

SB

5

COMMITTEE REPORT

4/4/75

HOUSE

Mr. Speaker:

Date 4/11/75

The Committee on JUDICIARY has had CS 5 am

under consideration. A Majority of the members of the Committee

() recommends it DO PASS

() recommends it DO NOT PASS

() recommends it DO PASS WITH ATTACHED AMENDMENT(S)

() recommends it BE REPLACED WITH CS FOR CS 5 am AND THAT (CS 5 am)

CS FOR CS 5 am DO PASS

() "and" recommends it BE REFERRED TO THE _____

COMMITTEE

() reports it back WITHOUT RECOMMENDATION

() "other"

Members signing the Majority report:

<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____
<u>[Signature]</u>	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

[Signature] Chairman

House Judiciary Committee
February 19, 1974

Joint Hearing with Senate Commerce

Anti Trust - HB 42/HB 137/ SS SB 5

The meeting was called to order at 2:30 by Senator Kerttula.
All House committee members were present except Mr. Fink.

Since those who wished to testify were unprepared, the meeting
was rescheduled for 2:15 Friday, February 21.

The Attorney General fielded questions from the committee
members. The question was raised concerning the possibility
of differences between interpretation of federal law and
the intention of very similar state legislation.

Mr. Gross stated that bigness would not constitute a violation
and that Alaska needs anti trust legislation despite federal
laws. Over 40 states already have such legislation. He would
hope that anti trust would be handled as another consumer
protection action.

House Judiciary Committee
February 21, 1975

33

Tingle

HB 137/HB 42/SS SB 5 Anti Trust

A joint meeting of the House Judiciary and Senate Commerce committees was called to order by Senator Kerttula at 2:30.

William Hopkins, Manager of Alaska Oil and Gas, introduced Mr. James O'M. Tingle of the law firm Pillsbury, Madison and Sutro in San Francisco. Mr. Tingle testified that he favors a bill on this subject, but an "appropriate" state bill. He favors adoption of the uniform state anti trust act.

Mr. Tingle made the following comments concerning SS SB 5. Sections 1 and 2 of the Sherman Act concerning restraint of trade and monopolies is included. Federal cases could be used to interpret the state legislation. He suggested the addition of "predatory intent" to the monopoly section.

Section 40 of SB 5 -- unfair competition and practices -- this is already covered in Alaska's Consumer Protection Act and is not needed in this bill.

Sections 30, 50 and 60 are from the Clayton Act and are not suitable for a state statute.

Other comments: The state should not have automatic triple damages. He was against criminal instead of civil penalties. Section 60 raises a problem with the Native Corporations. Provisions on investigatory powers should be "has reason to believe." Section 150 -- consent decrees hampers the Attorney General. Section 160 -- delete nolo contendere reference.

Bill Fritch of the Alaska Carriers Association testified that there should be exemptions for regulated public utilities and carriers.

House Judiciary Committee
February 27, 1975

Joint Hearing with Senate Commerce

Lamont

Anti trust legislation SS SB 5, HB 42, HB 137

William J. Lamont testified at the request of the committees. He cited the following as reasons why states need anti trust laws:

- there are commercial activities beyond the interstate commerce clause
- inadequacy of federal enforcement
- federal agents advise and provide surveillance, not direct prosecution. The government helps organize industry to almost encourage monopolies
- federal agencies want state help.

He favored state statutes modeled on the federal statutes for the following reasons:

- have judicial definitions of terms
- minimum application of doctrine of federal preemption
- Sherman Act designed to supplement state legislation (no inconsistencies)
- need for uniformity among states - familiarity with laws -- (The uniform act is not widely accepted) - *adaptation Arizona*

He made the following section by section comments on SS SB 5:
Section 10 - Section 1 of the Sherman Act.

Section 20 - Sherman Act. Against active monopolization not the existence of a monopoly as in the title of the section. A monopoly by itself isn't illegal if it results from superior business practices or chance (federal interpretation)
Deliberate price fixing to exclude competition -- a monopoly deliberately started or being exploited. (need letter of intent to state that definitions developed in federal law apply)

Section 40 - From Federal Trade Commission Act -- unnecessary, already in Consumer Protection statutes

Section 50 - Section 7 of Clayton Act -- useful and appropriate

Section 60 - Goes a little farther than Section 8 of the Clayton Act -- good. Might need a specific exemption for the Native Corporations for a limited time "activities in aid of or necessary to the federal act . . ."

