

Offered: 2/10/75  
Referred: Commerce

1 IN THE SENATE

BY KERTTULA

2 SPONSOR SUBSTITUTE FOR 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 52. MONOPOLIES; RESTRAINT OF TRADE.

11 ARTICLE 1. SUBSTANTIVE PROVISIONS.

12 Sec. 45.52.010. 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. 45.52.020. MONOPOLIES AND ATTEMPTED MONOPOLIES UNLAWFUL.

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

19 Sec. 45.52.030. TRANSACTIONS AND AGREEMENTS NOT TO USE OR DEAL  
20 IN COMMODITIES OR SERVICES UNLAWFUL. It is unlawful for a 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, if the effect of the lease, sale or contract  
29 for sale, or of the condition, agreement, or understanding may be sub-

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

3 Sec. 45.52.040. UNFAIR COMPETITION, DECEPTIVE PRACTICES UNLAWFUL.  
4 Unfair methods of competition or deceptive practices in the conduct of  
5 trade or commerce is unlawful.

6 Sec. 45.52.050. MERGERS, ACQUISITIONS, UNLAWFUL WHEN COMPETITION  
7 LESSENER. (a) It is unlawful for a person to acquire and hold,  
8 directly or indirectly, the whole or a part of the stock, other share  
9 capital, or assets of any other corporation whether or not acquired  
10 before the effective date of this Act if the effect of the acquisition  
11 and holding may be substantially to lessen competition or to tend to  
12 create a monopoly in any line of commerce in the state or in a section  
13 of the state. This subsection does not apply to persons purchasing  
14 such stock solely for investment if it is not used by voting or other-  
15 wise to bring about, or in attempting to bring about, the substantial  
16 lessening of competition. Nothing in this subsection prevents a  
17 corporation from causing the formation of subsidiary corporations for  
18 the actual carrying on of their immediate lawful business, or the  
19 natural and legitimate branches or extensions of it, or from owning  
20 and holding all or a part of the stock of the subsidiary corporation,  
21 when the effect of the formation is not substantially to lessen com-  
22 petition.

23 (b) When 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, 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 a 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 those mergers and acquisitions.

9 Sec. 45.52.060. INTERLOCKING DIRECTORATES AND RELATIONSHIPS.

10 (a) It is unlawful for a 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 a combination of them, are or have been by  
15 virtue of their business and location or operation, competitors; or  
16 if 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 accomplish the  
19 result prohibited in (a) of this section.

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

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

28 (e) A person affected by an act of a director, officer, or  
29 trustee may bring an action at any time to cause the director, officer,

1 or trustee who may be occupying such a position in violation of this  
2 section to terminate the prohibited interlocking relationship.

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

10 Sec. 45.52.070. EXEMPTIONS. (a) This chapter does not forbid  
11 the existence or operation of labor, agricultural or horticultural  
12 organizations created for the purpose of mutual help, and not conducted  
13 for profit, or forbid or restrain members of those organizations from  
14 lawfully carrying out the legitimate objectives of them; nor are those  
15 organizations or members illegal combinations or conspiracies in  
16 restraint of trade under the provisions of this chapter.

17 (b) This chapter does not forbid actions or arrangements author-  
18 ized or regulated under those laws of the United States which exempt  
19 those actions or arrangements from the antitrust laws of the United  
20 States or under the following statutes of this state:

21 (1) AS 06.05.235; and

22 (2) AS 10.15.

23 (c) Persons engaged in the business of commercial fishing may  
24 act together in associations, corporate or otherwise, with or without  
25 capital stock in collectively handling and marketing fish without  
26 violating the provisions of this chapter. These associations may have  
27 marketing agencies in common; and these associations and their members  
28 may make the necessary contracts and agreements to effect those pur-  
29 poses.

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ARTICLE 2. ENFORCEMENT PROVISIONS.

Sec. 45.52.100. CONTRACTS VOIDABLE. A contract or agreement in violation of a provision of this chapter is voidable by either party as to future performance by either party; however, the court may, in its discretion, order payment for goods or services already received to prevent unjust enrichment.

Sec. 45.52.110. SUITS BY PERSONS INJURED. (a) A person who is injured in his business or property by a violation of secs. 10, 20, 30, 40, 50 or 60 of this chapter, or a person so injured because he refuses to accede to a proposal for an arrangement which, if consummated, would be a violation of secs. 10, 20, 30, 40, 50 or 60 of this chapter, may bring a civil action

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

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

(b) When the state, a home rule or general law city or borough or other government entity is injured by reason of a violation of secs. 10, 20, 30, 40, 50 or 60 of this chapter, it may maintain an action in the same manner as prescribed in (a) of this section for an injured person; and the state, city, borough, or other governmental entity is entitled to the same relief as provided in (a) of this section.

