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1 IN THE HOUSE

BY BRADNER, BOWMAN, CHANCE, BARBER,  
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2 HOUSE BILL NO. 142

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act prohibiting monopolies and combinations in  
7 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: RESTRAINT OF TRADE.

11 ARTICLE 1. SUBSTANTIVE PROVISIONS.

12 Sec. 45.51.010. COMBINATIONS IN RESTRAINT OF TRADE, PRICE  
13 FIXING AND LIMITATION OF PRODUCTION PROHIBITED. Each contract, com-  
14 bination in the form of trust or otherwise, or conspiracy, in restraint  
15 of trade or commerce is illegal.

16 Sec. 45.51.020. PROHIBITED ACTS. (a) No person, exclusive of  
17 members of a single business entity consisting of sole proprietorship,  
18 partnership, corporation or other single business entity, may agree,  
19 combine, or conspire, with any other person or persons, or enter into,  
20 become a member of, or participate in any understanding, arrangement,  
21 contract, pact, or trust, directly or indirectly to

22 (1) create or carry out restrictions in trade or commerce;

23 (2) limit or restrict the production, or maintain or  
24 increase the price of any article of trade;

25 (3) prevent competition in the harvesting, extraction,  
26 production, manufacturing, making, transportation, sale or purchase  
27 of any article of trade;

28 (4) fix any standard of quality in respect to any article  
29 of trade intended for sale, barter, use or consumption in this state,

1 whereby its price to the public, consumer or purchaser of any kind  
2 shall be in any manner controlled, maintained or increased;

3 (5) agree not to sell, dispose of or transport any article  
4 of trade below a common standard, figure or fixed value;

5 (6) agree to keep the price of any article of trade at a  
6 fixed or graduated figure;

7 (7) establish or settle the price of any article of trade  
8 so as to preclude a free and unrestricted competition in the sale or  
9 transportation of such article of trade;

10 (b) Nothing in (a) of this section shall limit the generality of  
11 sec. 10 of this chapter.

12 Sec. 45.51.030. ACTS PERMITTED. Unless the effect of the follow-  
13 ing shall be to substantially lessen competition or to create a monopoly  
14 in any line of commerce in any part of the state, it shall be lawful  
15 for

16 (1) persons making the transfer of a business to covenant  
17 or agree not to compete within a reasonable area and within a  
18 reasonable period of time in connection with the sale of the business;

19 (2) partners to covenant or agree not to compete with the  
20 partnership within a reasonable area and for a reasonable period of  
21 time for the withdrawal of a partner from the partnership;

22 (3) a lessee to covenant or agree to be restricted in the  
23 use of the leased property to certain business or agricultural areas,  
24 and for a lessee to be restricted in the use of premises reasonably  
25 proximate to any such leased premises;

26 (4) an employee or agent to covenant or agree not to use the  
27 trade secrets of the employer or principal in competition with his  
28 employer or principal during the term of the employment or agency or  
29 thereafter within such time as may be reasonably necessary for the

1 protection of the employer or principal.

2 Sec. 45.51.040. MERGERS, ACQUISITIONS, HOLDINGS, AND  
3 DIVESTITURES. (a) No corporation may acquire and hold, directly  
4 or indirectly, the whole or any part of the stock or other share  
5 capital of any other corporation, or the whole or any part of the  
6 assets of any other corporation whether or not acquired before the  
7 effective date of this Act where the effect of such acquisition and  
8 holding may be substantially to lessen competition or to tend to  
9 create a monopoly in any line of commerce in any section of the state;  
10 however, this subsection does not apply to corporations purchasing  
11 such stock solely for investment if it is not used by voting or  
12 otherwise to bring about, or in attempting to bring about, the  
13 substantial lessening of competition. Nothing in this subsection  
14 may prevent a corporation from causing the formation of subsidiary  
15 corporations for the actual carrying on of their immediate lawful  
16 business, or the natural and legitimate branches or extensions  
17 thereof, or from owning and holding all or a part of the stock of  
18 the subsidiary corporation, when the effect of the formation is not  
19 substantially to lessen competition.

20 (b) Where the court finds that the effect of the holding of  
21 such stock, share capital, or assets is substantially to lessen  
22 competition or tends to create a monopoly, then the court shall  
23 order the divestiture or other disposition of such stock, share  
24 capital, or assets, of the corporation, and shall prescribe a  
25 reasonable time, manner, and degree of the divestiture or other  
26 disposition thereof. However, the court may not order the divestiture  
27 or other disposition of the assets of the corporation unless it is  
28 necessary to eliminate the lessening of competition or the tendency  
29 to create a monopoly, and the assets are reasonably identifiable and

1 separable, and the disposition can be done without causing undue  
2 hardship on the economic entity.