Section 70 - Co-op activity -- Regulated public utilities specifically authorized to do things would not be challenged under anti trust. Problem of unitization of oil leases (may be taken care of by federal action) Statement of Intent

House Judiciary Committee
February 27, 1975
page 2

Mr. Hogey, representing the Alaska Carriers Association, stated that certain public utilities are required by law to serve certain areas (inherent monopoly). He further stated that carrier rates are generally fixed by a bureau and that they need this joint rate making power.

John Spencer, Anchorage City Attorney, stated that there was a need to exempt regulated utilities and that setting concurrent tariffs was a common practice.

House Judiciary Committee

March 28, 1975

71
SS
VS.
CommCS

The meeting was called to order at 1:35 p.m. by Chairman Gardiner. All members were present except Rep. Parr, Specking, and Bradley.

Anne Carponetti explained the differences between the SS SB 5 and the Commerce CS SS SB 5.

The CS deleted Sect. 40 of the SS -- similar to what is already covered in the Consumer Protection Law. Sect. 40 of the CS pertains to mergers after the effective date of the Act. (b) was clarified to make divestiture a last resort remedy. (c) was redrafted to cover fishermen as fishermen, not as cannery owners. (d) was added to exempt the regulated activities of certain industries. (e) was added to exempt those activities expressly required by the Native Claims Settlement Act.

Sect. 120 of the CS eliminates violations of Sect 30 as criminal. Sect. 150 of the CS (b) deletes the authority of the court to modify consent judgments. Sect. 160 deletes nolo contendere as prima facie evidence in consent judgment. Sect. 210 of the CS (c) (2) added that the Attorney General could obtain documents outside the state.

Don Clocksin suggested the following:
page 6, line 23 delete "party" and insert "person". Mr. Brown moved the amendment which was adopted without objection.

page 7, Sect 170 suggested the adding of assurances that the statute of limitations is not running when the determination of the members in a class in a class action suit has not yet been reached. Fred Boness was asked to prepare language to this effect and to research how this would apply to the federal laws.

Page 4, line 13: Mr. Brown moved after "state," add " unless such actions or arrangements occur or are used in a manner clearly beyond the scope of such statutes;" Mr. Brown withdrew his amendment. The committee requested that alternate language be drawn up.

page 4 (e) line 25 add "or permitted" add Public Law Statute number. Add This exemption shall terminate on December 31, 1991. Mr. Brown moved the termination date and that part of the amendment was adopted.

page 4, line 18 "catching, collecting or delivering to processors for value. Mr. Brown moved the above language which was adopted with no objections.

February 19, 1975

Tingje

Alaska House Bill 137

Following is an analysis of the principal defects in the above-noted bill, which would enact a general anti-trust statute for Alaska:

A. For reasons discussed below, appropriate state antitrust legislation should be limited in substantive scope to provisions based upon the Sherman Act (15 U.S.C. §§ 1, 2). Sections 10 and 20 of this bill are based upon the Sherman Act but are deficient in the following respects:

1. Since the affected "trade or commerce" is not defined in terms of any activity in or affecting Alaska, these sections could literally be applied to trade restraints or monopolistic practices not occurring in or having any relation whatever to Alaska. This can be corrected by inserting after "to" in the first line of section 300(3) the words "any of the following economic activity all or any part of which is within this state: * * *." It would also be desirable to add this new section after section 20, to wit:

"In deciding whether conduct violates section 10 or section 20* the determination of the relevant market or effective area of competition shall not be limited by the boundaries of this state."

This will make it clear that the market analysis required to determine a violation of the substantive provisions will not be artificially limited by the state's boundaries.

2. Section 20, covering monopolization and attempts to monopolize, should be amended by adding at the end of the section the words "for the purpose of excluding competition or controlling, fixing or maintaining prices". While this would be slightly stricter than some applications of Sherman Act §2, it is very desirable at the state level to require a predatory intent in order not to outlaw the quite common situations in which monopolies have innocently arisen in limited local markets. As stated on this subject in the prefatory note to the Uniform State Antitrust Act:**

* If, contrary to the recommendations in part B hereof, sections 30 through 50 are not dropped, then the proposed new section should refer to them as well as to sections 10 and 20.

** This uniform act, recently adopted by the National Conference of Commissioners on Uniform State Laws, is recommended for Alaska and the other states as appropriately complementing the Federal antitrust legislation.

