

HB

250



# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

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Anchorage, Alaska 99501  
(907) 276-3550

March 19, 1979

House Judiciary Committee  
Alaska State Legislature  
Pouch V, Mail Stop #3100  
Juneau, Alaska 99811

Re: House Bill 250

Dear Committee Members:

This letter concerns House Bill 250, a proposal to repeal subsection (f) of AS 45.52.060. That subsection currently exempts banks and financial institutions from all coverage by the State of Alaska's antitrust statute. The Office of the Attorney General favors the adoption of House Bill 250.

Increasingly in the last few years, state governments have adopted an activist stand on enactment and enforcement of state antitrust laws. Attorneys general throughout the United States have devoted an increasing amount of available resources to the enforcement of their local antitrust statutes. In a time of steady inflation and increased awareness on the part of taxpayers, consumers and businessmen alike as to how their money is being spent, there is little tolerance for business enterprises which engage in activity that restrains competition. Such practices injure competing businesses and consumers alike, and they result in higher prices for all.

Banks and financial institutions, like any commercial enterprise, are capable of anti-competitive activity. A "blanket" exemption for such institutions, such as is currently provided by subsection (f), removes most of this anti-competitive activity from any meaningful regulation. As a general rule, these activities will not be specifically regulated by AS 06., and while they might constitute violations of federal antitrust statutes, it is unlikely that any agency charged with the enforcement of the federal statutes would intervene to challenge such conduct because of Alaska's geographical isolation.

There is simply no justifiable reason to provide a "blanket" exemption in Alaska's antitrust statute for banks and financial institutions. The spectre of conflicting regulations is sometimes raised when a regulated industry like banking is discussed in conjunction with antitrust laws. The possibility of conflicting regulation should not be a concern under Alaska's statutory scheme however. Subsection (g) of AS 45.52.060 insures that any action required or specifically permitted by an overseeing regulatory agency would not be subject to attack under the antitrust statute.

I think it would be helpful to describe in specific terms some of the forms that the potentially anti-competitive activity discussed above might take. The following examples are selected from complaints filed in other jurisdictions, jurisdictions which do not have an all-encompassing exemption for banks and financial institutions in their respective antitrust statutes:

1. Banking institutions have allegedly, in certain areas of the country, gotten together with one another and agreed upon and fixed a standardized service charge as well as related fees. This agreement lessens competition among the banks and maintains banking fee at artificially high levels. Such conduct constitutes price-fixing and would be a violation of AS 45.52.010, were it not for the exemption contained in AS 45.52.060(f). With this exemption, such conduct is insulated from attack under the state statute.

2. Banking institutions in certain areas of the country require, in connection with the issuance of home purchase loans, a title search on the property to be purchased. These banks also require utilization of a specific individual to perform this title search, and often the individual so designated is a bank officer or a director. This practice deprives the person applying for the loan of the freedom to select the individual of his choice to perform the title search and thus of the opportunity to shop in the marketplace for the best available price. The practice also excludes competitors from competing for the title search business of that bank's customers. This practice constitutes an illegal "tie-in", and would be a violation of both AS 45.52.010 and AS 45.52.030 were it not for the all-encompassing exemption enjoyed by Alaskan financial institutions. With the exemption afforded by AS 45.52.060(f), this conduct is insulated from attack under the state antitrust statute.

There are many additional examples of potentially anti-competitive activity by financial institutions, including such arrangements as territorial allocations among banks and "tie-ins" on condominium financing, which are outside the protection afforded by Alaska's antitrust statute because of

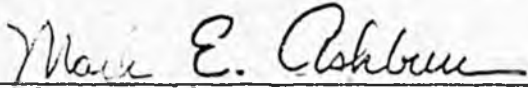
the exemption contained in AS 45.52.060(f).

