

Introduced: 2/2/73
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 168

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 unfair competition, monopolies
7 and combinations in 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. UNFAIR COMPETITION AND MONOPOLIES.

11 Sec. 45.51.010. PURPOSE AND INTENT. The legislature declares
12 that it is the purpose of this chapter to complement the body of
13 federal law governing restraints of trade, unfair competition and
14 unfair, deceptive and fraudulent acts or practices in trade and
15 commerce in order to protect the public and foster fair and honest
16 competition. It is the intent of the legislature that, in con-
17 struing this chapter, the courts be guided by the interpretation
18 given by the federal courts to the various federal statutes dealing
19 with the same or similar matters and that in deciding whether
20 conduct restrains or monopolizes trade or commerce or substantially
21 lessens competition, a determination of the relevant market or
22 effective area of competition shall not be limited by the boundaries
23 of the State of Alaska. To this end this chapter shall be liberally
24 construed that its beneficial purposes may be served. It is,
25 however, the intent of the legislature that this chapter shall not
26 be construed to prohibit acts or practices which are reasonable in
27 relation to the development and preservation of business and which
28 are not injurious to the public interest.

29 Sec. 45.51.020. UNFAIR COMPETITION AND PRACTICES. Unfair

1 methods of competition and unfair or deceptive acts or practices
2 in the conduct of trade or commerce are unlawful.

3 Sec. 45.51.030. CONTRACTS, COMBINATIONS, CONSPIRACIES IN
4 RESTRAINT OF TRADE. Every contract or combination, in the form
5 of trust or otherwise, or conspiracy in restraint of trade or
6 commerce is unlawful.

7 Sec. 45.51.040. MONOPOLIES AND ATTEMPTED MONOPOLIES. It is
8 unlawful for a person to monopolize, attempt to monopolize or
9 combine or conspire with any other person to monopolize any part of
10 trade or commerce.

11 Sec. 45.51.050. TRANSACTIONS AND AGREEMENTS NOT TO USE OR DEAL
12 IN COMMODITIES OR SERVICES OF COMPETITOR. It is unlawful for a
13 person to lease or sell or contract for sale of goods, wares, mer-
14 chandise, machinery, supplies, other commodities or services, whether
15 patented or unpatented, for use, consumption, enjoyment or
16 resale, or fix a price charged for, or discount from or rebate on the
17 price, on the condition, agreement or understanding that the lessee
18 or purchaser shall not use or deal in the goods, other commodities
19 or services of a competitor or competitors of the lessor or seller,
20 where the effect of the lease, sale or contract for sale or the
21 condition, agreement or understanding may be to substantially lessen
22 competition or tend to create a monopoly in any line of commerce.

23 Sec. 45.51.060. EXEMPTIONS. (a) This chapter does not forbid
24 the existence or operation of labor, agricultural or horticultural
25 organizations created for the purpose of mutual help and not conducted
26 for profit, or forbid or restrain members of these organizations
27 from lawfully carrying out legitimate objects of the organizations;
28 nor are the organizations or members illegal combinations or con-
29 spiracies in restraint of trade under the provisions of this chapter.

1 (b) This chapter does not forbid actions or arrangements
2 authorized or regulated under those laws of the United States which
3 exempt those actions or arrangements from the antitrust laws of the
4 United States or under the following statutes of this state:

5 (1) AS 06.05.235

6 (2) AS 10.15

7 (3) AS 31.05.100

8 (4) AS 31.05.110

9 (5) AS 38.05.180.

10 (c) Persons engaged in commercial fishing may act together in
11 associations, corporate or otherwise with or without capital stock,
12 collectively to handle and market fish without violating the pro-
13 visions of this chapter. These associations may have common
14 marketing agencies and their members may make contracts and agree-
15 ments necessary to the lawful purposes of these associations.

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

19 Sec. 45.51.070. RESTRAINT OF PROHIBITED ACTS. The attorney
20 general may bring an action in the name of the state against a person
21 to restrain and prevent an act prohibited by this chapter; the
22 prevailing party is entitled to recover the costs of the action
23 including a reasonable attorney's fee. The court may make additional
24 orders or judgments necessary to restore to a person in interest
25 money or real or personal property, which may have been acquired
26 by means of an act made unlawful by this chapter.