"There is a diversity of economic conditions and business problems in the many different states; and practices that are undesirable on a national scale are not necessarily undesirable, or even avoidable, in local areas. Thus, there are a large number and variety of local monopolies which were not created with an anti-competitive intent and which are not continued with such a purpose. Moreover, the persons involved in purely local business activity are on the whole less aware, and their advisers are less informed, of the possible illegality of business conduct other than the most obvious predatory practices such as boycotting and price fixing.

"Because of these considerations, and because the resources of states and their courts are typically not suited to resolving the complex economic issues associated with the enforcement and application of certain of the federal laws, the Uniform Act has borrowed only the generalities of Sections 1 and 2 of the Sherman Act. * * *"

B. Sections 30, 40, 50 and 60 should be dropped from the bill. Sections 30, 50 and 60, derived from but broader than sections 3, 7 and 8 of the Clayton Act (15 U.S.C. §§ 14, 18, 19), forbid respectively certain exclusive dealing contracts, mergers and acquisitions, and interlocking directorates and other relationships. No comparable provisions appear in the Uniform State Antitrust Act. The inappropriateness of such legislation at the state level results from several considerations, some of which are referred to in the foregoing quotation from the prefatory note to the Uniform State Antitrust Act. In the first place, any such trade restraints significantly affecting the state's economy would probably fall within the jurisdiction of the Federal enforcement agencies. Secondly, cases under such provisions typically raise complex issues of economics and law that lie beyond the state's experience and would principally serve to tax its resources to little purpose. Most importantly, and this reason is closely related to the other two, the complex nature of these issues in their typical interstate setting strongly indicates the desirability of having a uniform statutory interpretation, which quite obviously could not be expected if the courts of the 50 states were to attempt to apply such provisions.

So far as section 40 is concerned, its chief vice is that it would be enforceable not only through injunctive relief but through state and private actions for trebled damages. This would be a sharp and unwarranted departure from Federal law. Section 5 of the Federal Trade Commission Act (15 U.S.C. §45), on which section 40 is based, is enforceable only by the Federal Trade Commission. This is because the great breadth of the statute's terms (e.g. "unfair methods of competition") would make it unfair to subject violators to trebled damages, ex post facto, for acts often not defined as unlawful prior to their commission. If

section 40 is to be retained, it should be made enforceable only through proceedings by the state that do not exceed the types of remedies authorized for the Federal Trade Commission, which are largely confined to relief having only prospective application.

C. Section 100 should be dropped. While agreements in restraint of trade are unenforceable under the Sherman Act, without the necessity of any specific provision like section 100, it is settled that a person who obtains goods or services may not refuse to pay for them on the ground that, for example, the sales price had been fixed by the seller with others in violation of the statute. If the price was illegally inflated, the buyer may sue under the antitrust laws for the damages sustained, but he cannot refuse to pay for the goods in an action brought for their price (see e.g. Kelly v. Kosuga (1959) 358 U.S. 516). Although section 100 is addressed to this general subject, it is at best ambiguous and would leave to the discretion of the court whether goods or services must be paid for to prevent unjust enrichment.

D. There are several objections to section 110. In the first place, it is not desirable at the state level to provide for the mandatory trebling of the actual damages sustained as a result of an antitrust violation. The Uniform State Antitrust Act provides in a private action that "If the trier of fact finds that the violation is flagrant, it may increase recovery to an amount not in excess of three times the damages sustained." Secondly, section 110 would appear to give the state the right to recover treble the amount of any damage sustained by it as a result of a violation of the statute's substantive provisions. Federal law limits the government to single damages (15 U.S.C. §15(a)) since that agency should not require the good of multiple damages to encourage it to enforce the law. Accordingly, the Uniform State Antitrust Act also limits the state to single damages. The comments of the National Conference of Commissioners on these points are apt:

"The private right of action for injury to business or property by reason of a violation of the Act found in Section 4 of the Clayton Act (15 U.S.C.A. §15) has been adopted in this section, but with an important modification. The automatic trebling of damages under the Clayton Act which can bring about an in terrorem settlement by a defendant of a defensible case has been discarded.

"Instead, the trier of facts, the judge or the jury as the case may be, is given the discretion to increase the damages up to threefold the actual damages if it is found that the violation of the Act was "flagrant". The intent is to provide a punishment commensurate with the degree of guilt rather than a bludgeon which strikes with equally devastating force in both clear and doubtful cases.

"The state, its subdivisions and public agencies are also accorded a cause of action for injuries to their business or property because of violations of the Act; but like the right accorded the United States in the Clayton Act (15 U.S.C.A. §15a), recovery is limited to single damages."

