

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

April 1, 2011

3:23 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Craig Johnson, Vice Chair
Representative Dan Saddler
Representative Steve Thompson
Representative Lindsey Holmes
Representative Bob Miller

MEMBERS ABSENT

Representative Mike Chenault

COMMITTEE CALENDAR

HOUSE BILL NO. 72

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

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 72

SHORT TITLE: ANTITRUST ACTIONS & PENALTIES

SPONSOR(S): REPRESENTATIVE(S) GRUENBERG, PETERSEN

01/18/11	(H)	PREFILE RELEASED 1/7/11
01/18/11	(H)	READ THE FIRST TIME - REFERRALS
01/18/11	(H)	L&C, JUD
04/01/11	(H)	L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

GRETCHEN STAFT, Staff
Representative Max Gruenberg
Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Presented changes in the proposed committee substitute for HB 72.

REPRESENTATIVE MAX GRUENBERG

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as a joint prime sponsor of HB 72.

CYNTHIA DRINKWATER, Senior Assistant Attorney

Commercial/Fair Business Section

Department of Law (DOL)

Anchorage, Alaska

POSITION STATEMENT: Answered questions during the discussion of HB 72.

ACTION NARRATIVE

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CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:23 p.m. Representatives Olson, Miller, Johnson, Saddler, and Holmes were present at the call to order. Representatives Thompson arrived as the meeting was in progress.

HB 72-ANTITRUST ACTIONS & PENALTIES

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CHAIR OLSON announced that the only order of business would be HOUSE BILL NO. 72, "An Act authorizing and relating to certain causes of action for relief for direct or indirect injuries sustained as a result of antitrust violations; repealing the provision limiting to the attorney general the recovery of monetary relief for injury directly or indirectly sustained as a result of an antitrust violation; and relating to criminal and civil penalties for antitrust violations."

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REPRESENTATIVE JOHNSON moved to adopt the proposed committee substitute (CS) labeled 27-LS0381\M, Bannister, 3/22/11 as the working document.

REPRESENTATIVE SADDLER objected for the purpose of discussion.

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GRETCHEN STAFT, Staff, Representative Max Gruenberg, Alaska State Legislature, on behalf of one of the joint prime sponsors, explained the changes contained in the proposed committee substitute (CS) for HB 72. The main change to the CS was to remove Sections 10 and 11 of the original bill, which were the sections that pertain to criminal and civil antitrust penalties actionable by the attorney general. Those provisions are contained in another bill, she said. She referred to page 2, line 17 of the original bill and noted that the phrase "this chapter" was replaced with AS 45.50.562-45.50.570" to clarify that the provisions only applied to antitrust violations. The remaining provisions in the chapter were inadvertently included in the bill drafting process. She related that conforming changes were made to the title.

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MS. STAFT explained that HB 72 would expand the pool of individuals who can bring an antitrust lawsuit. Currently, only the attorney general (AG) or direct purchasers can bring a lawsuit for antitrust violations. The AG can recover indirect damages from upstream violators but no private right of action is allowed for indirect or direct damages. She related a scenario in which two computer chip manufacturers were colluded and artificially set high prices for their computer chips. The manufacturers then sold the computer chips to a computer manufacturer, such as Dell, who subsequently selling the computers to consumers. Under current law, the consumer could not sue the computer chip manufacturer for any antitrust violations even though the consumer paid a much higher price for the computer. Only Dell could bring a lawsuit since it directly bought the computer chips from the computer chip manufacturer.

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MS. STAFT stated HB 72 would allow the consumer to bring a lawsuit against the antitrust violator if the consumer could prove an antitrust violation occurred. The main reason to make a change is the AG has limited resources and does not always have staff to move forward on every lawsuit. Creating a private right of action for indirect purchasers would represent an efficient means for the state to ensure its citizens have redress without expending state funds. The bill would require individuals to notify the AG when a lawsuit is filed so the AG could intervene if necessary. The trend has been to allow for

private right of action for individuals. She referred to a map in members' packets and stated that about 30 states allow individuals to file private right of action lawsuits and only 9 restrict the right of action to the AG. The remaining 21 states allow for private individuals to bring lawsuits for individual damages, as well. She pointed out that these states have not seen flood of lawsuits filed.

