

Original sponsor: Commerce Committee

Offered: 2/4/72
Referred: Rules

1 IN THE SENATE BY THE COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 238

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to trade and commerce; and providing
7 for an effective date."

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

9 * Section 1. AS 45.45.010(b) is amended to read:

10 (b) During [UNTIL FEBRUARY 15, 1972 DURING] any calendar quarter
11 no interest may be charged by express agreement of the parties in a
12 loan, contract or commitment which is more than eight per cent per
13 annum, or four percentage points above the per annum rate charged
14 member banks for advances by [FEDERAL RESERVE DISCOUNT RATE FOR] the
15 12th Federal Reserve District that prevailed on the first day of the
16 month preceding the commencement of that calendar quarter, whichever
17 is greater. Notice of the prevailing quarterly rate shall be provided
18 by the Department of Commerce. Conventional mortgage loans covering
19 one- to four-family dwellings entered into under provisions of this
20 paragraph may be prepaid without penalty. [INTEREST AT A RATE NOT TO
21 EXCEED EIGHT PER CENT MAY BE CHARGED BY EXPRESS AGREEMENT OF THE
22 PARTIES IN A LOAN CONTRACT OR COMMITMENT DATED AFTER FEBRUARY 15, 1972.]

23 * Sec. 2. AS 45.45.010(c) is repealed and re-enacted to read:

24 (c) The maximum rate of interest specified in this section does
25 not apply to a loan processed when such loan exceeds \$100,000.

26 * Sec. 3. AS 45 is amended by adding a new chapter to read:

27 CHAPTER 51. MONOPOLIES AND RESTRAINT OF TRADE.

28 ARTICLE 1. PROHIBITION AND ENFORCEMENT

29 Sec. 45.51.010. UNREASONABLE RESTRAINTS OF TRADE OR COMMERCE;

1 MONOPOLIES. (a) Every contract, combination in the form of trust or
2 otherwise, or conspiracy, in unreasonable restraint of trade or
3 commerce, is unlawful.

4 (b) It is unlawful for any person to monopolize or attempt to
5 monopolize trade or commerce in the relevant market for the specific
6 purpose of excluding competition or controlling, fixing or maintaining
7 prices.

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

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

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

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

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

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

27 Sec. 45.51.040. CIVIL ACTION BY STATE OR LOCAL GOVERNMENT. When
28 the state, a city or a borough, whether home rule or otherwise, or
29 another governmental entity is injured, in its business or property,

1 by reason of a violation of a provision of this chapter, it has the
2 same remedies provided in sec. 30 of this chapter.

3 Sec. 45.51.050. ACTION BY ATTORNEY GENERAL. (a) The attorney
4 general may bring an action on behalf of the state or any of its
5 political subdivisions or governmental entities, or on behalf of any
6 citizen or class of citizens of the state if the state or its political
7 subdivision also has a cause of action, to enforce the provisions of
8 this chapter or any comparable provisions of federal law.

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

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

13 Sec. 45.51.070. PENALTY FOR VIOLATION. (a) A person who
14 violates sec. 10 of this chapter, including a principal, manager,
15 director, officer, agent, servant or employee, who has engaged in or
16 has participated in the determination to engage in an activity that
17 has been engaged in by any person, which is a violation of sec. 10 of
18 this chapter, is punishable , if a natural person, by a fine of not
19 more than \$10,000 or by imprisonment of not more than one year, or by
20 both; if the person is not a natural person then by a fine of not more
21 than \$20,000.

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

26 Sec. 45.51.080. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN
27 ACTION. (a) A final judgment or decree rendered in any civil or
28 criminal proceeding brought by the state under this chapter, to the
29 effect that a defendant has violated this chapter, is prima facie

1 evidence against that defendant in any other action or proceeding
2 brought under this chapter, as to all matters respecting which the
3 judgment or decree would be an estoppel between the parties in the
4 other action or proceeding.

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

7 (c) When a consent judgment or decree is filed, the attorney
8 general shall set out at the same time the alleged violations and
9 reasons for entering into the consent judgment or decree. No such
10 consent judgment or decree becomes final until 60 days from the filing
11 of the consent judgment or decree. During the 60-day period any
12 interested party under secs. 30, 40 and 50 of this chapter, may file
13 verified exceptions to the form and substance of the consent judgment
14 or decree, and the court, upon a full hearing on the exceptions, may
15 approve, refuse to enter, or modify the consent judgment or decree.

16 (d) A plea of nolo contendere in a criminal action under this
17 chapter has the effect of admitting each material allegation in the
18 complaint, and a final judgment or decree rendered under the plea is
19 prima facie evidence against the defendant in another action or pro-
20 ceeding brought under this chapter, as to all matters respecting
21 which the judgment or decree would be an estoppel as between the
22 parties in such other action or proceeding.