In addition, as noted above in part B, it is entirely inappropriate to provide a remedy in multiple or even single damages for a violation of section 40 of this bill.

E. Section 130(b) provides that in injunctive proceeding by the Attorney General the court may, among other things, enter such orders or judgments "as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by an act prohibited by this chapter * * *." This provision would unnecessarily embroil the Attorney General in private litigation, which should be adequately encouraged by the prospect of trebled damages. The Federal Department of Justice has no such authority. The recently enacted Consumer Warranty - Federal Trade Commission Improvement Act grants the Commission the power to obtain restitution to consumers in court but only after the Commission has entered a cease-and-desist order against an unfair or deceptive practice by the defendant which, as a reasonable man, he must have known was "dishonest or fraudulent" under the circumstances (Public Law 93-637, Title II, §206(a)).

F. Section 150(a) seems to contemplate that consent decrees in private as well as government litigation would be filed with the court, together with a statement concerning the alleged violations, the terms of the decree and "the reasons for entering into the consent judgment or decree". Subpart (b) provides that no such consent decree would become final until 60 days from its filing, during which period "any interested party" may file exceptions to the decree and the court, after a full hearing on the

matter, "may approve, refuse to enter, or may modify the consent judgment or decree". The only possible need for this section would be in respect of consent decrees in cases brought by the state to vindicate the public interest. It is not necessary or desirable to create this kind of burdensome procedure in private litigation. In addition, while it may be appropriate for the court to refuse to enter a consent decree in a case brought by the state, it would seem singularly inappropriate and incongruous to grant to the court a power to "modify" a consent decree. By its very nature, such a decree would require the consent of both parties and is not a matter that could be resolved by court order except after a full trial.

G. Section 160 provides that final judgments in civil or criminal antitrust actions are prima facie evidence against the defendant in private antitrust actions. The section is broader than comparable Federal legislation, however, because it gives prima facie effect to "a judgment rendered under a plea of nolo contendere", an expansion which will inevitably frustrate expeditious settlement of criminal antitrust cases. If state resources are to be conserved and settlements favored, as the exclusion of consent judgments from section 160 implies, judgments rendered under a plea of nolo contendere should not be accorded prima facie effect.

H. Article 3 concerns investigatory powers to be granted to the Attorney General. The chief difficulty here is that the Attorney General's power to issue compulsory process is not subject to appropriate controls but may be exercised "whenever it appears to the attorney general", or "whenever the attorney general believes", that a person has information or documentary material relevant to an antitrust investigation. This opens up the possibility of administrative harassment. Accordingly, it is recommended that this article be dropped and that there be substituted for it the provisions of section 6 of the Uniform State Antitrust Act, which give equal investigatory coverage but which require that the Attorney General have "reasonable cause to believe" that the person to whom a demand is directed has information or documents relevant to an antitrust investigation. In any event, this standard of control of the Attorney General's actions should be substituted for the illusory ones now contained in proposed sections 200 and 210.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

Anne

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

February 19, 1975

MEMORANDUM

TO: Senator Kerttula, Chairman
Senate Commerce Committee

FROM: Anne Carpeneti
Legislative Counsel

SUBJECT: Sponsor Substitute to Senate Bill 5

In response to your request, here follows an analysis of the Sponsor Substitute to SB 5 (SSSB5), proposed legislation for the prohibition of monopolies and combinations in restraint of trade. Fred Boness, Assistant Attorney General and drafter of the Department of Law's version of the antitrust legislation, HB 137, contributed greatly to this analysis. HB 137 and SSSB 5 are substantively the same; there are minor differences in the style of drafting of the bills.

Section 10 prohibits contracts, combinations or conspiracies in restraint of trade or commerce. The operative language is identical to section 1 of the Sherman Antitrust Act, 15 United States Code Sec. 1. The federal act has been exhaustively interpreted by the federal courts since its adoption in 1890; hence, use of the same language in this bill would have the advantage of bringing with it an extensive body of case law to aid state courts in its interpretation. Its purpose is to prohibit two or more parties from acting in a way which unreasonably restricts competition. The agreement or combination need not be explicit; most in fact are tacit agreements to act in a certain way. The language of the section is very general, and practices covered by it may also be covered by the more specific provisions of secs. 30 - 60.

Section 20 prohibits monopolies, attempts and conspiracies to monopolize any part of trade or commerce, and is modeled after sec. 2 of the Sherman Act. It differs from sec. 10 in that sec. 10 prohibits combinations in restraint of trade and sec. 20 prohibits monopolies. Thus, the former is directed at joint action by two or more parties, while the latter is aimed at individual action by a single party.