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REPRESENTATIVE SADDLER related his understanding that private individuals bringing action must notify the AG and then the AG's office can join in.

MS. STAFF answered yes.

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REPRESENTATIVE MAX GRUENBERG, Alaska State Legislature, explained that the reason for this bill because of a U.S. Supreme Court decision in Illinois Brick Co. v. Illinois, 431 U.S. 720 (1977). He related that "Illinois Brick" construed the federal antitrust statutes. It held that the federal law does not authorize a lawsuit for indirect damages. However, states are free to pass their own "little antitrust acts" allowing indirect damages. Normally, someone "way up the line is colluding, he said. He related a scenario in which gravel manufacturers collude to set gravel prices. The gravel is used in the manufacturer of asphalt, which is sold to the contractor, and the contractor uses it to pave the municipal streets. This bill would allow the municipality or the ultimate consumer, including a business, to obtain recompense.

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REPRESENTATIVE GRUENBERG continued. Traditionally, states did not have any statutes for indirect damages since states assumed these matters were covered by federal law. Initially, some concern was expressed that allowing people to file individual lawsuits would open the flood gates. The first step was to allow the AG the authority to bring these types of cases. As people have become more comfortable, some states are now allowing private individuals to bring lawsuit. He offered his belief that this is important because these are very tough cases, often involving big manufacturers and businesses and people must band together and file class-action suits. Usually, one lawsuit proceeds into federal court and everyone else joins

in and the case is consolidated. The AG, through the National Association of Attorneys General, communicates to indicate the main case that is proceeding, which is why the AG is being notified in these cases.

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REPRESENTATIVE GRUENBERG explained that the AG would then advise individuals how to proceed to join the main case and seek intervention, as necessary. He pointed out that this process provides check and balance. Mr. Sniffen advises that having this authority has not "opened the flood gates." Current law allows the AG to bring indirect damage lawsuits and the state has now had six or seven years to consider the law. He said it is very difficult, particularly for a small state like Alaska to pursue these cases alone so it is much better to join with other states. The effect of the bill would be to allow the 1,000 or so Alaskans who were damaged by the price fixed computer chips to seek to intervene in the lawsuit in the state that has filed in federal court, such as Nebraska. This would add an additional count to the lawsuit under Alaska state law. He pointed out that it would be necessary to do this through state law since the federal law does not allow it. The action would demonstrate that Alaska's consumers have standing to join the lawsuit and receive recompense. He stressed the importance of passing HB 72 since it will protect Alaska's consumers.

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REPRESENTATIVE JOHNSON asked whether anything would prevent an individual Alaskan from joining a lawsuit.

REPRESENTATIVE GRUENBERG answered no. This will not affect the right but unless the damage occurred in Nebraska the individual would not have any recourse. In further response to Representative Gruenberg, he answered that normally the court would apply the law where the transaction occurred.

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REPRESENTATIVE HOLMES related her understanding that if she had purchased a product in question, such as Celebrex, in Anchorage and a class-action suit was filed in Nebraska that she could not join the Nebraska lawsuit. However, under the bill she could do so.

REPRESENTATIVE GRUENBERG agreed. He clarified that it is not a question of joining the lawsuit but rather if the individual has a cause of action. In further response to Representative Johnson, he answered that being wronged does not allow for a cause of action.

REPRESENTATIVE HOLMES agreed.

REPRESENTATIVE GRUENBERG advised that the individual only has a cause of action if the law of the jurisdiction where you suffered the damage gives you a cause of action.

REPRESENTATIVE JOHNSON related his understanding that in antitrust violations an individual cannot join the lawsuit since the state does not have the provision in law to allow individuals to do so.

REPRESENTATIVE GRUENBERG clarified that the purpose of this bill is to allow Alaskan who have been damaged by antitrust issues to get reimbursed and obtain treble damages.

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REPRESENTATIVE JOHNSON recalled television advertising for class-action damages and asked why advertising is being run to reach Alaskans if they have no recourse.

