

Introduced: 2/10/75  
Referred: Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 137

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 51. MONOPOLIES; RESTRAINT OF TRADE.

11 ARTICLE 1. SUBSTANTIVE PROVISIONS.

12 Sec. 45.51.010. COMBINATIONS IN RESTRAINT OF TRADE UNLAWFUL.

13 Every contract, combination in the form of trust or otherwise, or  
14 conspiracy, in restraint of trade or commerce is unlawful.

15 Sec. 45.51.020. MONOPOLIES AND ATTEMPTED MONOPOLIES UNLAWFUL.

16 It is unlawful for any person to monopolize, or attempt to monopolize,  
17 or combine or conspire with any other person or persons to monopolize  
18 any part of trade or commerce.

19 Sec. 45.51.030. TRANSACTIONS AND AGREEMENTS NOT TO USE OR DEAL  
20 IN COMMODITIES OR SERVICES UNLAWFUL. It is unlawful for any person to  
21 lease or make a sale or contract for sale of goods, wares, merchandise,  
22 machinery, supplies, or other commodities, or services, whether patented  
23 or unpatented, for use, consumption, enjoyment, or resale, or fix a  
24 price charged for it, or discount from, or rebate upon, that price, on  
25 the condition, agreement, or understanding that the lessee or purchaser  
26 will not use or deal in the goods, wares, merchandise, machinery,  
27 supplies, or other commodity or service of a competitor or competitors  
28 of the lessor or seller, where the effect of the lease, sale or contract  
29 for sale, or of the condition, agreement, or understanding may be sub-

1       stantially to lessen competition or tend to create a monopoly in any  
2       line of commerce.

3             Sec. 45.51.040.   UNFAIR COMPETITION, DECEPTIVE PRACTICES UNLAWFUL.  
4       Unfair methods of competition or deceptive practices in the conduct of  
5       any trade or commerce is unlawful.

6             Sec. 45.51.050.   MERGERS, ACQUISITIONS, UNLAWFUL WHEN COMPETITION  
7       LESSENER. (a) It is unlawful for any person to acquire and hold,  
8       directly or indirectly, the whole or any part of the stock, other  
9       share capital, or assets of any other corporation whether or not  
10      acquired before the effective date of this Act where the effect of the  
11      acquisition and holding may be substantially to lessen competition or  
12      to tend to create a monopoly in any line of commerce in the State of  
13      Alaska or in any section of the state. This subsection does not apply  
14      to persons purchasing such stock solely for investment if it is not  
15      used by voting or otherwise to bring about, or in attempting to bring  
16      about, the substantial lessening of competition. Nothing in this  
17      subsection prevents a corporation from causing the formation of subsidiary  
18      corporations for the actual carrying on of their immediate lawful  
19      business, or the natural and legitimate branches or extensions of it,  
20      or from owning and holding all or a part of the stock of the subsidiary  
21      corporation, when the effect of the formation is not substantially to  
22      lessen competition.

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

1 necessary to eliminate the lessening of competition or the tendency to  
2 create a monopoly.

3 (c) This section does not apply to mergers, acquisitions or  
4 holding companies permitted by AS 06.05.235 nor 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. 45.51.060. INTERLOCKING DIRECTORATES AND RELATIONSHIPS.

10 (a) It is unlawful for any person to be at the same time a director,  
11 officer, partner, or trustee in any two or more firms, partnerships,  
12 trusts, associations, or corporations or any combination of them  
13 engaged in commerce, if these firms, partnerships, trusts, associations,  
14 or corporations or any combination of them, are or have been by  
15 virtue of their business and location or operation, competitors; or  
16 where the effect may be substantially to lessen competition or tend to  
17 create a monopoly.

18 (b) No person may by the use of a representative effectuate the  
19 result prohibited in (a) of this section.

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

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

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

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

12 Sec. 45.51.070. EXEMPTIONS. (a) This chapter does not forbid  
13 the existence or operation of labor, agricultural or horticultural  
14 organizations created for the purpose of mutual help, and not conducted  
15 for profit, or forbid or restrain members of those organizations from  
16 lawfully carrying out the legitimate objectives of them; nor are those  
17 organizations or members illegal combinations or conspiracies in  
18 restraint of trade under the provisions of this chapter.

