

1 IN THE HOUSE

BY BROWN AND GARDINER

2 HOUSE BILL NO. 42

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH 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 52. MONOPOLIES; RESTRAINT OF TRADE.

11 ARTICLE 1. SUBSTANTIVE PROVISIONS.

12 Sec. 45.52.010. COMBINATIONS IN RESTRAINT OF TRADE, PRICE FIXING  
13 AND LIMITATION OF PRODUCTION PROHIBITED. Each contract, combination in  
14 the form of trust or otherwise, or conspiracy, in restraint of trade or  
15 commerce is illegal.

16 Sec. 45.52.020. 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 another person, or enter into, become a  
20 member of, or participate in any understanding, arrangement, contract,  
21 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 an article of trade;

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

28 (4) fix a standard of quality in respect to an 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 is in any manner controlled, maintained or increased;

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

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

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

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

12 Sec. 45.52.030. ACTS PERMITTED. Unless the effect of the follow-  
13 ing is to substantially lessen competition or to create a monopoly in  
14 any line of commerce in any part of the state, it shall be lawful for

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

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

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

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

1           Sec. 45.52.040. MERGERS, ACQUISITIONS, HOLDINGS, AND  
2           DIVESTITURES. (a) No corporation may acquire and hold, directly or  
3           indirectly, the whole or a part of the stock or other share capital  
4           of another corporation, or the whole or a part of the assets of  
5           another corporation whether or not acquired before the effective date of  
6           this Act where the effect of the acquisition and holding may be sub-  
7           stantially to lessen competition or to tend to create a monopoly in a  
8           line of commerce in any section of the state; however, this subsection  
9           does not apply to corporations purchasing such stock solely for invest-  
10          ment if it is not used by voting or otherwise to bring about, or in  
11          attempting to bring about, the substantial lessening of competition.  
12          Nothing in this subsection prevents a corporation from causing the  
13          formation of subsidiary corporations for the actual carrying on of their  
14          immediate lawful business, or formation of natural and legitimate  
15          branches or extensions, or from owning and holding all or a part of  
16          the stock of the subsidiary corporation, when the effect of the formation  
17          is not substantially to lessen competition.

18                 (b) When the court finds that the effect of the holding of such  
19                 stock, share capital, or assets is substantially to lessen competition  
20                 or tends to create a monopoly, the court shall order the divestiture  
21                 or other disposition of such stock, share capital, or assets, of the  
22                 corporation, and shall prescribe a reasonable time, manner and degree  
23                 of the divestiture or other disposition of them. However, the court  
24                 may not order the divestiture or other disposition of the assets of  
25                 the corporation unless it is necessary to eliminate the lessening of  
26                 competition or the tendency to create a monopoly, and the assets are  
27                 reasonably identifiable and separable, and the disposition can be done  
28                 without causing undue hardship on the economic entity.

29                 (c) This section does not apply to mergers, acquisitions or

1 holding companies permitted by AS 06.05.235 or to a merger carried out  
2 in accordance with AS 21.69.590 - 21.69.600, nor to mergers, acquisitions  
3 or holding companies permitted and regulated by a regulatory agency of  
4 the United States having jurisdiction and control over such mergers and  
5 acquisitions.

6 Sec. 45.52.050. INTERLOCKING DIRECTORATES AND RELATIONSHIPS. (a)

7 No person may be at the same time a director, officer, partner, or  
8 trustee in any two or more firms, partnerships, trusts, associations, or  
9 corporations or any combination of them engaged in whole or in part in  
10 commerce, if such firms, partnerships, trusts, associations, or corpora-  
11 tions or any combination of them, are or have been, by virtue of their  
12 business and location of operation, competitors, so that the elimination  
13 by agreement between them would constitute a violation of this chapter.

14 (b) No person may by the use of a representative effectuate the  
15 result prohibited in (a) of this section where an act of the representa-  
16 tive acting in his capacity as director, officer, partner, or  
17 trustee of such business entities indicate an attempt, directly or  
18 indirectly, to manipulate the conduct of the business entities to the  
19 detriment of any of the entities and to the benefit of any other  
20 entity in which he has an interest.

21 (c) The validity or invalidity of an act of a director, officer,  
22 or trustee done by him while occupying such position in violation of  
23 this section shall be determined by the statutory and common law of  
24 this state relating to corporations, trusts, or associations.

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

29 (e) A person affected by an act of a director, officer, or

1 trustee may bring an action at any time to cause the director, officer,  
2 or trustee who may be occupying that position in violation of this  
3 section to terminate the prohibited interlocking relationship.

4 (f) The court, upon finding that a director, officer, or trustee is  
5 holding office in violation of this section, shall order the person to  
6 terminate the interlocking relationship, and in the case of a trustee,  
7 the court may, when it considers appropriate, order the trustee to  
8 vacate his office. A remedy provided in this section does not limit  
9 and is in addition and cumulative to any other remedy available under  
10 another section of this chapter or any other law.

11 Sec. 45.52.060. EXEMPTION OF LABOR ORGANIZATIONS. (a) Nothing in  
12 this chapter forbids the existence and operation of labor organizations,  
13 not having capital stock or conducted for profit, or forbids or restrains  
14 such an organization or the individual members of that organization from  
15 lawfully carrying out the legitimate objects of the organization, nor  
16 may these organizations, or the members of them, lawfully carrying out  
17 their legitimate objects be considered to be illegal combinations or  
18 conspiracies in restraint of trade under this chapter.

19 (b) This chapter does not apply to the conduct or activities of  
20 labor organizations or their members which conduct or activities are  
21 regulated by federal law or over which the National Labor Relations  
22 Board exercises jurisdiction.