Sec. 45.52.120. CERTAIN VIOLATIONS CONSTITUTE MISDEMEANOR. A person who violates secs. 10, 20, or 30 of this chapter is guilty of a misdemeanor and, upon conviction, is punishable, if a natural person,

1 by a fine of not more than \$20,000 or by imprisonment for not more  
2 than one year, or by both; and if not a natural person, by a fine  
3 of not more than \$50,000.

4 Sec. 45.52.130. INJUNCTION BY ATTORNEY GENERAL. (a) In addition  
5 to any other relief provided by this chapter, the attorney general may  
6 bring an action to enjoin a violation of this chapter. This action  
7 may be brought as a sole action or in conjunction with another action  
8 which the attorney general is authorized to bring.

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

14 Sec. 45.52.140. JURISDICTION OF COURT. An action arising under  
15 this chapter shall be brought in the superior court.

16 Sec. 45.52.150. CONSENT JUDGMENT. (a) In an action maintained  
17 under this chapter, the parties to it may file with the court a  
18 consent judgment or decree. The consent judgment or decree shall set  
19 out the alleged violations, future obligations of the parties, if any,  
20 damages, or other relief, the defendant agrees to make, if any, and  
21 the reasons for entering into the consent judgment or decree.

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

28 Sec. 45.52.160. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN  
29 ACTION. A final judgment rendered in a civil or criminal action

1 brought by the state under this chapter, including a judgment rendered  
2 under a plea of nolo contendere, is prima facie evidence against the  
3 defendant in any other action under this chapter brought by another  
4 party, or by the state, a city, a borough, or other governmental  
5 entity; however, this section does not apply to consent judgments or  
6 decrees entered under sec. 150 of this chapter.

7       Sec. 45.52.170. LIMITATION OF ACTIONS. An action to enforce a  
8 claim arising under this chapter is barred unless commenced within  
9 four years after the claim accrues, except that when an action is  
10 brought by the attorney general under this chapter, the running of  
11 this period of limitation, with respect to every private right of  
12 action for damages which is based in whole or in part on a matter  
13 complained of in the action by the attorney general, shall be sus-  
14 pended during the pendency of the action brought by the attorney  
15 general. For the purpose of this section, a claim for a continuing  
16 violation is considered to accrue at any time during the period of the  
17 violation.

### 18                   ARTICLE 3. INVESTIGATORY POWERS.

19       Sec. 45.52.200. POWERS OF THE ATTORNEY GENERAL. When it  
20 appears to the attorney general, either upon complaint or otherwise,  
21 that a person has engaged in, or engages in, or is about to engage in  
22 an act or practice prohibited or declared unlawful by this chapter,  
23 or that a person has assisted or participated in a plan, scheme,  
24 agreement or combination of the nature described in this chapter, or  
25 when he believes it to be in the public interest, the attorney general  
26 may commence an investigation. The attorney general may compel pro-  
27 duction of documentary material and take testimony, under oath, before  
28 the institution of an action under this chapter.

29       Sec. 45.52.210. DOCUMENTARY EVIDENCE. (a) When the attorney

1 general believes that a person may be in possession, custody, or  
2 control of a documentary evidence, wherever situated, which he be-  
3 lieves to be relevant to the investigation authorized in sec. 200 of  
4 this chapter, he may execute in writing and cause to be served upon  
5 that person, an investigative demand requiring him to produce the  
6 documentary material and permit inspection and copying.

7 (b) Each demand shall

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

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

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

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

18 (c) No demand may

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

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

25 (d) The demand may be served by the attorney general or his  
26 designee by

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

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

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

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

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

1 other petitions in connection with a demand, may be filed in the  
2 superior court for the judicial district in which the person on whom  
3 the demand is served resides.

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

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

27 Sec. 45.52.220. TESTIMONY OF WITNESSES. (a) In connection with  
28 an investigation authorized by sec. 200 of this chapter, the attorney  
29 general may issue an investigative demand compelling the attendance of

1 a person for examination under oath before himself or before a court  
2 of record.

3 (b) Each demand shall

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

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

9 (c) A demand may be served by the attorney general, or his  
10 designee, in accordance with the procedures prescribed in sec. 210(d)  
11 of this chapter.

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

1 A grant of immunity does not prevent the attorney general from insti-  
2 tuting civil contempt proceedings against a person who violates any  
3 of the above provisions.

4 ARTICLE 4. GENERAL PROVISIONS.

5 Sec. 45.52.300. DEFINITIONS. In this chapter

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

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

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