REPRESENTATIVE GRUENBERG offered his belief that the cases he referenced are generally not antitrust cases but are product liability cases. It may be that ship workers are damaged due to asbestos poisoning. Additionally, every state allows you to sue in cases in which a faulty bolt causes a lawnmower blade to injure a person. He explained that the antitrust laws are an unusual area of law. The law firm acts as clearinghouse to determine whether an individual has the right to sue and the associated lawyer in Alaska would determine whether a cause of action exists, and if so, the individual would join the lawsuit.

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REPRESENTATIVE JOHNSON asked for clarification on the number of antitrust lawsuits.

REPRESENTATIVE GRUENBERG answered that he did not know. In further response to Representative Johnson, he responded that this bill is to remedy a serious defect in law.

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REPRESENTATIVE THOMPSON inquired as to whether Nebraska has different antitrust laws that would apply. He further asked how that would relate to Alaska law.

REPRESENTATIVE GRUENBERG explained the process. He related a scenario in which 10 of 70 people were named in lawsuit in federal court. The first part of the complaint would address jurisdiction and would state that plaintiffs are residents of various states. It would list the names of the people from each state and would name the defendant as the Delaware Corporation with its main operations in Omaha. The actions would have occurred in numerous states through the sale of computer chips. The complaint would list the defendants who colluded to price fix the computer chips, would indicate the people bringing suit suffered, and would seek damages to be determined at trial. The individuals who were harmed in Arizona would recover damages under Arizona statutes, and those in Alaska would recover damages under Alaska statutes. The complaint would set forth the statutory basis of each state and the Alaska individual would be under Alaska law. He commented that the complaint would be lengthy, but would be carefully constructed to only cover Alaskans who purchased the computer chip product in Alaska.

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REPRESENTATIVE SADDLER asked for other examples of antitrust violations.

MS. STAFF answered that other antitrust cases might involve drug companies artificially setting drug prices high. Drug manufacturers would sell to distributors, who would sell to pharmacies. The consumer would be the indirect buyer since he/she would purchase the drug from a pharmacist. An indirect purchaser is one who would not directly pay the corporation. "It's basically an upstream issue," she said.

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REPRESENTATIVE SADDLER asked for clarification on the level of direct and indirect injury is involved in antitrust violations.

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CYNTHIA DRINKWATER, Senior Assistant Attorney, Commercial/Fair Business Section, Department of Law (DOL), stated she works in the Consumer Protection Unit in the Department of Law. She admitted she did not having much experience in antitrust matters. She suggested that Ed Sniffen would be knowledgeable in this area.

MS. STAFT presented a section-by-section analysis of Version M. She stated that Section 1 would allow indirect and direct purchasers to terminate the prohibited interlocking relationship.

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MS. STAFT related that Section 2 would allow a person to recover money damages up to three times the amount of damages plus reasonable attorney fees, and can also get an injunction to enjoin the unlawful practice.

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MS. STAFT stated that Section 3 would require the plaintiff commencing an antitrust action to mail a copy of the complaint to the attorney general (AG).

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MS. STAFT referred to Section 3, which she said would also define a person to take on the meaning in Title 1, and would apply to all Alaska Statutes. It would include the state, a political subdivision of the state, including home rule or general law, city or borough, and other government entities, including the Alaska Railroad Corporation and the University of Alaska.

MS. STAFT related that Section 4 would allow the AG to bring a civil action for monetary, injunctive, and equitable relief on behalf of citizens of Alaska.

MS. STAFT referred to Section 6-11, which she said represents conforming and clarifying changes technical stylistic in nature.

MS. STAFT related that Section 12, which clarifies that the remedies listed are available at the discretion of the judge. Those remedies include order a revocation of the business organization's franchise, certificate of authority, or license.

She explained that this reiterates the current law to be certain there is not any confusion.

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REPRESENTATIVE GRUENBERG referred to Section 12 of Version M. He stressed the importance of this provision since it would expand the ability of the court to order additional remedies and is based on an Idaho law. He referred members to page 4, and read: "...the court may order the revocation, forfeiture, or suspension of the business organization's charter, franchise, certificate of authority, privilege, or license, or any combination of them, and may order the dissolution of the business organization or the divestiture of any asset. He characterized this as an extremely important tool. He said that merely the threat is often enough to obtain compliance and have people abide by the law.

