

1 IN THE SENATE

BY KERTTULA

2 SENATE BILL NO. 5

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, PRICE FIXING
13 AND LIMITATION OF PRODUCTION PROHIBITED. Each contract, combination
14 in the form of trust or otherwise, or conspiracy, in restraint of trade
15 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 of
27 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,

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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