The Alaska antitrust statute is a law primarily intended to benefit the business community within the state. Essential to our economy is a marketplace free from artificial restraints which increase prices or exclude competitors from particular markets. The elimination of all such restraints will create a business environment of heightened competition and will benefit both business and consumer alike. The repeal of AS 45.52.060(f) will place no unfair burden on banks and financial institutions; it will simply help to insure that banks operate under the same rules of the competitive marketplace as all other businesses.

Respectfully submitted,

AVRUM M. GROSS  
ATTORNEY GENERAL

By:

  
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Mark E. Ashburn  
Assistant Attorney General  
Chief, Antitrust Section

AMG:MEA:jw

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT  
 DIVISION OF BANKING, SECURITIES, SMALL LOANS & CORPORATIONS  
 H. Phillip Hubbard, Commissioner  
 Julius J. Brecht, Director of Banking

COMPARATIVE STATEMENT OF ASSETS, LIABILITIES AND CAPITAL ACCOUNTS OF ALASKA BANKS AS OF 9-30-78

Banks in Alaska With Main Office - Location	Assets					Liabilities							Reserves		Capital Accounts			Total Liabilities and Capital
	Cash & Due From Banks	Securities	Federal Funds Loans And Discounts	Premises & Equipment	Other Assets	Total Assets	Demand Deposits	Time & Savings Deposits	Total Deposits	Public Fund Included In Total Deposits	Other Liabilities	Total Liabilities	Reserves On Loans & Securities	Capital	Surplus	Profits & Capital Reserves	Total Capital Accounts	
Alaska Bank of Commerce Anchorage	\$ 34,288.00	\$ 30,059.00	\$ 75,196.00	\$ 4,610.00	\$ 4,199.00	\$ 148,352.00	\$ 52,189.00	\$ 77,818.00	\$ 130,007.00	\$ 38,477.00	\$ 6,224.00	\$ 136,301.00	\$ 850.00	\$ 3,274.00	\$ 6,522.00	\$ 2,255.00	\$ 12,051.00	\$ 148,352.00
Alaska Pacific Bank Anchorage	8,798.00	18,123.00	51,973.00	1,471.00	1,302.00	81,667.00	27,012.00	44,827.00	71,839.00	21,088.00	4,038.00	75,877.00	132.00	2,563.00	1,456.00	1,771.00	5,790.00	81,667.00
Alaska Statebank Anchorage	5,528.00	15,351.00	82,744.00	4,808.00	1,346.00	113,777.00	36,757.00	62,066.00	98,823.00	35,233.00	3,496.00	102,229.00	574.00	3,085.00	5,735.00	2,728.00	11,548.00	113,777.00
B. H. Behrends Bank Juneau	2,500.00	8,701.00	32,669.00	1,045.00	1,349.00	46,264.00	18,822.00	23,723.00	42,545.00	13,893.00	709.00	43,254.00	124.00	500.00	1,500.00	1,010.00	3,010.00	46,264.00
Peoples Bank and Trust Anchorage	3,418.00	3,000.00	35,296.00	2,332.00	524.00	44,666.00	18,671.00	20,585.00	35,260.00	4,649.00	1,906.00	41,166.00	99.00	989.00	1,244.00	1,267.00	3,500.00	44,666.00
United Bank Alaska Anchorage	4,486.00	12,641.00	47,952.00	802.00	1,078.00	66,959.00	20,185.00	36,114.00	56,295.00	26,531.00	4,438.00	60,737.00	283.00	2,002.00	3,901.00	319.00	6,222.00	66,959.00
<b>Total Commercial Banks</b>	<b>\$ 63,018.00</b>	<b>\$ 87,971.00</b>	<b>\$ 325,830.00</b>	<b>\$ 3,068.00</b>	<b>\$ 8,798.00</b>	<b>\$ 501,685.00</b>	<b>\$ 173,636.00</b>	<b>\$ 265,137.00</b>	<b>\$ 438,773.00</b>	<b>\$ 139,871.00</b>	<b>\$ 20,791.00</b>	<b>\$ 459,564.00</b>	<b>\$ 2,059.00</b>	<b>\$ 12,413.00</b>	<b>\$ 20,358.00</b>	<b>\$ 9,350.00</b>	<b>\$ 42,121.00</b>	<b>\$ 501,685.00</b>