MEMORANDUM

Senator Kerttula
February 19, 1975
Page Two

An example of a prohibited act under this section would be the act of pricing below cost by a retailer who has a high percentage of the market in order to force competitors out of business. One of the leading cases under the corresponding federal provision is U. S. v. Aluminum Co., 148 F.2d 416 (1945), which discussed what share of the market constitutes a monopoly. It held that over 90 per cent of the market does constitute a monopoly; but that 60 per cent of the market was not clear and that other factors such as the number of parties making up the rest of the market, the ease of entry into the market, and other factors would be relevant.

Section 30 prohibits a seller or lessor of goods or services from conditioning the sale or lease on the buyer's or lessee's agreement not to purchase or use the goods or services of a competitor of the seller or lessor. This section is derived from section 3 of the Clayton Act, 15 United States Code Sec. 14, which supplemented the Sherman Act and which is much more specific in its provisions than the Sherman Act. The Clayton Act prohibits exclusive dealing, tying agreements, and certain requirements contracts.

An example of prohibited activity under the section would be the refusal of an area's sole distributor of fuel, who also runs a grocery store, to sell fuel to people who do not buy groceries from him.

A leading case decided under the comparable federal provisions is Standard Oil Co. (Calif) v. United States, 337 U. S. 293 (1949). There the Court found that Standard Oil, by requiring independent retail service stations to sign exclusive dealer contracts with Standard Oil in order to purchase Standard's product, violated this provision of the antitrust laws.

Section 40 prohibits unfair competition and deceptive practices, and contains the same language as AS 45.50.471(a), recently enacted consumer protection provisions of the Alaska Statutes. It covers tactics such as mislabeling and "bait and switch". (The latter practice involves advertisement of a product at a very attractive price, and then, when the customer has responded to the "bait", telling him that item or model is no longer available but offering a more expensive model in its place: the "switch".)

Although there is some overlap in coverage between this section and secs. 10 - 30, there is good reason for their separate existence. The bill provides that a violation of this section alone is not a misdemeanor, contrary to secs. 10 - 30, but only provides for civil remedies for violation of sec. 40. (Sections 10 - 30 have civil remedies as well as criminal penalties.)

MEMORANDUM

Senator Kerttula
February 19, 1975
Page Three

Section 50 prohibits mergers and acquisitions of the capital stock or assets of a corporation if the effect of the merger or acquisition substantially lessens competition or tends to create a monopoly. It differs from the comparable federal provision, 15 United States Code Sec. 18, because it applies to individuals and to corporations acquiring capital stock or assets of another corporation. The federal provision applies only when a corporation acquires an interest in another corporation.

Section 50 does not apply to acquisitions solely for investment if there is no attempt to substantially lessen competition by means of the investment. Nor does sec. 50 apply to the formation of subsidiary corporations if the formation does not substantially lessen competition. Section 50 also does not apply to mergers or acquisitions allowed by AS 05.05.235 or to mergers under AS 21.69.590 - 21.69.600.

United States v. El Paso Natural Gas Co., 376 U. S. 651 (1964), involved the acquisition by the major supplier of natural gas to Southern California of a smaller natural gas company that had entered the Southern California market. The Court found that the acquisition had the effect of substantially lessening competition and ordered divestiture.

Federal courts have looked closely at mergers which, though alone appear innocent, are a part of a trend leading to less competition. In United States v. Von's Grocery Co., 384 U. S. 270 (1966), the Court found a merger of two grocery chains violative of this provision of the antitrust law. The merged companies had a combined total of 7.5 per cent of the total sales in the market area, but the Court found the merger to be part of a trend toward fewer competitors in the area, and ordered divestiture.

Section 60 prohibits interlocking relationships: parties holding policy making positions in two or more companies, firms, partnerships or associations at the same time, if either the companies, firms, partnerships or associations are competitors, or if the effect substantially lessens competition or tends to create a monopoly.

Section 60 provides that the attorney general or a person affected may bring an action to terminate a prohibited interlocking relationship.

The exemptions from coverage under the Act in sec. 70 for labor unions, agricultural organizations, fishing associations, bank holding companies, and cooperatives have their roots in policy decisions. To some extent the state is required to exempt certain groups by federal statute. For example, federal law prohibits states from bringing labor unions under state antitrust legislation.

