



LAWS OF ALASKA

1970

Source

Chapter No.

FCCS 2d HCS CSSB 352

246

AN ACT

Relating to consumer protection.

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

* Section 1. AS 45.50.470 - 45.50.510 are repealed.

* Sec. 2. AS 45.50 is amended by adding new sections to read:

ARTICLE 4. UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION.

Sec. 45.50.471. UNLAWFUL ACTS AND PRACTICES. (a) It is unlawful for a person to

- (1) fraudulently convey or transfer goods or services by representing them to be those of another;
- (2) falsely represent or designate the geographic origin of any goods or services;
- (3) cause a likelihood of confusion or misunderstanding as to the source, sponsorship, or approval, or another person's affiliation, connection, or association with or certification of goods or services;
- (4) represent that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have;
- (5) represent that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, secondhand, or seconds;

(6) represent that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(7) disparage the goods, services, or business of another by false or misleading representation of fact;

(8) advertise goods or services with intent not to sell them as advertised;

(9) advertise goods or services with intent not to supply reasonable expectable public demand, unless the advertisement prominently discloses a limitation of quantity;

(10) make false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(11) engage in any other conduct creating a likelihood of confusion or of misunderstanding and which misleads, deceives, or damages any buyer or competitor in connection with the sale or advertisement of goods or services;

(12) use or employ any deception, fraud, false pretense, false promise, misrepresentation, or knowingly conceal, suppress, or omit any material fact with intent that others rely upon the concealment, suppression or omission in connection with the sale or advertisement of goods or services whether or not any person has in fact been misled, deceived or damaged;

(13) fail to deliver to the customer at the time of an installment sale of goods or services, a written order, contract, or receipt setting out the name and address of the seller and the name and address of the organization which he represents, and all of the terms and conditions of the sale, including a description of the goods or services, which shall be stated in readable, clear, and unambiguous language.

(b) The unlawful acts and practices listed in (a) of this section are in addition to and do not limit the types of unlawful acts and practices actionable at common law or under other statutes of this state.

(c) When a person is tried under the criminal provisions of this chapter for engaging in an unlawful act or practice under this chapter, it must be shown that he acted knowingly and with intent.

Sec. 45.50.481. EXEMPTIONS. Nothing in secs. 471 - 561 of this chapter applies to

(1) an act or transaction permitted under laws administered by the state, by any regulatory board or commission, or officer acting under statutory authority of the state or of the United States;

(2) an act done by the publisher, owner, agent, or employee of a newspaper, periodical or radio or television station in the publication or dissemination of an

advertisement, when the owner, agent or employee did not have knowledge of the false, misleading or deceptive character of the advertisement or did not have a direct financial interest in the sale or distribution of the advertised product or service.

Sec. 45.50.491. REGULATIONS. The commissioner of commerce, in accordance with the Administrative Procedure Act (AS 44.62), may adopt regulations interpreting and forms necessary for administering the provisions of secs. 471 - 561 of this chapter.

Sec. 45.50.501. RESTRAINING PROHIBITED ACTS. (a) When the attorney general has reason to believe that a person has used, is using, or is about to use an act or practice declared unlawful in sec. 471 of this chapter, and that proceedings would be in the public interest, he may bring an action in the name of the state against the person to restrain by injunction the use of the act or practice. The action may be brought in the superior court in the judicial district in which the person resides or is doing business or has his principal place of business in Alaska, or, with the consent of the parties, in any other judicial district in the state.

(b) The court may make additional orders or judgments that are necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of an act or practice declared to be unlawful by sec. 471 of this chapter.

Sec. 45.50.511. ASSURANCES OF VOLUNTARY COMPLIANCE. In the administration of secs. 471 - 561 of this chapter, the attorney general may accept an assurance of voluntary compliance with respect to any act or practice considered to be violative of secs. 471 - 561 of this chapter from a person who has engaged or was about to engage in such an act or practice. Such an assurance shall be in writing and shall be filed with and is subject to the approval of the superior court in the judicial district in which the alleged violator resides or is doing business or has his principal place of business in Alaska. Such an assurance of voluntary compliance is not considered an admission of violation for any purpose. Matters closed in this way may at any time be reopened by the attorney general for further proceedings in the public interest, under sec. 501 of this chapter.