Alaska Mutual Savings Bank Anchorage	10,410.00	21,031.00	125,993.00	6,342.00	5,601.00	169,377.00	2,548.00	135,844.00	138,392.00	28,790.00	17,767.00	156,159.00	-0-	3,001.00	10,217.00	-0-	13,218.00	169,377.00
Mt. McKinley Mutual Savings Bank - Fairbanks	456.00	11,563.00	44,156.00	1,585.00	1,187.00	58,947.00	297.00	52,635.00	52,932.00	6,680.00	2,217.00	55,149.00	-0-	1,000.00	2,796.00	-0-	3,796.00	58,947.00
<b>Total Savings Banks</b>	<b>\$ 10,866.00</b>	<b>\$ 32,594.00</b>	<b>\$ 170,149.00</b>	<b>\$ 7,927.00</b>	<b>\$ 6,788.00</b>	<b>\$ 228,324.00</b>	<b>\$ 2,845.00</b>	<b>\$ 188,479.00</b>	<b>\$ 191,324.00</b>	<b>\$ 35,470.00</b>	<b>\$ 19,984.00</b>	<b>\$ 211,308.00</b>	<b>-0-</b>	<b>\$ 4,001.00</b>	<b>\$ 13,015.00</b>	<b>-0-</b>	<b>\$ 17,016.00</b>	<b>\$ 228,324.00</b>
<b>Total State Banks</b>	<b>\$ 73,884.00</b>	<b>\$ 120,565.00</b>	<b>\$ 495,979.00</b>	<b>\$ 22,995.00</b>	<b>\$ 16,586.00</b>	<b>\$ 730,009.00</b>	<b>\$ 176,481.00</b>	<b>\$ 453,616.00</b>	<b>\$ 630,097.00</b>	<b>\$ 175,341.00</b>	<b>\$ 40,775.00</b>	<b>\$ 670,872.00</b>	<b>\$ 2,059.00</b>	<b>\$ 16,414.00</b>	<b>\$ 33,373.00</b>	<b>\$ 9,350.00</b>	<b>\$ 59,137.00</b>	<b>\$ 730,009.00</b>
Alaska National Bank of the North - Fairbanks	\$ 44,470.00	\$ 48,013.00	\$ 137,833.00	\$ 8,102.00	\$ 7,292.00	\$ 245,710.00	\$ 107,540.00	\$ 80,475.00	\$ 188,015.00	\$ 48,230.00	\$ 44,375.00	\$ 232,390.00	\$ 1,293.00	\$ 1,718.00	\$ 6,418.00	\$ 5,184.00	\$ 13,320.00	\$ 245,710.00
First National Bank of Anchorage - Anchorage	65,657.00	88,108.00	261,353.00	16,561.00	5,520.00	437,334.00	178,521.00	186,303.00	364,824.00	87,279.00	30,299.00	395,123.00	2,441.00	8,000.00	16,000.00	18,211.00	42,211.00	437,334.00
First National Bank of Fairbanks - Fairbanks	6,987.00	7,048.00	41,671.00	2,177.00	1,654.00	59,537.00	27,058.00	24,799.00	51,867.00	9,807.00	3,128.00	54,995.00	422.00	1,000.00	1,000.00	2,547.00	4,542.00	59,537.00
First National Bank of Ketchikan - Ketchikan	9,519.00	5,735.00	42,501.00	1,260.00	496.00	59,511.00	18,931.00	35,987.00	54,913.00	28,454.00	1,011.00	55,929.00	208.00	1,150.00	1,410.00	1,022.00	3,582.00	59,511.00
National Bank of Alaska Anchorage	70,585.00	127,466.00	392,942.00	34,000.00	10,381.00	635,374.00	269,015.00	270,970.00	539,985.00	101,959.00	41,777.00	581,767.00	3,191.00	20,000.00	15,500.00	18,112.00	53,612.00	635,374.00
Security National Bank Anchorage	3,879.00	4,175.00	21,520.00	490.00	417.00	30,481.00	10,920.00	17,417.00	28,337.00	12,508.00	289.00	28,626.00	41.00	716.00	739.00	400.00	1,855.00	30,481.00
<b>Total National Banks</b>	<b>\$ 201,092.00</b>	<b>\$ 280,545.00</b>	<b>\$ 897,860.00</b>	<b>\$ 62,590.00</b>	<b>\$ 25,860.00</b>	<b>\$ 1,467,947.00</b>	<b>\$ 611,995.00</b>	<b>\$ 615,951.00</b>	<b>\$ 1,227,946.00</b>	<b>\$ 288,237.00</b>	<b>\$ 120,879.00</b>	<b>\$ 1,348,825.00</b>	<b>\$ 7,550.00</b>	<b>\$ 32,584.00</b>	<b>\$ 41,067.00</b>	<b>\$ 45,471.00</b>	<b>\$ 119,122.00</b>	<b>\$ 1,467,947.00</b>
<b>TOTAL ALL BANKS</b>	<b>\$ 274,976.00</b>	<b>\$ 401,110.00</b>	<b>\$ 1,393,839.00</b>	<b>\$ 85,585.00</b>	<b>\$ 42,446.00</b>	<b>\$ 2,197,956.00</b>	<b>\$ 786,476.00</b>	<b>\$ 1,069,567.00</b>	<b>\$ 1,858,043.00</b>	<b>\$ 463,578.00</b>	<b>\$ 161,654.00</b>	<b>\$ 2,019,697.00</b>	<b>\$ 9,609.00</b>	<b>\$ 48,998.00</b>	<b>\$ 74,440.00</b>	<b>\$ 54,821.00</b>	<b>\$ 178,253.00</b>	<b>\$ 2,197,956.00</b>