19 (b) This chapter does not forbid actions or arrangements authorized  
20 or regulated under those laws of the United States which exempt those  
21 actions or arrangements from the antitrust laws of the United States  
22 or under the following statutes of this state:

23 (1) AS 06.05.235; and

24 (2) AS 10.15.

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

1 may make the necessary contracts and agreements to effect those pur-  
2 poses.

3 ARTICLE 2. ENFORCEMENT PROVISIONS.

4 Sec. 45.51.100. CONTRACTS VOIDABLE. A contract or agreement in  
5 violation of any provision of this chapter is voidable by either party  
6 as to future performance by either party; however, the court may, in  
7 its discretion, order payment for goods or services already received  
8 to prevent unjust enrichment.

9 Sec. 45.51.110. SUITS BY PERSONS INJURED. (a) Any person who  
10 is injured in his business or property by a violation of secs. 10, 20,  
11 30, 40, 50 or 60 of this chapter, or any person so injured because he  
12 refuses to accede to a proposal for an arrangement which, if consummated,  
13 would be a violation of secs. 10, 20, 30, 40, 50 or 60 of this chapter,  
14 may bring a civil action

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

19 (2) to enjoin the unlawful practice, and if judgment is for  
20 the plaintiff, he shall be awarded the costs of the suit, including  
21 reasonable attorney's fees.

22 (b) Whenever the state, a city, a borough (whether home rule or  
23 otherwise) or other government entity is injured by reason of a  
24 violation of secs. 10, 20, 30, 40, 50 or 60 of this chapter, it may  
25 maintain an action in the same manner as prescribed in (a) of this  
26 section for an injured person; and the state, city, borough, or other  
27 governmental entity is entitled to the same relief as provided in (a)  
28 of this section.

29 Sec. 45.51.120. CERTAIN VIOLATIONS CONSTITUTE MISDEMEANOR. A

1 person who violates secs. 10, 20, or 30 of this chapter is guilty of a  
2 misdemeanor and, upon conviction, is punishable, if a natural person,  
3 by a fine not exceeding \$20,000 or by imprisonment not exceeding one  
4 year, or by both; and if not a natural person then by a fine not  
5 exceeding \$50,000.

6 Sec. 45.51.130. INJUNCTION BY ATTORNEY GENERAL. (a) In addition  
7 to any other relief provided by this chapter, the attorney general may  
8 bring an action to enjoin any violation of this chapter. This action  
9 may be brought as a sole action or in conjunction with any other  
10 action which the attorney general is authorized to bring.

11 (b) The court may make additional orders or judgments as may be  
12 necessary to restore to any person in interest any money or property,  
13 real or personal, which may have been acquired by an act prohibited by  
14 this chapter; and, as may be necessary to prevent any continuing or  
15 future violations of this chapter.

16 Sec. 45.51.140. JURISDICTION OF COURT. Any action arising under  
17 this chapter shall be brought in the superior court.

18 Sec. 45.51.150. CONSENT JUDGMENT. (a) In an action maintained  
19 under this chapter, the parties to it may file with the court a  
20 consent judgment or decree. Such a consent judgment or decree shall  
21 set out the alleged violations, future obligations of the parties, if  
22 any, damages, or other relief, the defendant agrees to make, if any,  
23 and the reasons for entering into the consent judgment or decree.

24 (b) No such consent judgment or decree becomes final until  
25 60 days from its filing. During the 60-day period any interested  
26 party may file verified exceptions to the form or substance of the  
27 consent judgment or decree, and the court, upon a full hearing on  
28 those exceptions, may approve, refuse to enter, or may modify the  
29 consent judgment or decree.

1           Sec. 45.51.160. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN  
2 ACTION. A final judgment rendered in any civil or criminal action  
3 brought by the state under this chapter, including a judgment rendered  
4 under a plea of nolo contendere, is prima facie evidence against the  
5 defendant in any other action under this chapter brought by any other  
6 party, or by the state, a city, a borough, or other governmental  
7 entity; however, this section does not apply to consent judgments or  
8 decrees entered pursuant to sec. 150 of this chapter.