MEMORANDUM

Senator Kerttula
February 19, 1975
Page Four

Section 100 provides that contracts or agreements violating the antitrust provisions are voidable. This approach avoids enforcement of unlawful agreements but allows the Court to fashion a judgment to achieve equitable results; for example, if a party to an unlawful agreement gets the benefit of the bargain and then seeks to avoid the agreement before suffering the burden of the agreement, a court may find the agreement illegal but still require the benefited party to pay the reasonable value of goods received.

Section 110 provides that any injured party, including the state and a political subdivision of the state, may bring a civil action for treble damages and for an injunction of the unlawful practice.

Section 120 provides for criminal penalties for the violation of secs. 10 - 30 of the bill. Violation of secs. 10 - 30 is a misdemeanor, and punishment by fine and by imprisonment is provided.

Section 130 allows the attorney general to bring an injunction of unlawful practices even though the state is not an injured party under sec. 110.

Section 140 provides for jurisdiction in Superior Court for actions arising under the bill.

The great majority of antitrust cases are settled by consent judgments. Section 150 allows interested parties who object to the consent judgment to bring their exceptions to the consent judgment before the court for a hearing.

Section 160, by allowing judgments won by the state to be used as prima facie evidence against the defendant in a suit brought by another party, is an incentive for avoidance of litigation and encourages consent judgments.

Article 3, secs. 200 - 220, provide the attorney general with power to investigate practices which appear to be violations of the antitrust law before filing a cause of action in court. The attorney general may compel the production of documents and may take testimony under these sections.

Although the attorney general may compel the production of all documents he believes relevant to the investigation, the demand must be specific in terms of the alleged violation under investigation, the material demanded, the deadline for production and the person to whom the documents should be delivered. In addition, a demand for documents may not be unreasonable or include privileged matter. The person on whom the demand is served may petition the Court to set aside or to modify the investigatory demand.

MEMORANDUM

Senator Kerttula
February 19, 1975
Page Five

Subsection (g), sec. 210, provides penalties for persons who do not comply with the investigatory demand for documents.

Section 220 provides that the attorney general may issue an investigative demand compelling a person to appear for examination under oath.

Subsection (d) of sec. 220 provides penalties for persons who fail to appear. It also provides for transactional immunity to persons who answer questions, after first refusing to answer on the ground that the answers might incriminate him, in response to a written demand by the attorney general.

A M E N D M E N T

2

Offered in the SENATE

BY MILLER

TO CS SSSB 5. (Commerce Committee)

Page 4, between lines 20 and 21: insert the following material and reletter existing subsections accordingly:

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

(e) This chapter does not apply to carriers regulated under AS 42.10, AS 42.15, and AS 02.05, or to ferries regulated under AS 42.25. *Motor Freight bus air*

(f) This chapter does not apply to banks and financial institutions regulated under AS 06."

1111
1111

3

A M E N D M E N T

Offered in the SENATE

BY ZIEGLER

TO CS SSSB 5 (Commerce Committee)

Page 5, lines 13 - 16: delete all material and insert:

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

Page 5, line 18

Delete: "shall"

and insert: "may"

4

A M E N D M E N T

Offered in the SENATE

BY MILLER

TO CS SSSB 5 (Commerce Committee)

Page 7, lines 15 and 16:

Delete: "When it appears to the attorney general, either
upon complaint or otherwise,"

and Insert: "If the attorney has reasonable cause to believe"

Page 7, lines 25 and 26:

Delete: "When the attorney general believes that a person
may be"

and Insert: "If the attorney general has reasonable cause
to believe that a person is"

023

Original sponsor: Kerttula

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 HOUSE CS FOR 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 *C. Layton* 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. *Original 040 deleted - Unfair Competition; deceptive practices*

3 Sec. 45.52.040. MERGERS, ACQUISITIONS, UNLAWFUL WHEN COMPETITION *Already is in Consumer Protection statute*

4 LESSENER. (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 *before deleted - don't penalize past actions* 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 **Rehabilitated technical** (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 ^{"or have been" deleted - some argument 640 retro} by virtue of their business and ^{active}
9 location or operation, competitors and if the effect may be substan- ^{change}
10 tially to lessen competition or tend to create a monopoly. ^{↑ changed from "or" need both elements now}

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
4 the existence or operation of labor, agricultural or horticultural
5 organizations created for the purpose of mutual help, and not conducted
6 for 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
9 restraint of trade under the provisions of this chapter.

