

1 IN THE SENATE

BY RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 239

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act to Prohibit Unfair Practices in
7 Trade and Commerce, providing for civil
8 remedies and criminal penalties; and pro-
9 viding for an effective date."

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

11 Section 1. DEFINITIONS.

12 a. The term "trade or commerce" includes aids to com-
13 merce, including the businesses of radio, television, and news-
14 paper advertising, manufacture, preparation of products for mar-
15 ket, and the pursuit of any business authorized or permitted by
16 the laws of this state.

17 b. The term "commodity" or "commodities" includes
18 goods, wares, merchandise, machinery, equipment, supplies, adver-
19 tising, including radio, television and newspaper advertising,
20 and insurance, in trade or commerce, except where a different
21 meaning is clearly intended. The labor of human beings shall not
22 be deemed or held to be a commodity or article of commerce as
23 such terms are used in this Act, and nothing herein contained
24 shall be deemed to prohibit or restrict the right of workingmen
25 to combine in unions, organizations and associations, not organ-
26 ized for the purpose of profit.

27 c. The term "person" or "persons" whenever used in
28 this Act is deemed to include corporations and associations
29 existing under or authorized by the laws of this state, the United

1 States, of a possession of the United States, of any other state
2 of the United States.

3 Sec. 2. RESTRAINTS OF TRADE. Every contract, combination in
4 the form of trust or otherwise or conspiracy, in restraint of
5 trade or commerce is declared to be illegal.

6 For purposes of this section there can be no unlawful
7 contract, combination or conspiracy between: (1) a corporation
8 and its officers acting on its behalf; (2) a parent corporation
9 and its subsidiary or subsidiaries, or between subsidiaries of a
10 common parent corporation; (3) officers of a subsidiary and its
11 parent corporation or officers of the parent corporation; (4)
12 two or more corporations the stock of which is owned by the same
13 natural person or persons; unless such affiliated corporations
14 hold themselves out as competitors or unless the contract, combina-
15 tion or conspiracy acts as an unreasonable restraint upon the trade
16 or commerce of a person not party to such contract, combination
17 or conspiracy.

18 Sec. 3. MONOPOLY. Every person who shall monopolize, or
19 attempt to monopolize, or combine or conspire with any other per-
20 son or persons, to monopolize any part of the trade or commerce
21 of the State of Alaska is deemed guilty of a violation of this
22 Act.

23 Sec. 4. DISCRIMINATION IN PRICE, SERVICES, OR FACILITIES:
24 SELECTION OF CUSTOMERS.

25 a. It is unlawful for any person engaged in trade or
26 commerce, in the course of such trade or commerce, either directly
27 or indirectly, to discriminate in price between different pur-
28 chasers or sellers of commodities of like grade and quality, or to
29 refuse to deal with any purchaser or seller, where either or any of

1 the purchases or sales involved in such discrimination are in
2 trade or commerce, and where the effect of such discrimination
3 may be substantially to lessen competition or tend to create a
4 monopoly in any line of commerce, or to injure, destroy, or prevent
5 competition with any person who either grants or knowingly receives
6 the benefit of such discrimination, or with customers of either
7 of them: provided, that nothing contained in this section or sec-
8 tions 5 or 6 of this Act shall prevent differentials which make
9 only due allowance for differences in the cost of manufacture,
10 sale, or delivery resulting from the differing methods or quanti-
11 ties in which such commodities are from such sellers bought or
12 picked up or to such purchasers sold or delivered: provided, how-
13 ever, that nothing contained in this section or sections 5 and 6
14 of this Act shall prevent persons engaged in selling or buying
15 commodities from selecting their own customers in bona fide trans-
16 actions and not in restraint of trade: and provided further, that
17 nothing contained in this section or sections 5 and 6 of this Act
18 shall prevent price changes from time to time where in response
19 to changing conditions affecting the market for or the marketabi-
20 lity of the commodities concerned, such as but not limited to
21 actual or imminent deterioration of perishable commodities, obso-
22 lescence of seasonal commodities, distress sales under court
23 process, or sales in good faith in discontinuance of business in
24 the goods concerned.