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

29 (b) When a civil or criminal proceeding is instituted by the

1 state to prevent, restrain, or punish violations of this chapter, the
2 running of the period of limitation in respect of each private right
3 of action arising under sec. 30 of this chapter, and based in whole or
4 in part on any matter complained of in the proceeding, is suspended
5 during the pendency of that proceeding, including any appeal, and for
6 one year thereafter.

7 ARTICLE 2. GENERAL PROVISIONS.

8 Sec. 45.51.200. EXEMPTIONS. (a) This chapter does not forbid
9 the existence or operation of labor, agricultural or horticultural
10 organizations created for the purpose of mutual help, and not conducted
11 for profit, or forbid or restrain members of those organizations from
12 lawfully carrying out the legitimate objects of them; nor are those
13 organizations or members illegal combinations or conspiracies in
14 restraint of trade under the provisions of this chapter.

15 (b) This chapter does not forbid actions or arrangements autho-
16 rized or regulated under those laws of the United States which exempt
17 those actions or arrangements from the antitrust laws of the United
18 States or under the following statutes of this state:

- 19 (1) AS 06.05.235
20 (2) AS 10.15
21 (3) AS 31.05.100
22 (4) AS 31.05.110
23 (5) AS 38.05.180

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

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

4 Sec. 45.51.210. DEFINITIONS. In this chapter

5 (1) "article of trade" includes, but is not limited to,
6 goods; merchandise; natural resources, whether or not severed, extracted,
7 harvested or produced; agricultural products; produce, choses in action;
8 commodities; and any other article of commerce; trade or business in
9 service trades, transportation, banking, lending, advertising, bonding
10 and any other business whether or not that business furnishes a personal
11 service;

12 (2) "purchase" or "buy" includes "contract to buy", "lease"
13 and "contract to lease";

14 (3) "sale" or "sell" includes "contract to sell", "lease"
15 and "contract to lease".

16 * Sec. 4. AS 45.10.120 is amended to read:

17 Sec. 45.10.120. EXTENT OF SERVICE CHARGE. (a) The service charge
18 shall include all charges incident to investigating and making the retail
19 installment contract or charge agreement and for the privilege of making
20 the installment payments under the contract or agreement. No other fee,
21 interest, expense, or charge may be taken, received, reserved, or
22 contracted for investigating and making the contract or agreement, or
23 for the privilege of making the payments.

24 (b) A seller or holder of a retail installment contract may
25 charge, receive and collect a service charge which shall not exceed
26 the following rates multiplied by the number of months, including a
27 fraction of a month in excess of 15 days as one month, elapsing between
28 the date of the contract and the due date of the last installment,

29 (1) if [ON SO MUCH OF] the unpaid balance [AS] does not

1 exceed \$10,000, seven-twelfths [\$1,000, FIVE-SIXTHS] of one per cent;

2 (2) if the unpaid balance exceeds \$10,000 [\$1,000], on so
3 much of the unpaid balance as exceeds \$10,000 [\$1,000], one-third
4 [two-thirds] of one per cent;

5 (3) on contracts with an original balance under \$300, a
6 contract fee of \$10 may be added; this fee shall not be considered as
7 part of the service fee for purposes of sec. 70 of this chapter [IF
8 THE TOTAL SERVICE CHARGE SO COMPUTED IS LESS THAN \$12, \$12, BUT IF
9 THE DUE DATE OF THE LAST INSTALLMENT OF THE CONTRACT IS EIGHT MONTHS
10 OR LESS AFTER ITS EFFECTIVE DATE, \$10].

11 (c) A seller or holder of a retail charge agreement, revolving
12 charge agreement or other retail charge agreement may charge, receive
13 and collect a service charge not to exceed the following rates computed
14 on the outstanding balances from month to month,

15 (1) on so much of the outstanding balance as does not exceed
16 \$300 [\$1,000], one and one-fourth [ONE-HALF] per cent per month;

17 (2) if the outstanding balance is more than \$300 [\$1,000],
18 one per cent per month [ON THE EXCESS OVER \$1,000 OF THE OUTSTANDING
19 BALANCE].

20 (3) if the service charge so computed is less than \$1 for
21 any month, \$1;

22 (4) the service charge may be computed on a schedule of
23 fixed amounts if as so computed it is applied to all amounts of out-
24 standing balances equal to the fixed amount minus a differential of
25 not more than \$5 provided that it is also applied to all amounts of
26 outstanding balances equal to the fixed amount plus at least the same
27 differential.

28 * Sec. 5. This Act takes effect on the day after its passage and approval
29 or on the day it becomes law without approval. Sec. 4 of this Act shall be

1 effective only as to new installment contracts and balances on revolving
2 accounts after 90 days from the effective date of this Act.

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