3 (c) This section does not apply to mergers, acquisitions or  
4 holding companies permitted by AS 06.05.235 or to any merger carried  
5 out in accordance with AS 21.69.590 - 21.69.600, nor to mergers,  
6 acquisitions or holding companies permitted and regulated by a regula-  
7 tory agency of the United States having jurisdiction and control over  
8 such mergers and acquisitions.

9 Sec. 45.51.050. INTERLOCKING DIRECTORATES AND RELATIONSHIPS.

10 (a) No person may be at the same time a director, officer, partner,  
11 or trustee in any two or more firms, partnerships, trusts, associ-  
12 ations, or corporations or any combination thereof engaged in whole  
13 or in part in commerce, if such firms, partnerships, trusts, associ-  
14 ations, or corporations or any combination thereof, are or shall  
15 have been theretofore, by virtue of their business and location of  
16 operation, competitors, so that the elimination by agreement between  
17 them would constitute a violation of this chapter.

18 (b) No person may by the use of a representative or representa-  
19 tives effectuate the result prohibited in (a) of this section where  
20 the act or acts of the representative or representatives acting in  
21 their capacities as directors, officers, partners, or trustees of  
22 such business entities indicate an attempt, directly or indirectly,  
23 to manipulate the conduct of the business entities to the detriment  
24 of any of such entities and to the benefit of any other entity in  
25 which such person has an interest.

26 (c) The validity or invalidity of any act of any director,  
27 officer, or trustee done by such director, officer, or trustee while  
28 occupying such position in violation of this section shall be  
29 determined by the statutory and common law of this state relating to

1 corporations, trusts, or associations.

2 (d) The attorney general may bring an action at any time to  
3 cause a director, officer, or trustee who may be occupying such  
4 position in violation of this section, to vacate the office or  
5 offices to effectuate the termination of the prohibited interlocking  
6 relationship.

7 (e) Any person affected by any act of a director, officer, or  
8 trustee may bring an action at any time to cause the director,  
9 officer, or trustee who may be occupying such position in violation  
10 of this section to terminate the prohibited interlocking relationship.

11 (f) The court upon finding that a director, officer, or trustee  
12 is holding office in violation of this section shall order the person  
13 to terminate the interlocking relationship, and in the case of a  
14 trustee, the court may, when it considers appropriate, order the trustee  
15 to vacate his office. Any remedy provided in this section shall not  
16 limit and is in addition and cumulative to any other remedy available  
17 under any other section of this chapter or any other law.

18 Sec. 45.51.060. EXEMPTION OF LABOR ORGANIZATIONS. (a) Nothing in  
19 this chapter forbids the existence and operation of labor organiza-  
20 tions, not having capital stock or conducted for profit, or forbids  
21 or restrains such an organization or the individual members of  
22 such organization from lawfully carrying out the legitimate objects  
23 thereof; nor shall such organizations, or the members thereof, law-  
24 fully carrying out the legitimate objects thereof be considered to  
25 be illegal combinations or conspiracies in restraint of trade under  
26 this chapter.

27 (b) This chapter does not apply to the conduct or activities of  
28 labor organizations or their members which conduct or activities  
29 are regulated by federal law or over which the National Labor

1 Relations Board exercises jurisdiction.

2 Sec. 45.51.070. EXEMPTION OF CERTAIN COOPERATIVE AND OTHER  
3 ORGANIZATIONS. (a) Nothing in this chapter forbids the existence  
4 of any cooperative corporation organized and operated under the  
5 provisions of AS 10.15 or any cooperative organization or association  
6 which conforms and continues to conform to the requirements of the  
7 Capper-Volstead Act (7 U.S.C. 291 and 292), or any hospital and  
8 medical service corporation authorized in AS 21.87.

9 Sec. 45.51.080. EXEMPTION FOR COMMERCIAL FISHING. Persons  
10 engaged in the business of commercial fishing may act together in  
11 associations, corporate or otherwise, with or without capital stock  
12 in collectively handling and marketing fish without violating the  
13 provisions of this chapter. Such associations may have marketing  
14 agencies in common; and such associations and their members may make  
15 the necessary contracts and agreements to effect such purposes.

16 ARTICLE 2. ENFORCEMENT PROVISIONS.

17 Sec. 45.51.100. CONTRACTS VOID. A contract or agreement in  
18 violation of any provision of this chapter is void and is not  
19 enforceable at law or in equity.

20 Sec. 45.51.110. SUITS BY PERSONS INJURED. (a) A person who  
21 is injured in his business or property by reason of anything forbidden  
22 or declared unlawful by this chapter

23 (1) may sue for damages sustained by him, and, if the  
24 judgment is for the plaintiffs, he shall be awarded threefold the  
25 amount of damages sustained by him and reasonable attorney fees  
26 together with the costs of suit; and

27 (2) may bring proceedings to enjoin the unlawful practice,  
28 and if the decree is for the plaintiff, he shall be awarded reasonable  
29 attorney fees together with the cost of the suit.