9           Sec. 45.51.170. LIMITATION OF ACTIONS. An action to enforce a  
10 claim arising under this chapter is barred unless commenced within  
11 four years after the claim accrues, except that whenever any action is  
12 brought by the attorney general under the provisions of this chapter,  
13 the running of this period of limitation, with respect to every private  
14 right of action for damages which is based in whole or in part on any  
15 matter complained of in the action by the attorney general, shall be  
16 suspended during the pendency of the action brought by the attorney  
17 general. For the purpose of this section, a claim for a continuing  
18 violation is considered to accrue at any time during the period of the  
19 violation.

20                           ARTICLE 3. INVESTIGATORY POWERS.

21           Sec. 45.51.200. POWERS OF THE ATTORNEY GENERAL. Whenever it  
22 appears to the attorney general, either upon complaint or otherwise,  
23 that a person has engaged in, or engages in, or is about to engage in  
24 any act or practice prohibited or declared unlawful by this chapter,  
25 or that any person has assisted or participated in any plan, scheme,  
26 agreement or combination of the nature described in this chapter, or  
27 whenever he believes it to be in the public interest, the attorney  
28 general may commence an investigation. The attorney general may  
29 compel production of documentary material and take testimony, under

1 oath, prior to the institution of an action under this chapter.

2 Sec. 45.51.210. DOCUMENTARY EVIDENCE. (a) Whenever the attorney  
3 general believes that any person may be in possession, custody, or  
4 control of any documentary evidence, wherever situated, which he  
5 believes to be relevant to the investigation authorized in sec. 200 of  
6 this chapter, he may execute in writing and cause to be served upon  
7 that person, an investigative demand requiring him to produce the  
8 documentary material and permit inspection and copying.

9 (b) Each demand shall

10 (1) state the specific statute alleged violation of which  
11 is under investigation, and the general subject matter of the investi-  
12 gation;

13 (2) describe, with reasonable specificity so as fairly to  
14 indicate the material demanded, the documentary material to be produced;

15 (3) prescribe a return date within which the documentary  
16 material is to be produced; and

17 (4) identify the state employees or representatives to whom  
18 the documentary material is to be made available for inspection and  
19 copying.

20 (c) No demand may

21 (1) require the production of any documentary material  
22 which would be privileged from disclosure if demanded by a subpoena  
23 duces tecum issued by a court of this state; or

24 (2) contain any requirement which would be unreasonable or  
25 improper if contained in a subpoena duces tecum issued by a court of  
26 this state.

27 (d) The demand may be served by the attorney general or his  
28 designee by

29 (1) delivering a copy of it to the person to be served,

1 or, if that person is not a natural person, to any officer of the  
2 person to be served; or

3 (2) delivering a copy of it to any place of business  
4 in this state of the person to be served; or

5 (3) mailing by registered or certified mail a copy of  
6 it addressed to the person to be served at any place of business  
7 in this state, or, if that person has no place of business in  
8 this state, to his principal office or place of business.

9 (e) No documentary material produced pursuant to a demand, or  
10 copies of it, unless otherwise ordered by a superior court for good  
11 cause shown, may be produced for inspection or copying by, nor shall  
12 its contents be disclosed to anyone, other than an authorized employee  
13 of the state, without the consent of the person who produced the  
14 material. However, under such reasonable terms and conditions as the  
15 attorney general prescribes, copies of the documentary material shall  
16 be available for inspection and copying by the person who produced the  
17 material or any authorized representative of him. The attorney general,  
18 or his designee, may use copies of the documentary material as he  
19 determines necessary in the enforcement of this chapter, including  
20 presentation before any court; however, any such material which contains  
21 trade secrets may not be presented except with the approval of the  
22 court in which the action is pending after adequate notice to the  
23 person furnishing the material.

24 (f) At any time before the return date specified in the demand,  
25 or within 20 days after the demand has been served, whichever period  
26 is shorter, a petition to extend the return date for, or to modify or  
27 set aside a demand issued pursuant to (a) of this section, stating  
28 good cause, may be filed in the superior court for the judicial district  
29 where the parties reside. A petition by the person on whom the demand

1 is served, stating good cause, to require the attorney general or any  
2 other person to perform a duty imposed by this section, and all other  
3 petitions in connection with a demand, may be filed in the superior  
4 court for the judicial district in which the person on whom the demand  
5 is served resides.

