

**ALASKA STATE LEGISLATURE  
HOUSE SPECIAL COMMITTEE ON ECONOMIC DEVELOPMENT,  
INTERNATIONAL TRADE AND TOURISM**

April 16, 2003  
5:15 p.m.

**MEMBERS PRESENT**

Representative Cheryll Heinze, Chair  
Representative Pete Kott  
Representative Nancy Dahlstrom  
Representative Sharon Cissna  
Representative Harry Crawford

**MEMBERS ABSENT**

Representative Lesil McGuire, Vice Chair  
Representative Vic Kohring

**COMMITTEE CALENDAR**

HOUSE BILL NO. 225

"An Act relating to certain civil actions brought by the attorney general under monopoly and restraint of trade statutes; relating to the award of damages in actions brought under those statutes; and providing for an effective date."

- MOVED HB 225 OUT OF COMMITTEE

**PREVIOUS ACTION**

BILL: HB 225

SHORT TITLE: MONOPOLY AND RESTRAINT OF TRADE ACTIONS

SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/28/03	0675	(H)	READ THE FIRST TIME - REFERRALS
03/28/03	0675	(H)	EDT, JUD
03/28/03	0675	(H)	FN1: INDETERMINATE(LAW)
03/28/03	0675	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/16/03		(H)	EDT AT 5:00 PM CAPITOL 124

**WITNESS REGISTER**

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General  
Fair Business Practices Section

Civil Division (Anchorage)  
Department of Law  
Anchorage, Alaska

POSITION STATEMENT: Presented HB 225 and answered questions.

**ACTION NARRATIVE**

**TAPE 03-10, SIDE A**

Number 0001

**CHAIR CHERYLL HEINZE** called the House Special Committee on Economic Development, International Trade and Tourism meeting to order at 5:15 p.m. Representatives Heinze, Kott, Dahlstrom, and Cissna were present at the call to order. Representative Crawford arrived as the meeting was in progress.

HB 225-MONOPOLY AND RESTRAINT OF TRADE ACTIONS

CHAIR HEINZE announced that the committee would hear HOUSE BILL NO. 225, "An Act relating to certain civil actions brought by the attorney general under monopoly and restraint of trade statutes; relating to the award of damages in actions brought under those statutes; and providing for an effective date." [HB 225 was sponsored by the House Rules Standing Committee at the request of the governor.]

Number 0086

CLYDE (ED) SNIFFEN, JR., Assistant Attorney General, Fair Business Practices Section, Civil Division (Anchorage), Department of Law, presented HB 225 to the committee, informing members that his duties include enforcement of Alaska's antitrust and consumer protection statutes. Mr. Sniffen noted that HB 225 is a bill [the department] calls "the Illinois Brick repealer bill." He explained that currently there is a [1977 U.S. Supreme Court] case, Illinois Brick Co. v. Illinois, which stands for the proposition that indirect purchasers of goods cannot sue "upstream antitrust violators" for antitrust violations.

MR. SNIFFEN illustrated with a chart, noting that if a conspiracy between two suppliers results in keeping product prices high, there is a violation of antitrust law. In his example, the direct purchaser of the goods, the importer, then passes the high price on to the distributor, the wholesaler, the retailer, and, ultimately, the consumer. Under current federal and state antitrust law, the only person with authority to bring

an action against the antitrust violators would be the importer who'd purchased directly from the wrongdoers.

MR. SNIFFEN said the consumer, however, who ultimately bears the burden of paying a higher price for the product, wouldn't have that right. Therefore, HB 225 gives the attorney general the right to represent consumers who are indirect purchasers in actions against antitrust violators who may have committed harm "upstream."

Number 0250

MR. SNIFFEN indicated this legislation is something [the department] has been trying to get passed for a number of years. The state's antitrust law was passed in 1975, whereas the Illinois Brick case was decided in 1977. Since that time, Alaska just hasn't updated its antitrust law to give the attorney general the authority to bring these kinds of actions. He further explained:

In recent multistate cases that we've been involved in, the State of Alaska has lost out on significant recoveries because we do not have the authority to bring actions on behalf of consumers in these kinds of cases. One involved a couple of vitamin manufacturers [that] a bunch of states sued for conspiring to keep prices of vitamins high. And the settlement in that case gave a million dollars to every state that had a law like this.

Because Alaska did not have this law, we initially got zero. And we argued with the settlement committee that our laws actually should allow us to recover some money; we ended up with a hundred thousand dollars, but it was far short of the million dollars we would have gotten had we had this kind of law in place.

MR. SNIFFEN indicated there is no opposition to this legislation that the department is aware of, and concluded by saying it makes good sense for Alaska.

Number 0361

MR. SNIFFEN, in response to an observation from Representative Crawford, said this bill had been before [a previous legislature] and was heard by a number of committees without opposition, but hadn't had a floor hearing.

Number 0438

REPRESENTATIVE CISSNA asked what is meant by the following language found in subsection (h) on page 3:

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.

MR. SNIFFEN said it essentially means that whatever distribution plan [the state] comes up with as a result of an action against an antitrust violator must be approved by the court. A plan has to return money, first of all, to the consumers who are harmed and, if there is money left over, to other agencies or entities harmed by the conduct. Remaining funds might go to the state, or [the state] could establish other distribution mechanisms. He explained:

For example, if the conduct involved music CDs [compact disks], which is actually a case we're involved in now, we could ... give money to libraries and schools to purchase CDs. But those plans would be drawn together and submitted to the court, and the court would have to approve them in accordance with the instruction of the statute that everyone gets their fair share of the proceeds.

MR. SNIFFEN pointed out that in some cases there might not be 100-percent recovery. "We may only recover a portion of the actual damages that we can allege, or we may agree to settle the case for something that's less than 100 percent of everyone's damage," he told members, noting that such a case would require devising a system to equitably - perhaps on a pro rata basis - distribute the recovery among those who were harmed.

Number 0588

REPRESENTATIVE CISSNA requested confirmation that after money was distributed to consumers who were harmed, leftover money could be put into state services that "would make restitution," in a manner of speaking.

MR. SNIFFEN affirmed that. He said the state now does cy-pres distribution plans [from a French term that means "as near as (possible)"]. He indicated the department would have that option, and added, "It's broad enough that we could fashion the remedies with the recoveries we get in a number of ways. But that certainly could be one of them."

Number 0687

REPRESENTATIVE CISSNA moved to report HB 225 out of committee with individual recommendations [and accompanying fiscal note(s)]. There being no objection, HB 225 was reported from the House Special Committee on Economic Development, International Trade and Tourism.

#### **ADJOURNMENT**

There being no further business before the committee, the House Special Committee on Economic Development, International Trade and Tourism meeting was adjourned at 5:23 p.m.