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

3 Sec. 45.51.120. SUITS BY STATE OR LOCAL GOVERNMENT. (a)  
4 Whenever the state, a city, a borough, whether home rule or otherwise,  
5 or other government entity is injured, in its business or property by  
6 reason of anything forbidden or declared unlawful by this chapter,  
7 it shall have the same remedies provided in sec. 110 of this chapter.

8 (b) The attorney general may bring an action on behalf of the  
9 state or any of its political subdivisions or governmental entities,  
10 or on behalf of any citizen or class of citizens of the state if the  
11 state or its political subdivision also has a cause of action, to  
12 enforce the provisions of this chapter, or of any comparable pro-  
13 visions of federal law.

14 Sec. 45.51.130. INJUNCTION BY ATTORNEY GENERAL. The attorney  
15 general may bring proceedings to enjoin any violation of this chapter.

16 Sec. 45.51.140. JURISDICTION OF COURT. A civil action allowed  
17 by this chapter shall be brought in the superior court.

18 Sec. 45.51.150. PENALTY FOR VIOLATION. (a) A person who  
19 violates secs. 10, 20, 40 or 50 of this chapter, including any  
20 principal, manager, director, officer, agent, servant or employee,  
21 who has engaged in or has participated in the determination to engage  
22 in an activity that has been engaged in by any association, firm,  
23 partnership, trust or corporation, which is a violation of secs. 10,  
24 20, 40 or 50 of this chapter, is punishable, if a natural person,  
25 by a fine of not more than \$10,000 or by imprisonment of not more than one  
26 year, or by both; if the person is not a natural person then by a  
27 fine of not more than \$20,000.

28 (b) Whenever a corporation violates secs. 10, 20, 40 or 50 of  
29 this chapter, the violation shall be considered to be also that of the

1 individual director, officer or agent of the corporation who has  
2 authorized, ordered, or done any of the acts constituting in whole  
3 or in part such violation.

4 Sec. 45.51.160. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN  
5 ACTION: SUSPENSION OF LIMITATION. (a) A final judgment or decree  
6 rendered in any civil or criminal proceeding brought by the state  
7 under this chapter shall be prima facie evidence against the  
8 defendant in any other action or proceeding brought by any other  
9 party under this chapter, or by the state, a city or a borough, under  
10 sec. 120 of this chapter, as to all matters respecting which the  
11 judgment or decree would be an estoppel between the parties in such  
12 other action or proceeding.

13 (b) This section does not apply to consent judgments or decrees  
14 entered before any complaint has been filed.

15 (c) When a consent judgment or decree is filed, the attorney  
16 general shall set out at the same time the alleged violations and  
17 reasons for entering into the consent judgment or decree. No such  
18 consent judgment or decree shall become final until 60 days from  
19 the filing of the consent judgment or decree. During the 60-day  
20 period any interested party under secs. 110 and 120 of this chapter,  
21 may file verified exceptions to the form and substance of the consent  
22 judgment or decree, and the court, upon a full hearing thereon may  
23 approve, refuse to enter, or may modify the consent judgment or decree.

24 (d) A plea of nolo contendere in a criminal action under this  
25 chapter shall have the effect of admitting each material allegation  
26 in the complaint, and a final judgment or decree rendered under  
27 the plea shall be prima facie evidence against the defendant in  
28 an action or proceeding brought by any other party under this chapter,  
29 or by the state, a city, or a borough, under sec. 120 of this chapter,

1 as to all matters respecting which the judgment or decree would be  
2 an estoppel as between the parties in such other action or proceeding.

3 (e) Whenever a civil or criminal proceeding is instituted by  
4 the state to prevent, restrain, or punish violations of this chapter,  
5 the running of the statute of limitations in respect of each private  
6 right of action arising under sec. 110 of this chapter, and based  
7 in whole or in part on any matter complained of in the proceeding  
8 shall be suspended during the pendency thereof, including any appeal,  
9 and for one year thereafter.

10 Sec. 45.51.170. LIMITATION OF ACTIONS. An action to enforce  
11 a claim arising under this chapter shall be barred unless commenced  
12 within four years after the claim accrues, except as otherwise  
13 provided in sec. 160 of this chapter. For the purpose of this section,  
14 a claim for a continuing violation is considered to accrue at any time  
15 during the period of the violation.

16 ARTICLE 3. GENERAL PROVISIONS.

17 Sec. 45.51.200. DEFINITIONS. In this chapter

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

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

27 (3) "sale" or "sell" includes "contract to sell", "lease"  
28 and "contract to lease".  
29