

Original sponsor: Kerttula

Offered: 3/31/75
Referred: Rules

1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 5 (Judiciary)

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. EXEMPTIONS. (a) This chapter does not forbid the
20 existence or operation of labor, agricultural or horticultural organiza-
21 tions created for the purpose of mutual help, and not conducted for
22 profit, or forbid or restrain members of those organizations from
23 lawfully carrying out the legitimate objectives of them; nor are these
24 organizations or members illegal combinations or conspiracies in re-
25 straint of trade under the provisions of this chapter.

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

1 (1) AS 10.15; and

2 (2) AS 31.05.110.

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

7 (d) This chapter does not apply to public utilities which have been
8 issued a certificate of public convenience and necessity under AS 42.05.

9 (e) This chapter does not apply to carriers regulated under
10 AS 42.10, AS 42.15, and AS 02.05, or to ferries regulated under AS 42.25.

11 (f) This chapter does not apply to banks and financial institu-
12 tions regulated under AS 06.

13 (g) This chapter does not forbid activities expressly required by
14 a regulatory agency of the state. Activities permitted by a regulatory
15 agency of the state are not forbidden by this chapter if the regulatory
16 agency has given due consideration to the possible anti-competitive
17 effects before permitting the activities, and enforcement of the pro-
18 visions of this chapter would be disruptive of the regulatory scheme.

19 (h) This chapter does not forbid actions or arrangements expressly
20 required under the Alaska Native Claims Settlement Act.

21 ARTICLE 2. ENFORCEMENT PROVISIONS.

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

27 Sec. 45.52.110. SUITS BY PERSONS INJURED. (a) A person who is
28 injured in his business or property by a violation of secs. 10 or 20 of
29 this chapter may bring a civil action

1 (1) for damages sustained by him plus the costs of the suit,
2 including reasonable attorney fees; if judgment is for the plaintiff and
3 if the trier of fact finds that the violation was knowing and wilfull,
4 the court may increase recovery to an amount not in excess of three
5 times the damages sustained; and

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

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

15 Sec. 45.52.120. CERTAIN VIOLATIONS CONSTITUTE MISDEMEANOR. A
16 person who violates secs. 10 or 20 of this chapter is guilty of a
17 misdemeanor and, upon conviction is punishable, if a natural person, by
18 a fine of not more than \$20,000 or by imprisonment for not more than one
19 year, or by both; and if not a natural person, by a fine of not more
20 than \$50,000.

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

26 (b) The court may make additional orders or judgments as may be
27 necessary to restore to a person in interest any money or property, real
28 or personal, which may have been acquired by an act prohibited by this
29 chapter, and as may be necessary to prevent continuing or future viola-

1 tions of this chapter.

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

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

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

15 Sec. 45.52.160. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN
16 ACTION. A final judgment rendered in a civil or criminal action brought
17 by the state under this chapter is prima facie evidence against the
18 defendant in any other action under this chapter brought by another
19 party, or by the state, a city, a borough, or other governmental entity;
20 however, this section does not apply to consent judgments or decrees
21 entered under sec. 150 of this chapter.

22 Sec. 45.52.170. LIMITATION OF ACTIONS. An action to enforce a
23 claim arising under this chapter is barred unless commenced within four
24 years after the claim accrues, except that when an action is brought by
25 the attorney general under this chapter, the running of this period of
26 limitation, with respect to every private right of action for damages
27 which is based in whole or in part on a matter complained of in the
28 action by the attorney general, shall be suspended during the pendency
29 of the action brought by the attorney general. For the purpose of this

1 section, a claim for a continuing violation is considered to accrue at
2 any time during the period of the violation.

3 ARTICLE 3. INVESTIGATORY POWERS.

4 Sec. 45.52.200. POWERS OF THE ATTORNEY GENERAL. If the attorney
5 general has reasonable cause to believe that a person has engaged in, or
6 engages in, or is about to engage in an act or practice prohibited or de-
7 clared unlawful by this chapter, or that a person has assisted or partici-
8 pated in a plan, scheme, agreement or combination of the nature described
9 in this chapter, or when he believes it to be in the public interest,
10 the attorney general may commence an investigation. The attorney
11 general may compel production of documentary material and take testimony,
12 under oath, before the institution of an action under this chapter.

13 Sec. 45.52.210. DOCUMENTARY EVIDENCE. (a) If the attorney
14 general has reasonable cause to believe that a person is in possession,
15 custody, or control of a documentary evidence, wherever situated, which
16 he believes to be relevant to an investigation authorized in sec. 200
17 of this chapter, he may execute in writing and cause to be served upon
18 that person an investigative demand requiring him to produce the docu-
19 mentary material and permit inspection and copying.

20 (b) Each demand shall

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

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

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

28 (4) identify the state employees or representatives to whom
29 the documentary material is to be made available for inspection and

1 copying.