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

- 14 (1) AC 06.05.235; *banks*
15 (2) AS 10.15; and *CO-ops*
16 (3) AS 31.05.110. - *unintention*

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 apply to public utilities which have
22 been issued a certificate of public convenience and necessity under AS
23 42.05. - *P. Utilities*


24 (e) This chapter does not apply to carriers regulated under AS
25 *Motor Carriers* 42.10, *Buses* AS 42.15, and *Air Carriers* AS 02.05, or to ferries regulated under AS 42.25. *Ferries*

26 (f) This chapter does not apply to banks and financial institutions
27 regulated under AS 06. *Banks*

28 (g) This chapter does not forbid activities expressly required
29 by a regulatory agency of the state. Activities permitted by a regu-

1 latory agency of the state are not forbidden by this chapter if the
2 regulatory agency has given due consideration to the possible anti-
3 competitive effects before permitting the activities, and enforcement
4 of the provisions of this chapter would be disruptive of the regulatory
5 scheme.

6 (h) This chapter does not forbid actions or arrangements ^{necessary} expressly
7 ~~required~~ ^{to carry out the provisions of} under the Alaska Native Claims Settlement Act. ~~expressly~~

8 ARTICLE 2. ENFORCEMENT PROVISIONS. 

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

14 Sec. 45.52.110. SUITS BY PERSONS INJURED. (a) A person who is
15 injured in his business or property by a violation of secs. 10, 20,
16 30, 40 or 50 of this chapter, or a person so injured because he refuses
17 to accede to a proposal for an arrangement which, if consummated,
18 would be a violation of secs. 10, 20, 30, 40 or 50 of this chapter,
19 may bring a civil action

20 (1) for damages sustained by him, and if the judgment is for
21 the plaintiff and the trier of fact finds that the defendant's conduct
22 was wilfull, the plaintiff shall be awarded threefold the amount of
23 damages sustained by him, plus the costs of the suit, including reason-
24 able attorney fees; and ^{original version did not have "wilfull"}
^{mandatory treble damages are in Fed statute}

25 (2) to enjoin the unlawful practice, and if judgment is for
26 the plaintiff, he may be awarded the costs of the suit, including
27 reasonable attorney fees. ^{injunction}

28 (b) When the state, a home rule or general law city or borough
29 or other government entity is injured by reason of a violation of

secs. 10, 20, 30, 40 or 50 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 or 20 of this chapter is guilty of a misdemeanor and, upon conviction is punishable, if a natural person, by a fine of not more than \$20,000 or by imprisonment for not more than one year, or by both; and if not a natural person, by a fine of not more than \$50,000. *30 was deleted Not a criminal Act under Clayton less serious offense*
- Feds are a straight \$50,000

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

(b) The court may make additional orders or judgments as may be necessary to restore to a person in interest any money or property, real or personal, which may have been acquired by an act prohibited by this chapter, and as may be necessary to prevent continuing or future violations of this chapter. *Taxi cab case for equity*

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

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

(b) No consent judgment or decree becomes final until 60 days

this is
O.K. if you
trust A.G.
and courts

Nolo contendere - criminal cases - plea of
no contest (ipso Action) - if left in nobody's
would ever plead nolo contendere

You can't use nolo contendere as evidence in civil suit
as you could use "guilty plea"
plaintiff has to prove 51% (preponderance of evidence)
prima facie evidence is enough to win suit

1 from its filing. During the 60-day period an interested party may
2 file verified exceptions to the form or substance of the consent
3 judgment or decree, and the court, upon a full hearing on those excep-
4 tions, may approve or refuse to enter the consent judgment or decree.

5 Sec. 45.52.160. JUDGMENT IN FAVOR OF THE STATE AS EVIDENCE IN
6 ACTION. A final judgment rendered in a civil or criminal action
7 brought by the state under this chapter ^{including a judgment rendered under a plea of nolo contendere} is prima facie evidence against
8 the defendant in any other action under this chapter brought by another
9 party, or by the state, a city, a borough, or other governmental
10 entity; however, this section does not apply to consent judgments or
11 decrees entered under sec. 150 of this chapter.

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

22 ARTICLE 3. INVESTIGATORY POWERS. ^{Historically allowed to stall to prove A.G. had probable cause}

23 Sec. 45.52.200. POWERS OF THE ATTORNEY GENERAL. If the attorney
24 general ^{has reasonable cause} determines, upon complaint or otherwise, that a person has
25 engaged in, or engages in, or is about to engage in an act or practice
26 prohibited or declared unlawful by this chapter, or that a person has
27 assisted or participated in a plan, scheme, agreement or combination of
28 the nature described in this chapter, or when he believes it to be in
29 the public interest, the attorney general may commence an investigation.

