

Original sponsor: Kerttula

Offered: 3/14/75  
Referred: Judiciary

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

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

19 Sec. 45.52.030. TRANSACTIONS AND AGREEMENTS NOT TO USE OR DEAL IN  
20 COMMODITIES OR SERVICES UNLAWFUL. It is unlawful for a person to lease  
21 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           stantially to lessen competition or tend to create a monopoly in any  
2           line of commerce.

3           Sec. 45.52.040.   MERGERS, ACQUISITIONS, UNLAWFUL WHEN COMPETITION  
4           LESSENERED. (a) It is unlawful for a person to acquire and hold, di-  
5           rectly or indirectly, the whole or a part of the stock, other share  
6           capital, or assets of any corporation after the effective date of this  
7           Act if the effect of the acquisition and holding may be substantially to  
8           lessen competition or to tend to create a monopoly in any line of com-  
9           merce in the state or in a section of the state. This subsection does  
10          not apply to persons purchasing such stock solely for investment if it  
11          is not used by voting or otherwise to bring about, or in attempting to  
12          bring about, the substantial lessening of competition. Nothing in this  
13          subsection prevents a corporation from causing the formation of sub-  
14          sidiary corporations for the actual carrying on of their immediate  
15          lawful business, or the natural and legitimate branches or extensions of  
16          it, or from owning and holding all or a part of the stock of the sub-  
17          sidiary corporation, when the effect of the formation is not substan-  
18          tially to lessen competition.

19          (b) When the court finds that the effect of the holding of such  
20          stock, share capital, or assets is substantially to lessen competition  
21          or tends to create a monopoly and no other remedy will eliminate the  
22          lessening of competition or the tendency to create a monopoly, the court  
23          shall order the divestiture or other disposition of the stock, share  
24          capital, or assets and shall prescribe a reasonable time, manner, and  
25          degree of the divestiture or other disposition of it.

26          (c) This section does not apply to mergers, acquisitions or  
27          holding companies permitted by AS 06.05.235 or to a merger carried out  
28          in accordance with AS 21.69.590 - 21.69.600, or to mergers, acquisitions  
29          or holding companies permitted and regulated by a regulatory agency of

1 the United States having jurisdiction and control over those mergers and  
2 acquisitions.

3 Sec. 45.52.050. INTERLOCKING DIRECTORATES AND RELATIONSHIPS. (a)  
4 It is unlawful for a person to be at the same time a director, officer,  
5 partner, or trustee in any two or more firms, partnerships, trusts,  
6 associations, or corporations or any combination of them engaged in  
7 commerce, if these firms, partnerships, trusts, associations, or corpo-  
8 rations or a combination of them, are by virtue of their business and  
9 location or operation, competitors and if the effect may be substan-  
10 tially to lessen competition or tend to create a monopoly.

11 (b) No person may by the use of a representative accomplish the  
12 result prohibited in (a) of this section.

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

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

21 (e) A person affected by an act of a director, officer, or trustee  
22 may bring an action at any time to cause the director, officer, or  
23 trustee who may be occupying such a position in violation of this  
24 section to terminate the prohibited interlocking relationship.

25 (f) The court, upon finding that a director, officer, or trustee  
26 is holding office in violation of this section, shall order the person  
27 to terminate the interlocking relationship, and, in the case of a  
28 trustee, the court may, when it considers it appropriate, order the  
29 trustee to vacate his office. A remedy provided in this section does

1 not limit and is in addition to any other remedy available under another  
2 section of this chapter or another law.

3 Sec. 45.52.060. EXEMPTIONS. (a) This chapter does not forbid the  
4 existence or operation of labor, agricultural or horticultural organiza-  
5 tions created for the purpose of mutual help, and not conducted for  
6 profit, or forbid or restrain members of those organizations from  
7 lawfully carrying out the legitimate objectives of them; nor are these  
8 organizations or members illegal combinations or conspiracies in re-  
9 straint of trade under the provisions of this chapter.

10 (b) This chapter does not forbid actions or arrangements author-  
11 ized or regulated under the laws of the United States which exempt these  
12 actions or arrangements from application of the antitrust laws of the  
13 United States or under the following statutes of this state:

14 (1) AS 06.05.235;

15 (2) AS 10.15; and

16 (3) AS 31.05.110.