2 (c) No demand may

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

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

11 (d) The demand may be served by the attorney general or his
12 designee by

13 (1) delivering a copy of it to the person to be served, or,
14 if the person is not a natural person, to an officer of the person to be
15 served;

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

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

22 (e) No documentary material produced pursuant to a demand, or
23 copies of it, unless otherwise ordered by a superior court for good
24 cause shown, may be produced for inspection or copying by, nor may its
25 contents be disclosed, to anyone other than an authorized employee of
26 the state without the consent of the person who produced the material.
27 However, under those reasonable terms and conditions the attorney gen-
28 eral prescribes, copies of the documentary material shall be available
29 for inspection and copying by the person who produced the material or an

1 authorized representative of him. The attorney general, or his designee,
2 may use copies of the documentary material as he considers necessary in
3 the enforcement of this chapter, including presentation before a court;
4 however, material which contains trade secrets may not be presented
5 except with the approval of the court in which the action is pending
6 after adequate notice to the person furnishing the material.

7 (f) At any time before the return date specified in the demand, or
8 within 20 days after the demand has been served, whichever period is
9 shorter, a petition to extend the return date for, or to modify or set
10 aside a demand issued under (a) of this section, stating good cause, may
11 be filed in the superior court for the judicial district where the
12 parties reside. A petition by a person on whom a demand is served,
13 stating good cause, to require the attorney general or another person to
14 act in accordance with the requirements of (e) of this section, and all
15 other petitions in connection with a demand, may be filed in the supe-
16 rior court for the judicial district in which the person on whom the
17 demand is served resides.

18 (g) A person upon whom a demand is served under this section shall
19 comply with the terms of the demand unless otherwise provided by an
20 order of court issued in response to a petition filed under (f) of this
21 section. A person who, with intent to avoid, prevent, or obstruct
22 compliance, in whole or in part, with an investigative demand under this
23 section removes from any place, conceals, withholds, or destroys, muti-
24 lates, alters, or by any other means falsifies, a documentary material
25 in the possession, custody, or control of a person which is the subject
26 of a demand duly served upon any person, or who otherwise wilfully
27 disobeys any such demand, is guilty of a misdemeanor, and is punishable
28 upon conviction by a fine of not more than \$5,000, or by imprisonment
29 for a term of not more than one year, or by both. Failure of the state

1 to serve the demand properly under (d) of this section is a defense to
2 prosecution under this subsection, but invalidity of the demand under
3 (b) or (c) of this section is not a defense, and that invalidity may be
4 tested only in an action under (f) of this section to modify or set
5 aside the demand.

6 (h) Nothing in this section impairs the authority of the attorney
7 general or his designee to lay before a grand jury of this state evidence
8 concerning a violation of this chapter, to invoke the power of a court
9 to compel the production of evidence before a grand jury, or to file a
10 civil complaint or criminal information alleging a violation of this
11 chapter.

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

17 (b) Each demand shall

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

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

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

26 (d) If a person ordered to attend the inquiry fails to attend
27 without good cause, he is guilty of a misdemeanor and upon conviction is
28 punishable by a fine of not more than \$5,000, or by imprisonment for not
29 more than one year, or by both. If a person in attendance at the inquiry

1 refuses to answer a question on the ground that he may be incriminated
2 by his answer, and if the attorney general, or his designee, in a writing
3 directed to the person being questioned orders the person to answer the
4 question, the person shall comply with the order. After complying, and
5 if but for this section he would have been privileged to withhold the
6 answer given, he may not be prosecuted for an offense or subjected to a
7 penalty or forfeiture for or on account of a transaction, matter or
8 thing concerning which he gave evidence. However, he may nevertheless
9 be prosecuted or subjected to penalty or forfeiture for a perjury, false
10 swearing or contempt committed in answering or failing to answer. If a
11 person refuses to testify after being granted immunity from prosecution
12 and after being ordered to testify, he may be adjudged in contempt and
13 committed to jail until the time he purges himself of contempt by testi-
14 fying. A grant of immunity does not prevent the attorney general from
15 instituting civil contempt proceedings against a person who violates any
16 of the above provisions.

17 ARTICLE 4. GENERAL PROVISIONS.

18 Sec. 45.52.300. DEFINITIONS. In this chapter

19 (1) "asset" includes any property, tangible or intangible,
20 real, personal, or mixed and wherever located, and any other thing of
21 value;

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

26 (3) "trade" and "commerce" include but are not limited to,
27 trade in goods, merchandise, natural resources, whether or not severed,
28 extracted, harvested or produced, agricultural products, produce,
29 choses in action, commodities, and any other article of commerce; they

1 include trade or business in service trades, transportation, banking,
2 lending, advertising, bonding and any other business whether or not that
3 business furnishes a personal service.
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