "frivolous" means

20 (1) not reasonably based on evidence or on existing law or a reasonable
21 extension, modification, or reversal of existing law; or

22 (2) brought to harass the defendant or to cause unnecessary delay or
23 needless expense.

24 * Sec. 6. AS 45.50.531(g) is repealed.

25 * Sec. 7. AS 45.50.536, enacted by sec. 5 of this Act, only applies to causes of action that
26 accrue on or after the effective date of this Act.



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REPRESENTATIVE FRED DYSON

CSHB 203

Sponsor Statement

Consumer Protection from Unlawful Trade Practices

"An Act relating to actions for unlawful trade practices."

Alaskan consumers have grown increasingly vulnerable to fraud since the Dept. of Law's Consumer Protection Section was eliminated in the late 1980s.

Knowing that our state's fraud enforcement efforts are weak, swindlers prey heavily on our citizens, giving us a dubious reputation as easy targets, and costing us an estimated \$10 million a year in telemarketing fraud alone. We continue to lag far behind other states in providing protection to our consumers--especially elderly Alaskans, who are particularly vulnerable.

Though Alaska's state government consumer protection apparatus is inadequate to protect our citizens, we can empower ordinary Alaskans to fight back against consumer fraud. CSHB203 gives Alaskan's their own "teeth."

CSHB203 provides for a dispute resolution procedure for consumer disputes. First a consumer may not bring court action unless they first provide written notice. A mediation option is also provided for in this bill as a dispute resolution option.

The bill provides for full and reasonable attorney and costs for a consumer, plus the ability of the court to grant injunctive relief. An individual does not have to have suffered actual damages to be granted injunctive relief. The injunctive relief provision of this bill is intended to be a deterrent to the scam artist who prey on our elderly citizens.

To protect the honest business this bill defines frivolous and provides for the defendant to receive full reasonable attorneys fees and costs if the action is found to be frivolous. If the actions is not frivolous and the defendant prevails then Attorney fees and costs are provided for by court rules. This bill seeks to protect the consumer and provides for a fair process to resolve disputes.

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MEMORANDUM

April 22, 1998

SUBJECT: Sectional Summary of CSHB 203(JUD) (Work Order No. 20-LS0553\R)

TO: Representative Fred Dyson
Attn: Patrick Harman

FROM: *TB*
Theresa Bannister
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Amends the section dealing with attorney fees in certain small claims actions to conform the section to other changes in the bill.

Section 2. Amends the subsection that provides a remedy for violating AS 45.50.473, which requires that certain disclosures be made for the costs of certain telephone services. The amendment shows how the subsection relates to AS 45.50.531(a).

Section 3. Amends AS 45.50.531(a). AS 45.50.531 relates to private and class actions for unlawful acts and practices identified under AS 45.50.471. Allows a person who has lost money or property because of an unlawful act or practice to bring an action to recover damages. Allows the person to recover for each unlawful act or practice the greater of three times the actual damages or \$500. Removes the requirement that the violation be willful in order to receive triple damages. Allows a court to award other necessary and proper relief. States that the section does not prevent a person from pursuing other available remedies as well as bringing an action under this section.

Section 4. In (i) amends the section on private and class actions to require a court to require that 50 percent of a punitive damages award under (a) of the section be deposited in the general fund.

In (j) directs the commissioner of administration to separately account for money received under (i). States that the annual estimated balance in the account may be appropriated by the legislature for the expenses of the fair business practices section of the Department of Law.

Representative Fred Dyson
April 22, 1998
Page 2

Section 5. Adds three new sections to the article on unfair trade practices and consumer protection.

AS 45.50.535. Allows any victim of an act or practice unlawful under AS 45.50.471, whether or not the person suffered actual damages, to bring an action in court to stop a seller or lessor from continuing to engage in the unlawful act or practice. States that an action under this section is in addition to any other right to bring an action under other law.

Establishes conditions for bringing the action. First, the person must give the seller or lessor written notice that the person will bring the action unless the seller or lessor promptly stops the unlawful act or practice. Second, the seller or lessor must promptly stop the unlawful act or practice after the notice.

AS 45.50.536. Allows a civil action under AS 45.50.531 or 45.50.535 to be submitted to mediation. Requires the mediation to begin within 30 days after the court's order for mediation. Allows the court to enjoin the defendant during mediation from the act or practice that is the subject of the action.

AS 45.50.537. Establishes the rules for awarding attorney fees and costs and certain damages in an action brought by a private plaintiff under AS 45.50.471 - 45.50.561.

In (a), unless another part of the section provides differently, directs a court to award a prevailing plaintiff (the person who brings the action and wins) costs as allowed by court rule and full reasonable attorney fees at the prevailing reasonable rate.

In (b), unless the action is frivolous, directs the court to award a prevailing defendant attorney fees and costs as provided by court rule. If frivolous, the defendant receives full reasonable attorney fees at the prevailing reasonable rate.

In (c), if the plaintiff does not prevail and the action was brought to obtain a competitive business advantage, directs the court to award the prevailing defendant costs as provided by court rule, full reasonable attorney fees at the prevailing reasonable rate, and any damages suffered.

In (d), defines "frivolous."

Section 6. Repeals AS 45.50.531(g). This is the current subsection on attorney fees and costs for private actions under AS 45.50.531.

Section 7. This section is an applicability section for sec. 45.50.536.

If I may be of further assistance, please advise.

TLB:jdr.pl
98-263.jdr

FISCAL NOTE

Version: CSHB 203 (JUD)

(H) Publish Date: 4/20/98

**STATE OF ALASKA
1998 LEGISLATIVE SESSION**

Revision Date (Note if correction) _____ Dept. Affected Law
 Title "An Act relating to unlawful trade practices." BRU Civil Division
 Component Commercial
 Sponsor Representative Dyson
 Requester House Judiciary Committee Component Serial No. 2211

Expenditures/Revenues (Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY98) cost: 0.0

POSITIONS

Full-time	0	0	0	0	0	0
Part-time						
Temporary						

ANALYSIS: *(Attach a separate page if necessary)*
 HB 203 amends Alaska's Unfair Trade Practices and Consumer Protection Act to enhance a private litigant's right, under AS 45.50.531, to bring an action in Alaska Superior Court.

 Passage of this legislation would cause no new costs for the Department of Law. Section 5 may have the effect of increasing revenues, however, as it would require a court to award full attorney's fees and all allowable costs to a prevailing plaintiff (whether the state or a private plaintiff). Under current law, the prevailing plaintiff can only receive Rule 82 attorney's fees, set at approximately 20 percent. The amount of revenue that might accrue to the state is very speculative, depending on the level of effort expended by the state in pursuing actions brought under the Unfair Trade Practices and Consumer Protection Act.

Prepared by Joan M. Kasson *Joan M. Kasson* Phone 465-5370
 Division Attorney General's Office Date 1/28/98
 Approved by Commissioner Bruce M. Botelho, Attorney General Date 1/28/98
 Agency Department of Law

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