

Original sponsor: Rules Committee by
request of the Governor

Offered: 4/26/71
Referred: Rules

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 CS FOR HOUSE BILL NO. 164

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act prohibiting monopolies and combinations in
7 unreasonable restraint of trade."

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

9 * Section 1. AS 45 is amended by adding a new chapter to read:

10 CHAPTER 51. MONOPOLIES AND RESTRAINT OF TRADE.

11 ARTICLE 1. PROHIBITION AND ENFORCEMENT,

12 Sec. 45.51.010. UNREASONABLE RESTRAINTS OF TRADE OR COMMERCE;
13 MONOPOLIES. (a) Every contract, combination in the form of trust or
14 otherwise, or conspiracy, in unreasonable restraint of trade or
15 commerce, is unlawful.

16 (b) It is unlawful for any person to monopolize or attempt to
17 monopolize trade or commerce in the relevant market for the specific
18 purpose of excluding competition or controlling, fixing or maintaining
19 prices.

20 (c) In deciding whether conduct unreasonably restrains, mono-
21 polizes or attempts to monopolize trade or commerce, the determination
22 of the relevant market or effective area of competition is not limited
23 by the boundaries of this state.

24 Sec. 45.51.020. CONTRACTS VOIDABLE. A contract or agreement in
25 violation of a provision of this chapter is voidable; it may be enforced
26 by the injured party to the contract or agreement.

27 Sec. 45.51.030. CIVIL ACTION BY PERSON INJURED. (a) A person
28 who is injured in his business or property by reason of a violation of
29 a provision of this chapter may bring a civil action

1 (1) for damages sustained by him, and, if the judgment is
2 for him, he shall be awarded three times the amount of damages sus-
3 tained by him in addition to reasonable attorney fees and costs of the
4 action; and

5 (2) to enjoin the unlawful practice, and, if the decree is
6 for the plaintiff, he shall be awarded reasonable attorney fees
7 together with the cost of the suit.

8 (b) The remedies provided in this section are cumulative and
9 may be sought in one action.

10 Sec. 45.51.040. CIVIL ACTION BY STATE OR LOCAL GOVERNMENT.

11 When the state, a city or a borough, whether home rule or otherwise,
12 or another governmental entity is injured, in its business or property,
13 by reason of a violation of a provision of this chapter, it has the
14 same remedies provided in sec. 30 of this chapter.

15 Sec. 45.51.050. ACTION BY ATTORNEY GENERAL. (a) The attorney
16 general may bring an action on behalf of the state or any of its
17 political subdivisions or governmental entities, or on behalf of any
18 citizen or class of citizens of the state if the state or its political
19 subdivision also has a cause of action, to enforce the provisions of
20 this chapter or any comparable provisions of federal law.

21 (b) The attorney general may bring proceedings to enjoin a
22 violation of this chapter.

23 Sec. 45.51.060. JURISDICTION OF COURT. A civil action allowed
24 by this chapter shall be brought in the superior court.

25 Sec. 45.51.070. PENALTY FOR VIOLATION. (a) A person who
26 violates sec. 10 of this chapter, including a principal, manager,
27 director, officer, agent, servant or employee, who has engaged in or
28 has participated in the determination to engage in an activity that
29 has been engaged in by any person, which is a violation of sec. 10 of

1 this chapter, is punishable, if a natural person, by a fine of not
2 more than \$10,000 or by imprisonment of not more than one year, or by
3 both; if the person is not a natural person then by a fine of not more
4 than \$20,000.

5 (b) When a corporation violates sec. 10 of this chapter, the
6 violation is considered to be also that of the individual director,
7 officer or agent of the corporation who has authorized, ordered, or
8 done any of the acts constituting in whole or in part the violation.