17 (c) This chapter does not forbid persons engaged in the fishing  
18 industry as fishermen, catching or collecting aquatic products, from  
19 acting together in associations for the purpose of catching, collecting,  
20 or preparing for market their product.

21 (d) This chapter does not forbid activities expressly required  
22 by a regulatory agency of the state. Activities permitted by a regu-  
23 latory agency of the state are not forbidden by this chapter if the  
24 regulatory agency has given due consideration to the possible anti-  
25 competitive effects before permitting the activities, and enforcement of  
26 the provisions of this chapter would be disruptive of the regulatory  
27 scheme.

28 (e) This chapter does not forbid actions or arrangements expressly  
29 required under the Alaska Native Claims Settlement Act.

1 ARTICLE 2. ENFORCEMENT PROVISIONS.

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

7 Sec. 45.52.110. SUITS BY PERSONS INJURED. (a) A person who is  
8 injured in his business or property by a violation of secs. 10, 20, 30,  
9 40 or 50 of this chapter, or a person so injured because he refuses to  
10 accede to a proposal for an arrangement which, if consummated, would be  
11 a violation of secs. 10, 20, 30, 40 or 50 of this chapter, may bring a  
12 civil action

13 (1) for damages sustained by him, and if the judgment is for  
14 the plaintiff, he shall be awarded threefold the amount of damages  
15 sustained by him, together with the costs of the suit, including reason-  
16 able attorney fees; and

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

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

26 Sec. 45.52.120. CERTAIN VIOLATIONS CONSTITUTE MISDEMEANOR. A  
27 person who violates secs. 10 or 20 of this chapter is guilty of a  
28 misdemeanor and, upon conviction is punishable, if a natural person, by  
29 a fine of not more than \$20,000 or by imprisonment for not more than one

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

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

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

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

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

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

26 Sec. 45.52.160. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN  
27 ACTION. A final judgment rendered in a civil or criminal action brought  
28 by the state under this chapter is prima facie evidence against the  
29 defendant in any other action under this chapter brought by another

1 party, or by the state, a city, a borough, or other governmental entity;  
2 however, this section does not apply to consent judgments or decrees  
3 entered under sec. 150 of this chapter.

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

14 ARTICLE 3. INVESTIGATORY POWERS.

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

25 Sec. 45.52.210. DOCUMENTARY EVIDENCE. (a) When the attorney  
26 general believes that a person may be in possession, custody, or control  
27 of a documentary evidence, wherever situated, which he believes to be  
28 relevant to an investigation authorized in sec. 200 of this chapter, he  
29 may execute in writing and cause to be served upon that person an inves-

1           tigrative demand requiring him to produce the documentary material and  
2           permit inspection and copying.

3           (b) Each demand shall

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

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

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

11                   (4) identify the state employees or representatives to whom  
12                   the documentary material is to be made available for inspection and  
13                   copying.

14           (c) No demand may

15                   (1) require the production of documentary material which  
16                   would be privileged from disclosure if demanded by a subpoena duces  
17                   tecum issued by a court of the state; or

18                   (2) contain a requirement which would be unreasonable or  
19                   improper if contained in a subpoena duces tecum issued by a court of the  
20                   state; however, this shall not limit the power of the attorney general  
21                   to require production of documents located outside the state which  
22                   pertain to matters affecting the state.

23           (d) The demand may be served by the attorney general or his  
24           designee by

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

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

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

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

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

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

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

24 Sec. 45.52.220. TESTIMONY OF WITNESSES. (a) In connection with  
25 an investigation authorized by sec. 200 of this chapter, the attorney  
26 general may issue an investigative demand compelling the attendance of  
27 a person for examination under oath before himself or before a court of  
28 record.

29 (b) Each demand shall

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

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

6 (c) A demand may be served by the attorney general, or his desig-  
7 nee, in accordance with the procedures prescribed in sec. 210(d) of this  
8 chapter.

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

29 ARTICLE 4. GENERAL PROVISIONS.

1           Sec. 45.52.300. DEFINITIONS. In this chapter

2           (1) "asset" includes any property, tangible or intangible,  
3 real, personal, or mixed and wherever located, and any other thing of  
4 value;

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

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