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REPRESENTATIVE JOHNSON asked whether he was suggesting the state would threaten to dissolve a Japanese company who manufactures computer chips.

REPRESENTATIVE GRUENBERG asked to reserve the question. He did not think Alaska would have jurisdiction in Japan, but would like to ask Mr. Sniffen.

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REPRESENTATIVE MILLER referred to what he characterized as the Japanese question. He asked whether Japan would have an antitrust law that would fall under any American jurisdiction.

REPRESENTATIVE GRUENBERG answered that two parts exist in a lawsuit, one is liability, and the other is remedy. This bill pertains to remedy. He suggested that the question of liability does not depend on where the corporation is located but where the illegal action took place. He offered his belief that if in the illegal price fixing took place in Japan the U.S. would not have any jurisdiction. However, if the injury took place in Alaska, the consumer could get money damages. He further asserted that Alaska would have jurisdiction over the company in Japan since it was conducting business in the U.S. but that the U.S. law could not order dissolution.

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REPRESENTATIVE MILLER related a scenario in which price fixing occurred in New Jersey. He asked which court would have jurisdiction if consumers purchased the product in Alaska.

REPRESENTATIVE GRUENBERG answered that the Alaskan consumer could sue the company in either New Jersey or Alaska since the consumer was damaged in Alaska. He related his understanding that the consumer would have a choice. He highlighted that the question is different than what choice of law would apply. He elaborated that an Alaska court could apply either Alaska law or New Jersey law. The third question would be whether the case would be brought in state court or in federal court. He recapped the questions are which jurisdiction, which law will be used for liability, and which choice of law will be used for the remedy. He stated that this is logical from the legal point of view.

REPRESENTATIVE MILLER referred to page 4, line 28, of Version M. He inquired as to whether which court is indicated in subsection (c).

REPRESENTATIVE GRUENBERG asked to defer. He suggested that the corporation charter or business license is under the auspices of the State of New Jersey. He offered his belief that Alaska would not have jurisdiction and the provision most likely applies to an Alaska Corporation.

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REPRESENTATIVE JOHNSON asked whether federal law would allow an individual to sue for indirect damages in federal court.

REPRESENTATIVE GRUENBERG answered no, explaining that is why the "Illinois Brick" lawsuit was filed.

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REPRESENTATIVE HOLMES agreed to defer the final answer to Mr. Sniffen. She suggested that this provision may not force New Jersey to take away New Jersey's certification, but the State of Alaska could deny the business from operating in Alaska.

REPRESENTATIVE GRUENBERG answered that Alaska may be able to order the company to do something. He thought Alaska would have jurisdiction over the company. He deferred to the Department of Law.

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MS. STAFT referred to Sections 13 and 14 of Version M, which consist of conforming sections and the repealer section.

CHAIR OLSON asked whether this law would apply to a California case against Sempra Energy, a California corporation, Southern California Gas Company, a California corporation ("SoCalGas"). He stated that considerable information is available on the case. He also recalled the case settled out of court. He related that the defendants were sued by 200 California subdivisions, the State of California, manufacturers, and business owners.

MS. STAFT agreed to review the matter.

REPRESENTATIVE GRUENBERG referred to Section 14 of Version M and asked to discuss the repealers at the next hearing.

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REPRESENTATIVE GRUENBERG brought committee members' attention to proposed Section 10 of Version M, which relates to aggregate damages. Currently, the attorney general can use statistical sampling methods to estimate damages. He highlighted that this language provides an important tool in the prosecution of these types of cases. He asked to consider this provision of the bill relating to indirect damages.

CHAIR OLSON recalled a similar bill had been discussed during the last legislature. This bill is more concise, he said.

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REPRESENTATIVE MILLER referred to page 3, line 1, of Version M, to a Latin phrase "parens patriae." He asked for clarification on its meaning.

MS. STAFT explained that the term means that the attorney general would be bringing the lawsuit on someone's behalf as the guardian of their rights.

REPRESENTATIVE GRUENBERG related it is a legal term of art.

[HB 72 was held over.]

4:08:41 PM

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:08 p.m.