9 Sec. 45.51.080. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN
10 ACTION. (a) A final judgment or decree rendered in any civil or
11 criminal proceeding brought by the state under this chapter, to the
12 effect that a defendant has violated this chapter, is prima facie
13 evidence against that defendant in any other action or proceeding
14 brought under this chapter, as to all matters respecting which the
15 judgment or decree would be an estoppel between the parties in the
16 other action or proceeding.

17 (b) This section does not apply to consent judgments or decrees
18 entered before testimony has been taken.

19 (c) When a consent judgment or decree is filed, the attorney
20 general shall set out at the same time the alleged violations and
21 reasons for entering into the consent judgment or decree. No such
22 consent judgment or decree becomes final until 60 days from the filing
23 of the consent judgment or decree. During the 60-day period any
24 interested party under secs. 30, 40 and 50 of this chapter, may file
25 verified exceptions to the form and substance of the consent judgment
26 or decree, and the court, upon a full hearing on the exceptions, may
27 approve, refuse to enter, or modify the consent judgment or decree.

28 (d) A plea of nolo contendere in a criminal action under this
29 chapter has the effect of admitting each material allegation in the

1 complaint, and a final judgment or decree rendered under the plea is
2 prima facie evidence against the defendant in another action or pro-
3 ceeding brought under this chapter, as to all matters respecting
4 which the judgment or decree would be an estoppel as between the
5 parties in such other action or proceeding.

6 Sec. 45.51.090. LIMITATION OF ACTIONS. (a) An action to enforce
7 a claim arising under this chapter is barred unless commenced within
8 four years after the cause of action arises, except as otherwise
9 provided in (b) of this section. For the purpose of this section, a
10 cause of action for a continuing violation is considered as accruing at
11 any time during the period of the violation.

12 (b) When a civil or criminal proceeding is instituted by the
13 state to prevent, restrain, or punish violations of this chapter, the
14 running of the period of limitation in respect of each private right
15 of action arising under sec. 30 of this chapter, and based in whole or
16 in part on any matter complained of in the proceeding, is suspended
17 during the pendency of that proceeding, including any appeal, and for
18 one year thereafter.

19 ARTICLE 2. GENERAL PROVISIONS.

20 Sec. 45.51.200. EXEMPTIONS. (a) This chapter does not forbid
21 the existence or operation of labor, agricultural or horticultural
22 organizations created for the purpose of mutual help, and not conducted
23 for profit, or forbid or restrain members of those organizations from
24 lawfully carrying out the legitimate objects of them; nor are those
25 organizations or members illegal combinations or conspiracies in
26 restraint of trade under the provisions of this chapter.

27 (b) This chapter does not forbid actions or arrangements author-
28 ized or regulated under those laws of the United States which exempt
29 those actions or arrangements from the antitrust laws of the United

1 States or under the following statutes of this state:

2 (1) AS 06.05.235

3 (2) AS 10.15

4 (3) AS 31.05.100

5 (4) AS 31.05.110

6 (5) AS 38.05.180.

7 (c) Persons engaged in the business of commercial fishing may act
8 together in associations, corporate or otherwise, with or without
9 capital stock in collectively handling and marketing fish without
10 violating the provisions of this chapter. These associations may have
11 marketing agencies in common; and these associations and their members
12 may make the necessary contracts and agreements to effect those purposes.

13 (d) Persons engaged in the business of insurance, to the extent
14 they are regulated under AS 21, are exempt from the provisions of this
15 chapter.

16 Sec. 45.51.210. DEFINITIONS. In this chapter

17 (1) "article of trade" includes, but is not limited to,
18 goods; merchandise; natural resources, whether or not severed, extracted,
19 harvested or produced; agricultural products; produce, choses in action;
20 commodities; and any other article of commerce; trade or business in
21 service trades, transportation, banking, lending, advertising, bonding
22 and any other business whether or not that business furnishes a personal
23 service;

24 (2) "purchase" or "buy" includes "contract to buy", "lease"
25 and "contract to lease";

26 (3) "sale" or "sell" includes "contract to sell", "lease"
27 and "contract to lease".
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