

HOUSE BILL NO. 225

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/28/03

Referred: House Special Committee on Economic Development, International Trade, and Tourism, Judiciary

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to certain civil actions brought by the attorney general under
2 monopoly and restraint of trade statutes; relating to the award of damages in actions
3 brought under those statutes; and providing for an 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
8 a 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 the judgment is for the
3 plaintiff, the plaintiff may be awarded costs of the suit, including reasonable attorney
4 fees.

5 (b) **If** [WHEN THE STATE,] a home rule or general law city or borough[,] or
6 other governmental entity is injured by reason of a violation of AS 45.50.562 -
7 45.50.570, it may maintain an action in the same manner as prescribed in (a) of this
8 section for an injured person; and the [STATE,] city, borough, or other governmental
9 entity is entitled to the same 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
14 reason of any 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 governmental entities or persons doing
17 business or residing in this state, to secure monetary relief as provided in this section
18 for injuries directly or indirectly sustained by persons by reason of any violation of
19 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 any amount of monetary relief that

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

23 (2) is properly allocable to persons who have excluded their claims
24 under (e) of this section.

25 (d) The court shall award the attorney general as monetary relief three times
26 the total damage sustained as described in (a) or (b) of this section and, additionally,
27 the costs of the action, including reasonable attorney fees.

28 (e) In any action brought under (b) of this section, the attorney general, at the
29 times, in the manner, and with the content the court directs, shall cause notice of the
30 action to be given by publication. Any governmental entity or person on whose behalf
31 an action is brought under (b) of this section may elect to exclude from civil action the

1 portion of the state claim for monetary relief attributable to that governmental entity or
 2 person by filing notice of the election with the court within the time specified in the
 3 attorney general's notice given in accordance with this subsection.

4 (f) The final judgment in an action under (a) or (b) of this section is res
 5 judicata as to any claim under AS 45.50.576 by any governmental entity or person on
 6 whose behalf the action was brought and who fails to give notice of election to
 7 exclude under (e) of this section within the period specified in the attorney general's
 8 notice given under (e) of this section.

9 (g) An action under (b) of this section may not be dismissed or compromised
 10 without the approval of the court, and notice of any proposed dismissal or compromise
 11 shall be given by publication at the times, in the manner, and with the content the
 12 court directs in accordance with (e) of this section and AS 45.50.584.

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

20 (i) Only the attorney general, in a suit brought under this section, may seek
 21 monetary relief for injury indirectly sustained for a violation of AS 45.50.562 -
 22 45.50.570.

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

24 **Sec. 45.50.579. Proof of aggregate damages.** In a civil action brought by the
 25 attorney general under AS 45.50.577, the attorney general may recover aggregate
 26 damages by using statistical sampling or sampling methods, by the computation of
 27 illegal overcharges, or by a similar, reasonable system of estimating aggregate
 28 damages that the court in its discretion permits without the necessity of separately
 29 proving the individual claim or amount of damage to governmental entities or persons
 30 on whose behalf the civil action was brought.

31 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 APPLICABILITY. This Act applies to civil actions alleging a violation of
3 AS 45.50.562 - 45.50.570 that occurred on or after the effective date of this Act.

4 * **Sec. 5.** This Act takes effect July 1, 2003.