

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda--underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

ALEC's Corporate Board --in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at www.SourceWatch.org.

DID YOU KNOW? Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

& MEETINGS

Home → Model Legislation → Civil Justice ←

Private Enforcement of Consumer Protection Statutes

Summary

State consumer protection statutes, frequently known as "unfair and deceptive trade practices acts," vary widely from state to state. ALEC's Model Act on Private Enforcement of Consumer Protection Statutes structures the private right of action under such laws to reflect sound public policy. Legislation based on the model act must be carefully drafted to fit within the state's existing statutory scheme. Cross-references to the state's existing definition of an unlawful act or practice, optional language, and language that may be altered to fit the preference of the sponsor or consistency with state law are presented in brackets.

Model Legislation

Section 1. {Private Right of Action}

A.) A person who reasonably relies upon an act or practice declared unlawful by [SECTION] in entering into a transaction and thereby suffers an ascertainable loss of money or property may bring an action under this Act to enjoin further violations, or to recover as damages the out-of-pocket loss the person sustained as a result of such act or practice, or both. The "out-of-pocket loss" shall be no more than the difference between what the person paid for the product or service and what the product or service was actually worth in the absence of the unlawful act or practice.

B.) At least ten days prior to the commencement of any action brought under this section, any person intending to bring such an action shall notify the prospective defendant of the intended action, and give the prospective defendant an opportunity to confer with the person, the person's counsel, or other representative as to the proposed action. Such notice shall be given to the prospective defendant by mail, postage prepaid, to the prospective defendant's usual place of business, or if the prospective defendant has no usual place of business, to the prospective defendant's last known address.

IN STATES PROVIDING FOR AND OPTING TO MAINTAIN TREBLE DAMAGES, INCLUDE PARAGRAPHS (C) AND (D):

C.) If the [court OR trier of fact] finds by clear and convincing evidence that the use or employment of the act or practice declared unlawful by [SECTION] was willful with the purpose of deceiving the public, the court may award up to three (3) times the actual damages sustained[, or \$500 per person, whichever is greater].

D.) In determining whether to award enhanced damages under Subsection (b) and the amount of such penalty, the [court OR trier of fact] shall consider:

- (1) if the amount of the actual damages awarded would have a deterrent effect upon the defendant;
- (2) the seriousness of the violation, including the nature, circumstances, frequency, and gravity of any prohibited act or practice;
- (3) the history of previous violations;
- (4) the good faith of the person found to have violated the Act, including whether the person took prompt and appropriate remedial action upon learning of the alleged violation; and
- (5) any other matter that justice may require.

E.) Any person who is entitled to bring an action under Subsection (a) on his or her own behalf against an alleged violator of this act for damages for an act or practice declared unlawful by [SECTION] may bring a class action against such person on behalf of any class of persons of which he or she is a member and which has been damaged by such act or practice, subject to and pursuant to the [STATE] Rules of Civil Procedure governing class actions. [In any such class action, the court shall not award statutory damages, but recovery shall be limited to actual out-of-pocket loss suffered by the person or persons.]¹ This paragraph is not intended to create or otherwise permit class action relief where not permitted by state law.²

F.) Punitive or exemplary damages are not permitted in an action maintained under this Section.

Did you know that Victor Schwartz--a lawyer who represents companies in product litigation--was the corporate co-chair in 2011?

From CMD: This "model" bill would bar punitive or exemplary damages for willfully deceptive actions by a corporation. It would also bar the recovery of attorney's fees to consumers if they prevailed unless they established that the company's intention was to deceive the public.

Section 2. {Attorneys Fees and Costs} The court may award reasonable attorneys' fees and costs to:

- A.) A prevailing plaintiff upon a finding [by the court OR trier of fact] that the defendant's use or employment of the act or practice declared unlawful by [SECTION] was willful with the purpose of deceiving the public, ← **CMD: only if willful...**
- B.) A prevailing defendant upon a finding by the court that the action was groundless in fact or law or brought in bad faith, or brought for the purpose of harassment.

Section 3. {Limitation of Actions} No action may be brought more than one (1) year after the person bringing the action discovers or reasonably should have discovered a loss resulting from an act or practice declared unlawful by [SECTION], but in no event may any action be brought under this chapter more than [four (4)] years from the first instance of the act or practice giving rise to the cause of action.

Section 4. {Exemptions}

A.) Nothing in this Act shall apply to:

(1) Acts or practices required or permitted by or in accord with state or federal law, rule or regulation, judicial or administrative decision, or formal or informal agency action;

(2) Acts or practices by the publisher, owner, agent or employee of a newspaper, periodical, radio or television station or any other person without knowledge of the deceptive character of the advertisement in the publication or dissemination of an advertisement supplied by another; or

(3) Acts or practices by a retailer who has, in good faith, engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated the Act.

B.) Nothing in this Act is intended to create a claim or remedy for a violation of a state or federal law, rule or regulation where the legislature did not establish a private right of action.³

Endnotes

1. This provision is needed only in states that opt to provide statutory damages, a minimum award to the plaintiff regardless of the actual injury. The model act does not provide for statutory damages, but fully compensates plaintiffs for any out-of-pocket loss.

2. Legislation in states that do not currently permit class action lawsuits under their consumer protection statute should not include paragraph (e).

3. This language is needed in states in which courts have permitted use of consumer protection statutes to effectively create private rights of action under other statutes or regulations where the legislature did not intend to allow private lawsuits.

Adopted by the Civil Justice Task Force at the Annual Meeting in July, 2005. Approved by the ALEC Board of Directors in August, 2005.

About Us and ALEC EXPOSED. The Center for Media and Democracy reports on corporate spin and government propaganda. We are located in Madison, Wisconsin, and publish www.PRWatch.org, www.SourceWatch.org, and now www.ALECExposed.org. For more information contact: editor@prwatch.org or 608-260-9713.

Center for Media and Democracy's quick summary

Provisions in this bill would significantly limit consumer rights. Many state consumer laws allow individuals to bring an individual suit if those laws are broken (as opposed to a governmental agency bringing an enforcement action); this bill would limit the amount a wronged consumer could recover to out-of-pocket expenses and an injunction requiring the defendant stop the unlawful practice. Few consumers would have the incentive to initiate a time-consuming lawsuit to vindicate their rights without the incentive of additional financial recovery. This is particularly the case when the actual financial losses resulting from the wrongful practice are minimal, even though the unfair practice affects many Americans.