

HOUSE BILL NO. 460

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

BY REPRESENTATIVE CROFT

Introduced: 2/19/02

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to actions for monopolies and restraint of trade, including proof of**
2 **damages; amending Rule 82, Alaska Rules of Civil Procedure; and providing for an**
3 **effective date."**

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

5 * **Section 1.** AS 45.50.576 is amended to read:

6 **Sec. 45.50.576. Suits by persons injured; treble damages.** (a) A person
7 who is injured in business or property by a violation of AS 45.50.562 - 45.50.570, or a
8 person so injured because the person refuses to accede to a proposal for an
9 arrangement that, if consummated, would be a violation of AS 45.50.562 - 45.50.570,
10 may bring a civil action

11 (1) for damages sustained by the person, and, if the judgment is for the
12 plaintiff [AND THE TRIER OF FACT FINDS THAT THE DEFENDANT'S
13 CONDUCT WAS WILFUL], the plaintiff shall be awarded threefold the amount of
14 damages sustained by the person, plus the costs of the suit, including reasonable

1 attorney fees; and

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

4 (b) **If** [WHEN THE STATE,] a **nonstate** [HOME RULE OR GENERAL
5 LAW CITY OR BOROUGH, OR OTHER] governmental entity is injured by reason
6 of a violation of AS 45.50.562 - 45.50.570, it may maintain an action in the same
7 manner as prescribed in (a) of this section for an injured person; and the **nonstate**
8 [STATE, CITY, BOROUGH, OR OTHER] governmental entity is entitled to the same
9 relief as provided in (a) of this section.

10 * **Sec. 2.** AS 45.50 is amended by adding a new section to read:

11 **Sec. 45.50.577. Enforcement by attorney general.** (a) The attorney general
12 may bring a civil action in superior court to secure monetary relief as provided in this
13 section on behalf of the state and its agencies injured either directly or indirectly by a
14 violation of AS 45.50.562 - 45.50.570.

15 (b) The attorney general may bring a civil action in superior court in the name
16 of the state, as parens patriae on behalf of a nonstate governmental entity or person
17 doing business or residing in this state, to secure monetary relief as provided in this
18 section for injuries directly or indirectly sustained by the nonstate governmental entity
19 or person by reason of a violation of AS 45.50.562 - 45.50.570.

20 (c) The court shall exclude from the amount of monetary relief awarded in an
21 action under (a) or (b) of this section monetary relief that

22 (1) duplicates amounts that have been awarded for the same injury; or

23 (2) is allocated to nonstate governmental entities or persons who have
24 excluded their claims under (f) of this section.

25 (d) If the state is the prevailing party under (a) or (b) of this section, the court
26 shall award as monetary relief three times the total damages sustained.

27 (e) In addition to the monetary relief awarded under (d) of this section, if the
28 state is the prevailing party under (a) or (b) of this section, the court shall award the
29 state its costs for the action as provided by court rule and full reasonable attorney fees.

30 (f) In an action brought under (b) of this section, the attorney general, at the
31 times, in the manner, and with the content the court directs, shall publish notice of the

1 action. A nonstate governmental entity or person on whose behalf an action is brought
 2 under (b) of this section may elect to exclude from the civil action the portion of the
 3 claim for monetary relief attributable to that nonstate governmental entity or person by
 4 filing notice of the election with the court within the time specified in the notice
 5 published under this subsection.

6 (g) The final judgment in an action under this section precludes any claim
 7 under AS 45.50.576 by a nonstate governmental entity or person on whose behalf the
 8 action was brought and who fails to give notice of election to be excluded under (f) of
 9 this section within the time specified in the attorney general's notice published under
 10 (f) of this section.

11 (h) An action under (b) of this section may not be dismissed or compromised
 12 without the approval of the court, and notice of a proposed dismissal or compromise
 13 shall be published at the time, in the manner, and with the content the court directs
 14 under (f) of this section and AS 45.50.584.

15 (i) Monetary relief recovered under this section shall be distributed in the
 16 manner the court, in its discretion, authorizes. A distribution procedure authorized by
 17 the court under this subsection must afford the state and each nonstate governmental
 18 entity and person participating in the action a reasonable opportunity to secure the
 19 participant's appropriate portion of the net monetary relief.

20 (j) In an action under this section, the attorney general may recover aggregate
 21 damages by using statistical sampling, by the computation of illegal overcharges, or
 22 by another reasonable system of estimating aggregate damages that the court in its
 23 discretion permits without the necessity of separately proving the individual claim or
 24 amount of damage to the state, the nonstate governmental entity, or the person on
 25 whose behalf the civil action was brought.

26 * **Sec. 3.** AS 45.50 is amended by adding a new section to read:

27 **Sec. 45.50.579. Actions for indirect injury.** Only the attorney general in an
 28 action brought under AS 45.50.577 may seek monetary relief for injury indirectly
 29 sustained due to a violation of AS 45.50.562 - 45.50.570.

30 * **Sec. 4.** AS 45.50.586 is amended to read:

31 **Sec. 45.50.586. Judgment in favor of the state as evidence in another**

1 **action.** A final judgment rendered in a civil or criminal action brought by the state
 2 under AS 45.50.562 - 45.50.596 is prima facie evidence against the defendant in any
 3 other action under AS 45.50.562 - 45.50.596 brought by another **person**, [PARTY,
 4 OR] by the state **or its agencies**, [A CITY, A BOROUGH,] or **by a nonstate**
 5 [OTHER] governmental entity; however, this section does not apply to consent
 6 judgments or decrees entered under AS 45.50.584.

7 * **Sec. 5.** AS 45.50.596 is amended by adding a new paragraph to read:

8 (4) "nonstate governmental entity" includes a municipality, but does
 9 not include the state or its agencies.

10 * **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to
 11 read:

12 INDIRECT COURT RULE AMENDMENT. AS 45.50.577(e), enacted by sec. 2 of
 13 this Act, has the effect of changing Rule 82, Alaska Rules of Civil Procedure, by requiring
 14 that the court award full reasonable attorney fees to the state as the prevailing party rather
 15 than follow the criteria in Rule 82.

16 * **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to
 17 read:

18 APPLICABILITY. This Act applies to a civil action alleging a violation of
 19 AS 45.50.562 - 45.50.570 that occurs on or after the effective date of this Act.

20 * **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to
 21 read:

22 CONDITIONAL EFFECT. AS 45.50.577(e), enacted by sec. 2 of this Act, takes
 23 effect only if sec. 6 of this Act receives the two-thirds majority vote of each house required by
 24 art. IV, sec. 15, Constitution of the State of Alaska.

25 * **Sec. 9.** This Act takes effect July 1, 2002.