27 Sec. 45.51.080. CIVIL ACTION FOR DAMAGES. (a) A person who
28 is injured in his business or property by a violation of secs. 20,
29 30, 40 or 50 of this chapter or a person so injured because he refuses

1 to accede to a proposal for an arrangement which, if completed, would
2 be a violation of secs. 20, 30, 40 or 50 of this chapter may bring an
3 action to enjoin further violations, to recover three times the
4 damages sustained by him, or both, together with the cost of suit,
5 including a reasonable attorney's fee. For the purpose of this sub-
6 section, the word "person" includes all political subdivisions of the
7 state.

8 (b) The attorney general may bring an action in the name of the
9 state, on behalf of the political subdivisions of the state or citizens
10 of the state to recover damages for injuries to business or property.
11 Where an action is brought by the attorney general under this section,
12 and judgment is entered, the award shall be the greater of three times
13 the actual damages, together with costs, including a reasonable
14 attorney's fee, or the civil penalty in sec. 130 of this chapter.

15 (c) The attorney general may also bring an action in the name
16 of the state or its political subdivisions for damages provided by
17 federal laws which are similar in purpose and intent to this chapter.

18 Sec. 45.51.090. ASSURANCE OF DISCONTINUANCE OF PROHIBITED ACT.
19 In enforcing this chapter, the attorney general may accept an assurance
20 of discontinuance of an act or practice considered to be in violation
21 of this chapter. The assurance shall be in writing and filed with and
22 subject to the approval of the superior court. The assurance of
23 discontinuance shall not be considered an admission of a violation
24 for any purpose, but proof of failure to comply with the assurance
25 is prima facie evidence of a violation of this chapter.

26 Sec. 45.51.100. DEMAND TO PRODUCE DOCUMENTARY MATERIALS FOR
27 INSPECTION. (a) Whenever the attorney general believes that a
28 person may be in possession, custody or control of an original or copy
29 of a book, record, report, memorandum, paper, communication,

1 tabulation, map, chart, photograph, mechanical transcription or other
2 tangible document or recording, which he believes to be relevant to
3 the subject matter of an investigation of a possible violation of secs.
4 20, 30, 40 or 50 of this chapter, he may, prior to the institution of
5 a civil proceeding, execute in writing and serve upon the person a
6 civil investigative demand requiring the person to produce the
7 documentary material and permit inspection and copying.

8 (b) Each demand shall

9 (1) state the statute section or sections, the alleged
10 violation of which is under investigation and the general subject
11 matter of the investigation;

12 (2) describe the kind of documentary material to be
13 produced with reasonable specificity;

14 (3) prescribe a date before which the documentary material
15 must be produced; and

16 (4) identify the members of the attorney general's staff
17 to whom the documentary material is to be made available for
18 inspection and copying.

19 (c) No demand may

20 (1) contain a requirement which would be unreasonable or
21 improper if contained in a subpoena duces tecum issued by the
22 superior court; or

23 (2) require the disclosure of documentary material which
24 is privileged, or which could not be required by a subpoena duces
25 tecum issued by the superior court.

26 (d) Service of a demand may be made by

27 (1) delivering a true copy to the person or, if the
28 person is not a natural person, to any officer of the person to be
29 served; or

1 (2) delivering a true copy to the principal place of
2 business in this state of the person to be served; or

3 (3) mailing by registered or certified mail a true copy
4 addressed to the person to be served at his principal place of
5 business.

6 (e) Documentary material demanded under the provisions of this
7 section shall be produced for inspection and copying during normal
8 business hours at the principal office or place of business of the
9 person served, or at times and places agreed upon by the person
10 served and the attorney general.