D.A. doesn't need reasonable cause to go to grand jury to start investigation

1 The attorney general may compel production of documentary material and
2 take testimony, under oath, before the institution of an action under
3 this chapter.

4 Sec. 45.52.210. DOCUMENTARY EVIDENCE. (a) If the attorney
5 general ^{reasonable cause} determines that a person is in possession, custody, or control
6 of a documentary evidence, wherever situated, which he believes to be
7 relevant to an investigation authorized in sec. 200 of this chapter, he
8 may execute in writing and cause to be served upon that person an inves-
9 tigative demand requiring him to produce the documentary material and
10 permit inspection and copying.

11 (b) Each demand shall

12 (1) state the specific statute the alleged violation of
13 which is under investigation, and the general subject matter of the
14 investigation;

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

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

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

22 (c) No demand may

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

26 (2) contain a requirement which would be unreasonable or
27 improper if contained in a subpoena duces tecum issued by a court of
28 the state; however, this shall not limit the power of the attorney
29 general to require production of documents located outside the state

1 which pertain to matters affecting the state.

2 (d) The demand may be served by the attorney general or his
3 designee by

4 (1) delivering a copy of it to the person to be served, or,
5 if the person is not a natural person, to an officer of the person to
6 be served;

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

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

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

27 (f) At any time before the return date specified in the demand,
28 or within 20 days after the demand has been served, whichever period
29 is shorter, a petition to extend the return date for, or to modify or

1 set aside a demand issued under (a) of this section, stating good
2 cause, may be filed in the superior court for the judicial district
3 where the parties reside. A petition by a person on whom a demand is
4 served, stating good cause, to require the attorney general or another
5 person to act in accordance with the requirements of (e) of this
6 section, and all other petitions in connection with a demand, may be
7 filed in the superior court for the judicial district in which the
8 person on whom the demand is served resides.

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

26 (h) Nothing in this section impairs the authority of the attorney
27 general or his designee to lay before a grand jury of this state
28 evidence concerning a violation of this chapter, to invoke the power
29 of a court to compel the production of evidence before a grand jury,

1 swearing or contempt committed in answering or failing to answer. If a
2 person refuses to testify after being granted immunity from prosecution
3 and after being ordered to testify, he may be adjudged in contempt and
4 committed to jail until the time he purges himself of contempt by
5 testifying. A grant of immunity does not prevent the attorney general
6 from instituting civil contempt proceedings against a person who violates
7 any of the above provisions.

8 ARTICLE 4. GENERAL PROVISIONS.

9 Sec. 45.52.300. DEFINITIONS. In this chapter

10 (1) "asset" includes any property, tangible or intangible,
11 real, personal, or mixed and wherever located, and any other thing of
12 value;

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

17 (3) "trade" and "commerce" include but are not limited to,
18 trade in goods, merchandise, natural resources, whether or not severed,
19 extracted, harvested or produced, agricultural products, produce,
20 choses in action, commodities, and any other article of commerce; they
21 include trade or business in service trades, transportation, banking,
22 lending, advertising, bonding and any other business whether or not
23 that business furnishes a personal service.
24
25
26
27
28
29

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. SUBSTITUTIVE 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. *delete*

6 Sec. 45.52.050. MERGERS, ACQUISITIONS, UNLAWFUL WHEN COMPETITION
7 LESSENE~~D~~. (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

*Unconstitutional
get Monopolies
under 020*

*Testified in CS
to make action*

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.

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
4 as to future performance by either party; however, the court may, in
5 its discretion, order payment for goods or services already received
6 to 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,
9 30, 40, 50 or 60 of this chapter, or a person so injured because he
10 refuses to accede to a proposal for an arrangement which, if consum-
11 mated, would be a violation of secs. 10, 20, 30, 40, 50 or 60 of this
12 chapter, may bring a civil action

13 (1) for damages sustained by him, and if the judgment is
14 for the plaintiff, he shall be awarded threefold the amount of damages
15 sustained by him, together with the costs of the suit, including
16 reasonable 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
21 or other government entity is injured by reason of a violation of
22 secs. 10, 20, 30, 40, 50 or 60 of this chapter, it may maintain an
23 action in the same manner as prescribed in (a) of this section for an
24 injured person; and the state, city, borough, or other governmental
25 entity is entitled to the same relief as provided in (a) of this
26 section.

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

*not criminal under
1985 serious offenses
Clayton Act*

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, as 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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