

HB

446

SENATE COMMITTEE REPORT

DATE: 4/12/06

FURTHER: Finance

DATE TURNED
IN TO OFFICE: _____

Judiciary Committee considered CS FOR HOUSE BILL NO. 446(JUD)

HB 446 PENALTY FOR UNLAWFUL TRADE PRACTICE

"An Act relating to the amount of a civil penalty for an unlawful act or practice in the conduct of trade or commerce; and eliminating mandatory continuances in these matters after issuance of an injunction."

and recommends:

- be replaced with _____ CS _____ (_____)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

CS Senate Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
SCS House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>	X			
<i>[Signature]</i>	X			
<i>[Signature]</i>			X	
<i>[Signature]</i>			X	
CHAIR: <i>[Signature]</i>			X	

Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
Phone: (907) 465-2995
Fax: (907) 465-8592



Interim:
716 W 4th Avenue, Suite 430
Anchorage, AK 99501-2133
Phone: (907) 269-0250
Fax: (907) 269-0249

Representative Lesil McGuire

Chair, Judiciary Committee

SPONSOR STATEMENT HB 446

"An Act relating to the amount of a civil penalty for an unlawful act or practice in the conduct of trade or commerce."

The Federal Trade Commission recently reported that *Alaska topped the nation in fraud complaints last year: 249 per 100,000 people*. Unfortunately, Alaska's current consumer protection laws provide one of the lowest allowable civil penalties of any state. To strengthen Alaska's consumer protection law and send a message to those who prey on Alaska consumers, HB 446 seeks to increase the civil penalties authorized under Alaska's Unfair Trade Practices and Consumer Protection Act.

Under current law, when a person or company violates an injunction prohibiting unfair or deceptive business practices, it is subject to a maximum penalty of \$25,000. HB 446 will increase that maximum allowable civil penalty to \$50,000.

The current Act also provides for a \$5,000 civil penalty for each violation of the Act. HB 446 will increase this amount to a range between \$1,000 and \$25,000 per violation. The current \$5,000 penalty in the Act was established in 1970 when the Act was passed. Adjusting for inflation alone, this penalty should be \$20,200 (inflation from January 1970 to January 2005 was 405%). An increase to \$25,000 is a very modest increase.

Obtaining injunctive relief and civil penalties are the tools that enable the Attorney General to protect Alaska consumers against unfair and deceptive trade practices. These changes are vital enforcement tools that strengthen the Act. All civil penalties are assessed by a court only after a violation of the Act has been proven. All penalty payments go directly to the State of Alaska. Your support of this important legislation is appreciated.

CS FOR HOUSE BILL NO. 446(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FOURTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 2/27/06
Referred: Finance

Sponsor(s): REPRESENTATIVES MCGUIRE, Lynn, Gara, Dahlstrom, Gruenberg, Neuman

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the amount of a civil penalty for an unlawful act or practice in the
2 conduct of trade or commerce; and eliminating mandatory continuances in these
3 matters after issuance of an injunction."

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

5 * Section 1. AS 45.50.551(a) is amended to read:

knowingly and willfully

6 (a) A person who violates the terms of an injunction or restraining order
7 issued under AS 45.50.501 shall forfeit and pay to the state a civil penalty of not more
8 than \$50,000 for each [~~\$25,000 PER~~] violation. For the purposes of this section, the
9 superior court in a judicial district issuing an injunction retains jurisdiction, [AND
10 THE CAUSE SHALL BE CONTINUED,] and, in these cases, the attorney general
11 acting in the name of the state may petition for recovery of the penalties.

12 * Sec. 2. AS 45.50.551(b) is amended to read:

13 (b) In an action brought under AS 45.50.501, if the court finds that a person is
14 using or has used an act or practice declared unlawful by AS 45.50.471, the attorney

*knowingly
willfully*

1 general, upon petition to the court, may recover, on behalf of the state, a civil penalty
2 of not less than \$1,000 and not more than \$25,000 for each [\$5,000 PER] violation.

3 * Sec. 3. The uncodified law of the State of Alaska is amended by adding a new section to
4 read:

5 APPLICABILITY. This Act applies to all penalties assessed on or after the effective
6 date of this Act, regardless of when the conduct occurred.

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 446(JUD)
 (H) Publish Date: 2/27/06

Revision Date/Time (Note if correction): _____ Dept. Affected: _____
 Title Penalty for Unlawful Trade Practice RDU Alaska Court System
 Component Trial Courts
 Sponsor Representative McGuire
 Requester _____ Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

The court system does not anticipate any fiscal impact from the passage of HB 446.

Prepared by: Doug Wooliver, Administrative Attorney
 Division: Alaska Court System
 Approved by: Doug Wooliver for Stephanie Cole, Administrative Director
 Agency: Alaska Court System

Phone 463-4750
 Date/Time 2/21/06 @ 2:30 pm
 Date 2/21/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 2
 Bill Version: CSHB 446(JUD)
 (H) Publish Date: 2/27/06

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to the amount of a civil penalty
for an unlawful act or practice in the conduct of trade..." RDU CIVIL
 Component Commercial & Fair Business
 Sponsor Representative McGuire
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill doubles the civil penalty imposed on someone who violates the terms of an injunction or restraining order issued to prevent the person from engaging in an unlawful act or practice in the conduct of trade or commerce, from \$25,000 to \$50,000 for each violation. It changes the penalty for the unlawful act or practice that is the subject of the injunction or restraining order, from the present level of \$5,000 to not less than \$1,000 nor more than \$25,000 for each violation.

Passage of this legislation will not have a fiscal impact on the Department of Law.