11 (f) No documentary material produced in response to a demand
12 may, unless ordered by a superior court for good cause shown, be dis-
13 closed to nor the contents disclosed by other than an authorized
14 employee of the attorney general without the consent of the person who
15 produced the material; however, under reasonable terms and conditions
16 prescribed by the attorney general the copies of the documentary
17 material shall be available for inspection and copying by the person
18 who produced the material or any duly authorized representative of
19 that person.

20 (g) The attorney general may use documentary material he
21 determines necessary in the enforcement of this chapter, including
22 use for presentation before any court. Any material which contains
23 trade secrets may not be presented to the court except with the
24 approval of the court in which action is pending after adequate notice
25 to the person furnishing the material.

26 (h) Before the return date specified in the demand or within
27 twenty days after the demand has been served, whichever is shorter,
28 a petition stating good cause to extend the return date or to
29 modify or set aside a demand may be filed. A petition, by the person

1 on whom the demand is served, to require the attorney general or other
2 person to perform a duty imposed by the provisions of this section,
3 and all other petitions in connection with a demand shall be filed
4 in the superior court.

5 (i) If a person fails to comply with a demand for documentary
6 material under this section, the attorney general may file a petition
7 in the superior court for an order for the enforcement of this
8 section. When a petition is filed, the court shall hear and deter-
9 mine the matter presented and enter an order or orders necessary to
10 enforce this section. Disobedience of an order entered under this
11 section shall be punished as contempt.

12 (j) This section does not apply to a criminal prosecution.

13 Sec. 45.51.110. LIMITATION OF ACTIONS. An action for damages
14 under sec. 80 of this chapter is barred unless commenced within four
15 years after the cause of action accrues. The running of this time
16 limitation is tolled for private actions brought under sec. 80 of
17 this chapter and based in part upon a complaint brought by the
18 attorney general to enforce secs. 20, 30, 40 or 50 of this chapter
19 while the attorney general's action is pending.

20 Sec. 45.51.120. FINAL JUDGMENT TO RESTRAIN PRIMA FACIE
21 EVIDENCE IN CIVIL ACTION. (a) A final judgment in an action
22 brought by the state that a person has violated secs. 20, 30, 40 or
23 50 of this chapter is prima facie evidence against that person in a
24 subsequent action brought by a party against the person under sec.
25 80 of this chapter as to all matters covered by the judgment.

26 (b) This section does not apply to consent judgments or decrees
27 where the court makes no finding of illegality.

28 Sec. 45.51.130. CIVIL PENALTIES. (a) A person who violates
29 secs. 20, 30 or 40 of this chapter or the terms of an injunction

1 issued under this chapter shall forfeit and pay a civil penalty of
2 \$100 for each day of violation.

3 (b) This section does not apply to a radio or television station
4 which broadcasts, or to any publisher, printer or distributor
5 of a newspaper, magazine, billboard or other advertising medium who
6 publishes, prints or distributes advertising in violation of sec. 20
7 of this chapter without knowledge of its false, deceptive or mis-
8 leading character.

9 (c) For the purpose of this section the superior court issuing
10 an injunction retains jurisdiction and the cause shall be continued,
11 and the attorney general may petition on behalf of the state for the
12 recovery of civil penalties.

13 Sec. 45.51.140. DISSOLUTION, FORFEITURE OF CORPORATE FRANCHISE
14 FOR VIOLATIONS. Upon a petition by the attorney general, the court
15 may order the dissolution, suspension, or forfeiture or the franchise
16 of a corporation that violates secs. 20, 30 or 40 of this chapter or the
17 terms of an injunction issued under this chapter.

18 Sec. 45.51.150. PERSONAL SERVICE OF PROCESS OUTSIDE STATE. A
19 person outside the state who engages in conduct which affects the
20 commerce or trade of this state in violation of this chapter thereby
21 submits himself to the personal jurisdiction including personal
22 service of process outside the state, of this state's courts.

23 Sec. 45.51.160. DEFINITIONS. In this chapter

24 (1) "trade" and "commerce" mean the sale of assets or
25 services, and any commerce directly or indirectly affecting the
26 people of the State of Alaska;

27 (2) "assets" means property, tangible or intangible, real,
28 personal, or mixed and other things of value.
29