25 b. Upon proof being made, in any judicial proceeding
26 on a complaint under this section, that there has been discrimina-
27 tion in price or services or facilities furnished, the burden of
28 rebutting the prima facie case thus made by showing justification
29 shall be upon the person charged with a violation of this section,

1 and unless justification shall be affirmatively shown, the Super-
2 rior Court shall issue an order terminating the discrimination:
3 provided, however, that nothing contained in this section shall
4 prevent a seller rebutting the prima facie case thus made by
5 showing that his lower price or the furnishing of services or
6 facilities to any purchaser or purchasers was made in good faith
7 to meet an equally low price of a competitor or the services or
8 facilities furnished by a competitor; or a buyer rebutting the
9 prima facie case thus made by showing that his higher price of the
10 furnishing of services or facilities to any seller or sellers was
11 made in good faith to meet an equally high price of a competing
12 buyer or the services or facilities furnished by a competing buy-
13 er.

14 c. It is unlawful for any person engaged in trade or
15 commerce in the course of such trade or commerce, to pay or grant,
16 or to receive or accept, anything of value as a commission, bro-
17 kerage, or other compensation, or any allowance or discount in
18 lieu thereof, except for services rendered in connection with the
19 sale or purchase of commodities either to the other party to such
20 transaction or to an agent, representative, or other intermediary
21 therein where such intermediary is acting in fact for or in be-
22 half, or is subject to the direct or indirect control, of any
23 party to such transaction other than the person by whom such com-
24 pensation is so granted or paid.

25 d. It is unlawful for any person engaged in trade or
26 commerce to pay or contract for the payment of anything of value
27 to or for the benefit of a customer of such person in the course
28 of such commerce as compensation or in consideration for any
29 services or facilities furnished by or through such customer in

1 connection with the processing, handling, sale, or offering for
2 sale of any commodities manufactured, sold, or offered for sale
3 by such person, unless such payment or consideration is available
4 on proportionally equal terms to all other customers competing in
5 the distribution of such commodities.

6 e. It is unlawful for any person engaged in trade or
7 commerce to discriminate or to assist in a discrimination to his
8 knowledge in favor of one purchaser against another purchaser or
9 purchasers of a commodity in trade or commerce, with or without
10 processing, by contracting to furnish or furnishing, or by contri-
11 buting to the furnishing of, any services or facilities connected
12 with the processing, handling, sale, or offering for sale of such
13 commodity so purchased upon terms not accorded to all purchasers
14 on proportionally equal terms.

15 f. It is unlawful for any person engaged in trade or
16 commerce, in the course of such trade or commerce, knowingly to
17 induce or receive a discrimination in price which is prohibited
18 by this section.

19 Sec. 5. EXCLUSIVE DEALING: DISCRIMINATION AGAINST SELLER'S
20 COMPETITORS. It is unlawful for any person engaged in trade or
21 commerce, in the course of such trade or commerce, to lease or
22 make a sale or contract for sale of commodities, whether patented
23 or unpatented, or fix a price charged therefor, or discount from,
24 or rebate upon, such price, on the condition, agreement, or under-
25 standing that the lessee or purchaser thereof shall not use or
26 deal in the commodities of a competitor or competitors of the
27 lessor or seller, where the effect of such lease, sale, or con-
28 tract for sale or such condition, agreement, or understanding may
29 be to substantially lessen competition or tend to create a monop-

1 oly in any line of trade or commerce.