23 Sec. 45.52.070. EXEMPTION OF CERTAIN COOPERATIVE AND OTHER  
24 ORGANIZATIONS. Nothing in this chapter forbids the existence of a  
25 cooperative corporation organized and operated under the provisions  
26 of AS 10.15 or a cooperative organization or association which conforms  
27 and continues to conform to the requirements of the Capper-Volstead Act  
28 (7 U.S.C. 291 and 292), or a hospital and medical service corporation  
29 authorized in AS 21.87.

1           Sec. 45.52.080. EXEMPTION FOR COMMERCIAL FISHING. Persons engaged  
2 in the business of commercial fishing may act together in associations,  
3 corporate or otherwise, with or without capital stock in collectively  
4 handling and marketing fish without violating the provisions of this  
5 chapter. Such associations may have marketing agencies in common; and  
6 such associations and their members may make the necessary contracts and  
7 agreements to effect these purposes.

8                   ARTICLE 2. ENFORCEMENT PROVISIONS.

9           Sec. 45.52.100. CONTRACTS VOID. A contract or agreement in  
10 violation of a provision of this chapter is void and is not enforceable  
11 at law or in equity.

12           Sec. 45.52.110. SUITS BY PERSONS INJURED. (a) A person who is  
13 injured in his business or property by reason of anything forbidden or  
14 declared unlawful by this chapter

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

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

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

24           Sec. 45.52.120. SUITS BY STATE OR LOCAL GOVERNMENT. (a) When  
25 the state, a city, a borough, whether home rule or otherwise, or other  
26 government entity is injured, in its business or property by reason of  
27 anything forbidden or declared unlawful by this chapter, it shall have  
28 the same remedies provided in sec. 110 of this chapter.

29                   (b) The attorney general may bring an action on behalf of the

1 state or any of its political subdivisions or governmental entities,  
2 or on behalf of any citizen or class of citizens of the state if the  
3 state or its political subdivision also has a cause of action, to  
4 enforce the provisions of this chapter, or of comparable provisions of  
5 federal law.

6 Sec. 45.52.130. INJUNCTION BY ATTORNEY GENERAL. The attorney  
7 general may bring proceedings to enjoin a violation of this chapter.

8 Sec. 45.52.140. JURISDICTION OF COURT. A civil action allowed  
9 by this chapter shall be brought in the superior court.

10 Sec. 45.52.150. PENALTY FOR VIOLATION. (a) A person who violates  
11 secs. 10, 20, 40 or 50 of this chapter, including a principal, manager,  
12 director, officer, agent, servant or employee, who has engaged in or  
13 has participated in the determination to engage in an activity that has  
14 been engaged in by an association, firm, partnership, trust or corpora-  
15 tion, which is a violation of secs. 10, 20, 40 or 50 of this chapter,  
16 is punishable, if a natural person, by a fine of not more than \$10,000,  
17 or by imprisonment of not more than one year, or by both; if the  
18 person is not a natural person, by a fine of not more than \$20,000.

19 (b) When a corporation violates secs. 10, 20, 40 or 50 of this  
20 chapter, the violation shall be considered to be also that of the  
21 individual director, officer or agent of the corporation who has  
22 authorized, ordered, or done any of the acts constituting in whole or  
23 in part the violation.

24 Sec. 45.52.160. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN  
25 ACTION: SUSPENSION OF LIMITATION. (a) A final judgment or decree  
26 rendered in a civil or criminal proceeding brought by the state under  
27 this chapter is prima facie evidence against the defendant in any other  
28 action or proceeding brought by another party under this chapter, or  
29 by the state, a city or a borough, under sec. 120 of this chapter, as

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

3 (b) This section does not apply to consent judgments or decrees  
4 entered before a complaint has been filed.

5 (c) When a consent judgment or decree is filed, the attorney  
6 general shall set out at the same time the alleged violations and  
7 reasons for entering into the consent judgment or decree. No consent  
8 judgment or decree may become final until 60 days from the filing of  
9 the consent judgment or decree. During this 60-day period an interested  
10 party under secs. 110 and 120 of this chapter may file verified exceptions  
11 to the form and substance of the consent judgment or decree, and the  
12 court, upon a full hearing may approve, refuse to enter, or may modify  
13 the consent judgment or decree.

14 (d) A plea of nolo contendere in a criminal action under this  
15 chapter has the effect of admitting each material allegation in the  
16 complaint, and a final judgment or decree rendered under the plea is  
17 prima facie evidence against the defendant in an action or proceeding  
18 brought by any other party under this chapter, or by the state, a  
19 city, or a borough, under sec. 120 of this chapter, as to all matters  
20 respecting which the judgment or decree would be an estoppel as between  
21 the parties in such other action or proceeding.

22 (e) When a civil or criminal proceeding is instituted by the  
23 state to prevent, restrain, or punish violations of this chapter, the  
24 running of the statute of limitations in respect of each private right  
25 of action arising under sec. 110 of this chapter, and based in whole  
26 or in part on a matter complained of in the proceeding shall be suspended  
27 during the pendency of the proceeding, including an appeal, and for  
28 one year thereafter.

29 Sec. 45.52.170. LIMITATION OF ACTIONS. An action to enforce

1 a claim arising under this chapter shall be barred unless commenced  
2 within four years after the claim accrues, except as otherwise pro-  
3 vided in sec. 160 of this chapter. For the purpose of this section,  
4 a claim for a continuing violation is considered to accrue at any time  
5 during the period of the violation.

6 ARTICLE 3. GENERAL PROVISIONS.

7 Sec. 45.52.200. DEFINITIONS. In this chapter

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

15 (2) "purchase" or "buy" includes "contract to buy", "lease"  
16 and "contract to lease";

17 (3) "sale" or "sell" includes "contract to sell", "lease"  
18 and "contract to lease".  
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