6 (g) A person upon whom a demand is served under this section  
7 shall comply with the terms of the demand unless otherwise provided by  
8 an order of court issued in response to a petition filed under (f) of  
9 this section. Any person who, with intent to avoid, prevent, or  
10 obstruct compliance, in whole or in part, with any investigative  
11 demand under this section, (1) removes from any place, (2) conceals,  
12 (3) withholds, or (4) destroys, mutilates, alters, or by any other  
13 means falsifies, any documentary material in the possession, custody,  
14 or control of any person which is the subject of any demand duly  
15 served upon any person, or who (5) otherwise wilfully disobeys any  
16 such demand, is guilty of a misdemeanor, and is subject, upon conviction  
17 to a fine not to exceed \$5,000 or to imprisonment for a term of not  
18 more than one year, or both. Failure of the state to serve the demand  
19 properly under (d) of this section is a defense to prosecution under  
20 this subsection, but invalidity of the demand under subsections (b) or  
21 (c) is not a defense, and such an invalidity may be tested only in an  
22 action under subsection (f) to modify or set aside the demand.

23 (h) Nothing in this section impairs the authority of the attorney  
24 general or his designee to (1) lay before a grand jury of this state  
25 any evidence concerning a violation of this chapter, (2) invoke the  
26 power of a court to compel the production of any evidence before a  
27 grand jury, or (3) file a civil complaint or criminal information  
28 alleging a violation of this chapter.

29 Sec. 45.51.220. TESTIMONY OF WITNESSES. (a) In connection with

1 an investigation authorized by sec. 200 of this chapter, the attorney  
2 general may issue an investigative demand compelling the attendance of  
3 any person for examination under oath before himself or before a court  
4 of record.

5 (b) Each demand shall

6 (1) state the specific statute alleged violation of which  
7 is under investigation, and the general subject matter of the investi-  
8 gation;

9 (2) state the date, time and place at which the examination  
10 is to take place.

11 (c) Any demand may be served by the attorney general, or his  
12 designee, in accordance with the procedures prescribed in sec. 210(d).

13 (d) If a person ordered to attend such an inquiry fails to  
14 attend without good cause, he is guilty of a misdemeanor and, upon  
15 conviction, is punishable by a fine not to exceed \$5,000, or by im-  
16 prisonment for a term of not more than one year, or both. If a  
17 person in attendance at such an inquiry refuses to answer a question  
18 on the ground that he may be incriminated by his answer, and if the  
19 attorney general, or his designee, in a writing directed to the person  
20 being questioned orders that person to answer the question, that  
21 person shall comply with the order. After complying, and if but for  
22 this section he would have been privileged to withhold the answer  
23 given, he may not be prosecuted for any offense or subjected to any  
24 penalty or forfeiture for or on account of any transaction, matter or  
25 thing concerning which he gave evidence. However, he may nevertheless  
26 be prosecuted or subjected to penalty or forfeiture for any perjury,  
27 false swearing or contempt committed in answering, or failing to  
28 answer. If a person refuses to testify after being granted immunity  
29 from prosecution and after being ordered to testify he may be adjudged

1 in contempt and committed to jail until such time as he purges himself  
2 of contempt by testifying. A grant of immunity does not prevent the  
3 attorney general from instituting civil contempt proceedings against  
4 any person who violates any of the above provisions.

5 ARTICLE 4. GENERAL PROVISIONS.

6 Sec. 45.51.300. DEFINITIONS. In this chapter

7 (1) "asset" includes any property, tangible or intangible,  
8 real, personal, or mixed and wherever located, and any other thing of  
9 value;

10 (2) "documentary evidence" includes any original or copy of  
11 any book, record, report, memorandum, paper, communication, tabulation,  
12 map, chart, photograph, mechanical tabulation, magnetic tape, or other  
13 computer data storage system, or other tangible document or recording;

14 (3) "trade" and "commerce" include but are not limited to,  
15 trade in goods; merchandise; natural resources, whether or not severed,  
16 extracted, harvested or produced; agricultural products; produce;  
17 choses in action; commodities; and any other article of commerce; they  
18 include trade or business in service trades, transportation, banking,  
19 lending, advertising, bonding and any other business whether or not  
20 that business furnishes a personal service.  
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