2 Sec. 6. EXCLUSIVE DEALING: DISCRIMINATION AGAINST BUYER'S
3 COMPETITORS. It is unlawful for any person engaged in trade or
4 commerce, in the course of such trade or commerce, to purchase,
5 lease or contract for the purchase or lease of commodities, or fix
6 a price charged therefor, or discount from, or rebate upon, such
7 price, on the condition, agreement, or understanding that the
8 seller or lessor thereof shall not sell or lease the commodities
9 to a competitor or competitors of the purchaser or lessee, where
10 the effect of such lease, sale or contract for sale or such condi-
11 tion, agreement, or understanding may be to substantially lessen
12 competition or tend to create a monopoly in any line of commerce.

13 Sec. 7. MERGERS AND STOCK ACQUISITIONS. No corporation en-
14 gaged in trade or commerce shall acquire, directly or indirectly,
15 the whole or any part of the stock, other share capital, or any
16 part of the assets of another corporation, or attempt in any man-
17 ner to bring two or more corporations under the same management
18 or control, where, in any line of trade of commerce in some sec-
19 tion of the state, the purpose or effect of such acquisition or
20 attempted combination or consolidation may be to substantially
21 lessen competition, or to tend to create a monopoly.

22 Sec. 8. EXEMPTIONS. a. Persons regulated by federal or
23 state agencies are exempt from the provisions of this Act in so
24 far as the conduct complained of is sanctioned by the agency.

25 b. Nothing in this Act shall prevent a cooperative
26 association or a cooperative corporation from returning to its
27 members, producers, or consumers the whole, or any part of, the
28 net earnings or surplus resulting from its trading operations, in
29 proportion to their purchases or sales from, to, or through the

1 association.

2 Sec. 9. PUNISHMENT FOR VIOLATIONS. A violation of Sections
3 2, 3, 4, 5, 6 or 7 of this Act shall be punishable by imprison-
4 ment of not more than one year, or by fine of not more than
5 \$5,000.00, or both.

6 Sec. 10. IMMUNITY OF WITNESSES. No person shall be prose-
7 cuted or be subject to any penalty for or on account of any trans-
8 action, matter or thing concerning which he may testify or pro-
9 duce evidence, documentary or otherwise, in any proceeding, suit
10 or prosecution under this Act: provided, that no person so testi-
11 fying shall be exempt from prosecution or punishment for perjury
12 committed in so testifying. No person shall be compelled under
13 this section to make any statements which would tend to incrimi-
14 nate him under federal law.

15 Sec. 11. JURISDICTION OF COURTS. The Superior Court is in-
16 vested with jurisdiction to prevent, restrain and punish viola-
17 tions of this Act, and it shall be the duty of the Attorney
18 General to institute proceedings in the name of the state to pre-
19 vent and restrain such violations. When the parties complained
20 of shall have been duly notified of the action, the court shall
21 proceed, as soon as may be, to the hearing and determination of
22 the case; and pending final decree, the court may at any time
23 make such temporary restraining order or prohibition as the court
24 shall deem just. The court may appoint a master as provided by
25 the Rules of Civil Procedure.

26 Sec. 12. SUITS BY PERSONS INJURED: AMOUNT OF RECOVERY. Any
27 person who shall be injured in his business or property by reason
28 of anything forbidden in this Act may sue therefor in the Superior
29 Court, and shall, in the discretion of the court, recover double

1 the damages by him sustained, and the cost of suit including a
2 reasonable attorney's fee.

3 Sec. 13. JUDGMENT IN FAVOR OF STATE AS EVIDENCE. A final
4 judgment or decree rendered in any criminal prosecution or in any
5 suit or proceeding brought by or on behalf of the state under this
6 Act to the effect that a defendant has violated this Act shall be
7 prima facie evidence against such defendant in any suit or pro-
8 ceeding brought by any other party against such defendant under
9 Sec. 12 of this Act as to all matters respecting which said judg-
10 ment or decree would be an estoppel as between the parties there-
11 to; provided, this section shall not apply to consent judgments
12 or decrees entered before any testimony has been taken.