Sec. 45.50.521. WHEN INFORMATION AND EVIDENCE CONFIDENTIAL AND NONADMISSIBLE. (a) The attorney general may not release information or evidence, obtained by him under the provisions of secs. 471 - 561 of this chapter, to a district attorney or his investigator or to a law enforcement officer for use in a criminal prosecution. The information or evidence produced by the attorney general under secs. 471 - 561 of this chapter is not admissible in evidence in a criminal prosecution. The provisions of this subsection do not prevent the attorney general from disclosing to a district attorney or law enforcement officer the fact of the commission of a crime by a person, nor does it prevent a district attorney or his investigator or a law enforcement officer from independently producing or obtaining the same or similar facts, information, or evidence for use in a criminal prosecution.

(b) Subject to the provisions of sec. 501(a) of this chapter, the attorney general may not make public the name of a person alleged to have committed an act or practice declared unlawful in sec. 471 of this chapter during an investigation conducted by him under secs. 471 - 561 of this chapter, nor are the records of investigation or intelligence information of the attorney general obtained under secs. 471 - 561 of this chapter considered public records available for inspection by the general public. However, the attorney general is not prevented from issuing public statements describing or warning of a course of conduct or a conspiracy which constitutes or will constitute an unlawful act or practice, whether on a local, state, regional, or national basis.

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 sec. 471 of this chapter, may bring a civil action in the judicial district in which the seller or lessor resides or has his 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 he adequately represents the similarly situated persons, bring an action on behalf of himself 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 his proposed complaint, and he 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. Also, in an action brought under this subsection, the plaintiff shall post bond of not less than \$5,000 and which is sufficient to cover costs and attorney fees which may be awarded under (g) of this section.

(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 sec. 501 of this chapter is prima facie evidence in an action

brought under this section that the person used or employed an act or practice declared unlawful by sec. 471 of this chapter.

(f) No person may commence an action under this section more than two years after he discovers or reasonably should have discovered that his loss resulted from an act or practice declared unlawful by sec. 471 of this chapter.

(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 he incurred in his 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.

Sec. 45.50.541. NON-NEGOTIABILITY OF CONSUMER PAPER.

(a) If a contract for sale or lease of consumer goods or services on credit entered into between a retail seller and a retail buyer requires or involves the execution of a promissory note or instrument or other evidence of indebtedness of the buyer, the note, instrument or evidence of indebtedness shall have printed on its face the words "consumer paper", and the note, instrument or evidence of indebtedness with the words "consumer paper" printed on it is not a negotiable instrument within the meaning of Uniform Commercial Code (AS 45.05).

(b) Notwithstanding the absence of such a notice on a note, instrument or evidence of indebtedness arising out of a consumer credit sale or consumer lease as described in this section, an assignee of the rights of the seller or lessor is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease. An agreement to the contrary has no effect in limiting the rights of a consumer.

(c) The assignee's liability under this section may not exceed the amount owing to the assignee at the time the claim or defense is asserted against the assignee.

Sec. 45.50.551. PENALTIES. (a) A person who violates the terms of an injunction or restraining order issued under sec. 501 of this chapter shall forfeit and pay to the state a civil penalty of not more than \$25,000 per violation. For the purposes of this section, the superior court in a judicial district issuing an injunction retains jurisdiction, and the cause shall be continued, and in these cases the attorney general acting in the name of the state may petition for recovery of the penalties.

(b) In an action brought under sec. 501 of this chapter, if the court finds that a person is using or has used an act or practice declared unlawful by sec. 471 of this chapter, the attorney general, upon petition to the court, may recover, on behalf of the state, a civil penalty of not more than \$5,000 per violation.

(c) A person who engages in a course of conduct declared unlawful by sec. 471 of this chapter is, upon

conviction, punishable by a fine of not more than \$10,000, but this subsection does not limit any other provision of secs. 471 - 561 of this chapter.

Sec. 45.50.561. DEFINITIONS. In secs. 471 - 561 of this chapter

(1) "advertising" includes the attempt directly or indirectly by publication, dissemination, solicitation, endorsement or circulation, display in any manner, including solicitation or dissemination by mail, telephone or door-to-door contacts, or in any other way, to induce directly or indirectly a person to enter or not enter into an obligation or acquire title or interest in any merchandise or to increase the consumption of it or to make a loan;

(2) "documentary material" means the original or a copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situate;

(3) "examination" of documentary material includes the inspection, study, or copying of the material, and the taking of testimony under oath or acknowledgement in respect of documentary material or copy of it;

(4) "seconds" means manufactured items having flaws or consisting of a standard quantity or quality less than the manufacturer's quality standard.