**10.01B ELEMENTS OF A CONSUMER PROTECTION ACT CLAIM UNDER AS 45.50.531(a) BASED ON A PROVISION OF
AS 45.50.471(b)**

[Plaintiff] claims that [he][she][it] was harmed because [defendant] [describe alleged violation of specific provision(s) in AS 45.50.471(b)]. In order to find in favor of [plaintiff] on this claim, you must find that it is more likely true than not true that:

 (1) [defendant] [insert elements of specific AS 45.50.471(b) provision at issue];

(2) the [insert alleged violation of AS 45.50.471(b)] occurred in [defendant’s] conduct of trade or commerce; and

(3) [plaintiff] suffered an ascertainable loss of money or property as a result of [insert alleged violation of AS 45.50.471(b)].

**Use Note**

Use this instruction in an action brought under AS 45.50.531(a) when plaintiff alleges a violation of any of the subsections of AS 45.50.471(b). The first element of this instruction should be modified in each case to incorporate the elements of the relevant provision(s) of AS 45.50.471(b) at issue.

Along with Instruction 10.01B, the court should also give Instructions 10.02 and 10.04.

The acts specified in AS 45.50.471(b) are considered unfair or deceptive as a matter of law. Therefore, if the court gives Instruction 10.01B, instructions 10.03A and 10.03B should not be given, except as described below.

If plaintiff alleges that defendant engaged in conduct that constituted a violation of 45.50.471(a) and that the defendant also engaged in conduct that violated one of the specific prohibitions listed in AS 45.50.471(b), Instruction 10.01A should also be given. In that event, Instructions 10.03A and 10.03B must be given, but they must be modified to explain that they do not apply to the claims that are based on AS 45.50.471(b).

**Comment**

The Alaska Supreme Court has not directly addressed the causation element of a claim based on a violation of AS 45.50.471. Proof that the deceptive or unfair act caused the plaintiff’s damages is a necessary element. AS 45.50.531(a) grants a private right of action to a plaintiff only if the plaintiff “suffer[ed] an ascertainable loss of money or property as a result of another person's act or practice declared unlawful by AS 45.50.471.” The statute therefore requires proof that the unfair or deceptive act caused the plaintiff damage. Moreover, the statute of limitations on a UTPA claim begins to run when the “consumer discovers or reasonably should have discovered the prohibited conduct caused a loss.” *Weimer v. Cont'l Car & Truck, LLC*, 237 P.3d 610, 615 (Alaska 2010). Causation is therefore a necessary element. *See also Merdes & Merdes, P.C. v. Leisnoi, Inc.*, 410 P.3d 398, 412 (Alaska 2017) (holding that lawyer engaged in unfair conduct that supported a UTPA claim in part because his conduct “caused a substantial harm by denying Leisnoi access to funds from which it could satisfy a valid debt. Thus, all three factors support a finding that the transfers were unfair for purposes of the UTPA.”) The Alaska Supreme Court has impliedly recognized that causation is a requirement for a UTPA claim that is based on misrepresentation. *Borgen v. A & M Motors, Inc.*, 273 P.3d 575, 591 (Alaska 2012) (“Borgen is therefore correct that the elements of his case for misrepresentation under section .471 were that (1) A & M Motors misrepresented the model year of the motor home by representing that it was a 2003 model when in fact it was a 2002 model; (2) that this misrepresentation was material; and (3) that it caused him damage.”) It is consistent with general Alaska tort law to require plaintiffs to prove that their damages were caused by the violation of AS 45.50.471(b). *See, e.g., Ferrell v. Baxter*, 484 P.2d 250, 259 (Alaska 1971) (violation of statute may establish defendant was negligent; causation is a separate issue).