13 Whenever any suit or proceeding or criminal prosecution
14 is instituted by the state to prevent, restrain, or punish viola-
15 tions of this Act, the running of the statute of limitations in
16 respect of each and every private right of action arising under
17 said laws and based in whole or in part on any matter complained
18 of in said suit or proceeding shall be suspended during the
19 pendency thereof.

20 Sec. 14. LIABILITY OF DIRECTORS AND AGENTS OF CORPORATION.
21 Whenever a corporation shall violate this Act, such violation
22 shall be deemed to be also that of the individual directors, offi-
23 cers, or agents of such corporation who shall have knowingly
24 authorized, ordered, or done any of the Acts constituting in whole
25 or in part such violation.

26 Sec. 15. AUTHORITY OF ATTORNEY GENERAL TO INSPECT RECORDS
27 AND ISSUE SUMMONS: SERVICE OF SUMMONS.

28 a. The Attorney General, or his authorized representa-
29 tive, in any investigation or inspection in connection with the

1 enforcement of this Act, is authorized to examine any books,
2 papers, records, or memoranda of any person or business. Books,
3 papers, records, or memoranda shall be available for inspection
4 and the premises where a business may be conducted shall be open,
5 at all reasonable times, and the Attorney General may summon any
6 person to appear and produce books, records, papers, or memoranda
7 bearing upon matters within the scope of this Act, and to give
8 testimony or answer interrogatories under oath respecting the
9 same and the Attorney General, or his authorized representative
10 shall have power to administer oaths to such person.

11 b. If any person having been personally summoned shall
12 neglect or refuse to obey the summons issued as herein provided,
13 the Attorney General may report the fact to the Superior Court
14 and said court hereby is empowered to compel obedience to such
15 summons to the same extent as witnesses may be compelled to obey
16 the subpoenas of that court.

17 Sec. 16. CONFIDENTIAL INFORMATION. The Attorney General, or
18 his authorized assistants or representatives shall not make public
19 or use said copies or any information derived in the course of
20 said examination of said records or documents, except in the course
21 of some judicial proceedings in which the state is a party, or in
22 a suit by the state to cancel the permit or forfeit the license of
23 such corporation, or to collect penalties for a violation of the
24 laws of this state, or for information of any officer of this
25 state charged with the enforcement of its laws.

26 Sec. 17. FORFEITURE OF RIGHT TO DO BUSINESS. Any foreign
27 corporation doing business in Alaska under a permit granted under
28 the laws of this state, or any officer or agent thereof, or any
29 domestic corporation shall fail or refuse to permit the Attorney

1 General, or his authorized representative or representatives to
2 examine or take copies of any of its said books, records, and
3 other documents whether same be situated within this or any other
4 state within the United States, shall thereby forfeit its right to
5 do business in this state; and its license shall be cancelled or
6 forfeited.

7 Sec. 18. EFFECT OF ACT ON PRIOR LAW. The provisions of this
8 Act shall be cumulative of all other laws now in force in this
9 state, and shall not be construed as repealing any other means
10 afforded by law for securing testimony or inquiring into the
11 rights and privileges of corporations.

12 Sec. 19. EFFECT OF REFUSAL TO PERMIT EXAMINATION OF BOOKS.
13 If any person shall fail or refuse to permit the Attorney General
14 or his authorized representative to make such examination, to
15 examine or to take copies of any or all of the books, accounts,
16 records, minutes, letters, memoranda, documents, checks, vouchers,
17 telegrams, constitution and by-laws and other records of said
18 corporation, he shall be fined not less than \$100.00 nor more than
19 \$1,000.00, and be imprisoned in jail not less than 30 nor more
20 than 100 days. Each day of such failure or refusal shall be a
21 separate offense.

22 Sec. 20. EFFECTIVE DATE. This Act takes effect on the day
23 after its passage and approval or on the day it becomes law with-
24 out such approval.

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