Prepared by: Kathryn Daughhete, Director
 Division Administrative Services Division
 Approved by: Kathryn Daughhete for David Marquez, Attorney General
 Agency Department of Law

Phone 465-3673
 Date/Time 2/22/06 2:18 PM
 Date 2/22/2006

FISCAL NOTE

STATE OF ALASKA
2006 LEGISLATIVE SESSION

Fiscal Note Number: 3
 Bill Version: CSHB 446(JUD)
 (H) Publish Date: 3/17/2006

Revision Date/Time (Note if correction): _____ Dept. Affected: LAW
 Title "An Act relating to the amount of a civil penalty for RDU CIVIL
an unlawful act or practice in the conduct of trade... Component Commercial & Fair Business0
 Sponsor Representative McGuire
 Requester House Judiciary Component No. _____

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012
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						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()	*****	*****	*****	*****	*****	*****
-------------------------------	-------	-------	-------	-------	-------	-------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2006) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2007 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Prepared by: House Finance Committee

Phone 465-4945/465-3779

Rep. Kevin Meyer, Co-Chair

Date 3/15/2006

Rep. Mike Chenault, Co-Chair

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

FRANK MURKOWSKI, GOVERNOR

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)276-8334

February 20, 2006

The Honorable Lesil McGuire
Chair
House Judiciary Committee
State Capitol, Room 118
MS 3100
Juneau, Alaska 99801

Re: HB 446, Civil Penalties in Consumer Protection Cases

Dear Representative McGuire:

Thank you for introducing HB 446. The Department of Law supports this important legislation. It would provide the department with more powerful enforcement tools by ensuring minimum penalties for violators of Alaska's Unfair Trade Practices and Consumer Protection Act (the "Act"), and increase the maximum penalty to a more meaningful amount. The current penalty of \$5,000 per violation is outdated. Several states have maximum penalties of \$100,000 or more, recognizing that in some cases, a single violation can have catastrophic consumer impacts that require severe penalties against larger corporate defendants.

The penalty provision of the Act requires the court to ultimately decide the amount of the penalty. Currently, this amount can range from \$0 to \$5,000. The court typically considers the nature of the alleged conduct, the harm involved, and other factors when considering an appropriate penalty. The amendments proposed by HB 446 will require the court to engage in this same analysis, except that the court must impose at least a \$1,000 penalty if a violation is found, and can impose up to \$25,000 per violation in appropriate cases. The proposed amendments will only affect state enforcement efforts because only the state can request penalties.

The Honorable Leslie McGuire
Chair
House Judiciary Committee

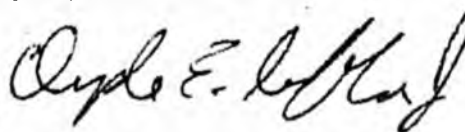
February 20, 2006
Page 2

The Act is a critically important law that allows consumers and the department to investigate and prosecute consumer fraud and deception. HB 446 strengthens the Act, and provides a greater deterrent to would-be violators.

If you need additional information, please contact me at (907) 269-5200.

Sincerely,

DAVID W. MÁRQUEZ
ATTORNEY GENERAL

By: 

Clyde E. Sniffen, Jr.
Assistant Attorney General

cc: Kevin Jardell, Legislative Director
Office of the Governor

Randy Ruaro, AAG
Deborah Behr, AAG
Department of Law

CES/sjm

To: Housed Judiciary and Finance Committees

Re: AkPIRG Supports HB 446 - Penalty for Unlawful Trade Practice

AkPIRG urges support for HB 446 – Penalty for Unlawful Trade Practices. This bill is a concrete step toward better protection for Alaskan consumers by modernizing the penalties against those who commit consumer crime.

Alaska leads the nation in fraud complaints, according to the Federal Trade Commission. Alaska's current laws in regard to consumer protection however, provide one of the lowest allowable civil penalties of any state. HB 446 will strengthen the Unfair Trade Practices and Consumer Protection Act, sending the message that crimes against consumers will not be lightly punished.

The current penalty dates back to the 1970s, HB 446 will increase deterrence by increasing the penalties for consumer crimes. In cases involving a person or company violating an injunction prohibiting unfair or deceptive business practices, the maximum allowable civil penalty will be increased from \$25,000 to \$50,000 - for each violation. The bill will also allow a range of \$1,000 to \$25,000 to be employed for civil penalties – again, for each violation of the Act.

The Department of Law needs the proper tools to be able to protect consumers in Alaska. HB 446 is one step toward better protection. The Alaskan Legislature is making great strides in updating consumer protection laws in regard to Identity Theft and other fraud. Increasing the penalties for such crimes will serve as a needed deterrence to better protect Alaskans.

Thank you for your support of this legislation.
Sincerely,

Steve Cleary
AkPIRG Director



April 19, 2006

Honorable Ralph Seekins, Chair
Senate Judiciary Committee
Alaska State Capitol, Room 125
Juneau, Alaska 99801-1182

RE: HB 446 (McGuire)—Support

Dear Chair Seekins:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the Senate Judiciary Committee to support HB 446, authored by Representative Lesil McGuire and co-sponsored, on a bi-partisan basis, by five other House members and supported by the Alaska Attorney General.

This bill will increase the potential civil penalty for unlawful commercial or trade practices. As you and your colleagues know, older persons are often the targets of illegal businesses. The loss of even modest amounts of money may be devastating to a person living on a low, fixed income.

HB 446 will allow law enforcement to levy more appropriate penalties and help prohibit unfair and deceptive practices in trade and commerce. HB 446 will improve enforcement and, hopefully, help deter these acts in the future.

AARP recommends an "AYE" vote on HB 446.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Marie Darlin".

Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

C Vice-Chair Charlie Huggins
Senator Gene Therriault
Representative Lesil McGuire

Senator Hollis French
Senator Gretchen Guess