

HOUSE BILL NO. 72

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES GRUENBERG AND PETERSEN

Introduced: 1/18/11

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act authorizing and relating to certain causes of action for relief for direct or**
2 **indirect injuries sustained as a result of antitrust violations; repealing the provision**
3 **limiting to the attorney general the recovery of monetary relief for injury directly or**
4 **indirectly sustained as a result of an antitrust violation; and relating to criminal and**
5 **civil penalties for antitrust violations."**

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

7 * **Section 1.** AS 45.50.570(e) is amended to read:

8 (e) A person **that is injured directly or indirectly** [AFFECTED] by an act of
9 a director, officer, or trustee may bring an action at any time to cause the director,
10 officer, or trustee who may be occupying the position in violation of this section to
11 terminate the prohibited interlocking relationship. **In this subsection, "person" has**
12 **the meaning given in AS 01.10.060, and includes the state, a political subdivision**
13 **of the state, including a home rule or general law city or borough, and other**

governmental entities, including the Alaska Railroad Corporation and the University of Alaska.

* **Sec. 2.** AS 45.50.576(a) is amended to read:

(a) A person that [WHO] is injured directly or indirectly [IN BUSINESS OR PROPERTY] by a violation of AS 45.50.562 - 45.50.570, or a person that is [SO] injured because the person refuses to accede to a proposal for an arrangement that, if consummated, would be a violation of AS 45.50.562 - 45.50.570, may bring a civil action

(1) for damages directly or indirectly sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded threefold the amount of damages directly or indirectly sustained by the person, plus the costs of the suit, including reasonable attorney fees; and

(2) to enjoin the unlawful practice, and, if the judgment is for the plaintiff, the plaintiff may be awarded costs of the suit, including reasonable attorney fees.

* **Sec. 3.** AS 45.50.576 is amended by adding new subsections to read:

(d) A person commencing an action for a violation of this chapter shall, simultaneously with the filing of the complaint with the court, mail a copy of the complaint to the attorney general.

(e) In this section, "person" has the meaning given in AS 01.10.060, and includes the state, a political subdivision of the state, including a home rule or general law city or borough, and other governmental entities, including the Alaska Railroad Corporation and the University of Alaska.

* **Sec. 4.** AS 45.50.577(a) is amended to read:

(a) The attorney general may bring a civil action [IN SUPERIOR COURT] to secure monetary, injunctive, and other equitable relief [AS PROVIDED IN THIS SECTION] on behalf of the state and its agencies injured [EITHER] directly or indirectly by reason of a [ANY] violation of AS 45.50.562 - 45.50.570.

* **Sec. 5.** AS 45.50.577(b) is amended to read:

(b) The attorney general may bring a civil action [IN SUPERIOR COURT] in the name of the state, as parens patriae on behalf of [GOVERNMENTAL ENTITIES

OR] persons doing business or residing in this state, to secure monetary, injunctive, and other equitable relief [AS PROVIDED IN THIS SECTION] for injuries directly or indirectly sustained by persons by reason of a [ANY] violation of AS 45.50.562 - 45.50.570.

* **Sec. 6.** AS 45.50.577(e) is amended to read:

(e) In an [ANY] action brought under (b) of this section, the attorney general, at the times, in the manner, and with the content the court directs, shall cause notice of the action to be given by publication. A [ANY GOVERNMENTAL ENTITY OR] person on whose behalf an action is brought under (b) of this section may elect to exclude from civil action the portion of the state claim for [MONETARY] relief attributable to that [GOVERNMENTAL ENTITY OR] person by filing notice of the election with the court within the time specified in the attorney general's notice given in accordance with this subsection.

* **Sec. 7.** AS 45.50.577(f) is amended to read:

(f) The final judgment in an action under (a) or (b) of this section is res judicata as to any claim under AS 45.50.576 by a [ANY GOVERNMENTAL ENTITY OR] person on whose behalf the action was brought and who fails to give notice of election to exclude under (e) of this section within the period specified in the attorney general's notice given under (e) of this section.

* **Sec. 8.** AS 45.50.577(h) is amended to read:

(h) Monetary relief recovered in an action under this section shall be (1) distributed in the manner the court, in its discretion, authorizes; or (2) deemed a civil penalty by the court and deposited in the general fund, and may be appropriated to the Alaska permanent fund (AS 37.13.010(a)) or for any other public purpose. A distribution procedure authorized by the court under this subsection must afford each [GOVERNMENTAL ENTITY OR] person participating in the civil action a reasonable opportunity to secure that [ENTITY'S OR] person's appropriate portion of the net monetary relief.

* **Sec. 9.** AS 45.50.577 is amended by adding a new subsection to read:

(j) In this section, "person" has the meaning given in AS 01.10.060, and includes the state, a political subdivision of the state, including a home rule or general

1 law city or borough, and other governmental entities, including the Alaska Railroad
2 Corporation and the University of Alaska.

3 * **Sec. 10.** AS 45.50.578 is amended to read:

4 **Sec. 45.50.578. Criminal and civil penalties** [CERTAIN VIOLATIONS
5 **CONSTITUTE MISDEMEANOR**]. A person who violates AS 45.50.562 or
6 45.50.564 is guilty of a **class C felony** [MISDEMEANOR] and upon conviction is
7 punishable,

8 **(1)** if a natural person, by a fine of not more than **\$1,000,000,**
9 **notwithstanding AS 12.55.035** [\$20,000], or by imprisonment **as provided in**
10 **AS 12.55** [FOR NOT MORE THAN ONE YEAR], or by both; **or**

11 **(2)** [AND] if not a natural person, by a fine of not more than
12 **\$50,000,000, notwithstanding AS 12.55.035** [\$50,000].

13 * **Sec. 11.** AS 45.50.578 is amended by adding a new subsection to read:

14 (b) In addition to any other relief available, the attorney general may bring a
15 civil action against a person who violates AS 45.50.562 or 45.50.564 or an injunction
16 issued under AS 45.50.580 for a civil penalty of not more than

17 (1) \$1,000,000 if the person is a natural person;

18 (2) \$50,000,000 if the person is not a natural person.

19 * **Sec. 12.** AS 45.50.579 is amended to read:

20 **Sec. 45.50.579. Proof of aggregate damages.** In a civil action brought [BY
21 THE ATTORNEY GENERAL] under **AS 45.50.562 - 45.50.596** [AS 45.50.577], the
22 **plaintiff** [ATTORNEY GENERAL] may recover aggregate damages by using
23 statistical sampling or sampling methods, by the computation of illegal overcharges, or
24 by a similar, reasonable system of estimating aggregate damages that the court, in its
25 discretion, permits, without the necessity of separately proving the individual claim or
26 amount of damage to **a person** [GOVERNMENTAL ENTITIES OR PERSONS] on
27 whose behalf the civil action was brought. **In this section, "person" has the**
28 **meaning given in AS 01.10.060, and includes the state, a political subdivision of**
29 **the state, including a home rule or general law city or borough, and other**
30 **governmental entities, including the Alaska Railroad Corporation and the**
31 **University of Alaska.**

1 * **Sec. 13.** AS 45.50.580(b) is amended to read:

2 (b) The court may enter an order or judgment [MAKE ADDITIONAL
3 ORDERS OR JUDGMENTS AS MAY BE NECESSARY] to restore to a person in
4 interest any money or property, real or personal, that may have been acquired by an
5 act prohibited by AS 45.50.562 - 45.50.596, and [AS] may enter an order or
6 judgment [BE NECESSARY] to prevent continuing or future violations of
7 AS 45.50.562 - 45.50.596. In this subsection, "person" has the meaning given in
8 AS 01.10.060, and includes the state, a political subdivision of the state, including
9 a home rule or general law city or borough, and other governmental entities,
10 including the Alaska Railroad Corporation and the University of Alaska.

11 * **Sec. 14.** AS 45.50.580 is amended by adding a new subsection to read:

12 (c) If the court finds that a business organization, including a corporation,
13 limited liability company, limited partnership, or partnership organized or operating
14 under the law of the state has violated AS 45.50.562 - 45.50.570, the court may order
15 the revocation, forfeiture, or suspension of the business organization's charter,
16 franchise, certificate of authority, privilege, or license, or any combination of them,
17 and may order the dissolution of the business organization or the divestiture of any
18 asset.

19 * **Sec. 15.** AS 45.50.586 is amended to read:

20 **Sec. 45.50.586. Judgment [IN FAVOR OF THE STATE] as evidence in**
21 **another action.** A final order or judgment rendered in a civil or criminal action
22 brought [BY THE STATE] under AS 45.50.562 - 45.50.596 is prima facie evidence of
23 liability [AGAINST THE DEFENDANT] in another [ANY OTHER] action under
24 AS 45.50.562 - 45.50.596 brought by another person [PARTY, OR BY THE STATE,
25 A CITY, A BOROUGH, OR OTHER GOVERNMENTAL ENTITY]; however, this
26 section does not apply to consent judgments or decrees entered under AS 45.50.584.
27 In this section, "person" has the meaning given in AS 01.10.060, and includes the
28 state, a political subdivision of the state, including a home rule or general law city
29 or borough, and other governmental entities, including the Alaska Railroad
30 Corporation and the University of Alaska.

31 * **Sec. 16.** AS 45.50.576(b), 45.50.577(i), and 45.50.580(a) are repealed.