Compiled Quarterly by the Division of Banking, Securities, Small Loans and Corporations  
 State Office Building, Pouch D, Juneau, Alaska 99811

a/ Savings Bank's Reserves Included in Surplus Accounts  
 b/ Includes Outstanding Debentures  
 c/ Includes U.S. Government, State & Political Deposits  
 d/ Memo Figure not Included in Capital Total

2197 66.00  
 65.91

635  
 437  
 585  
 2197 1457.00  
 1318.2  
 1388.0

635  
 437  
 245  
 2197 1317.00  
 1318.2  
 60%

1317  
 169  
 1486.00  
 1318.2  
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167%

539  
 364  
 188  
 1858 1091.00  
 929.0  
 1620.0  
 1486.4  
 1336

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT  
DIVISION OF BANKING, SECURITIES, SMALL LOANS AND CORPORATIONS  
H. Phillip Hubbard, Commissioner  
Julius J. Brecht, Director of Banking

**COMPARATIVE CONSOLIDATED STATEMENT OF CONDITION OF BANKS IN ALASKA AS OF SEPTEMBER 30, 1978**  
(Comparison 9-30-77 to 9-30-78)

ASSETS	State Banks		National Banks	9-30-78	9-30-77	Dollar Increase (Decrease)	Percentage Increase (Decrease)
	Commercial	Savings		Total All Banks	Total All Banks		
Cash and Due From Banks	63,018.00	10,866.00	201,092.00	274,976.00	204,493.00	70,483.00	34.5
U.S. Treasury Securities	18,010.00	9,354.00	68,720.00	96,084.00	105,257.00	(9,173.00)	(8.7)
Securities of Other U.S. Government Agencies and Corporations	13,715.00	16,186.00	50,336.00	80,237.00	65,529.00	14,708.00	22.4
Obligations of States and Political Subdivisions	55,894.00	457.00	158,244.00	214,595.00	212,947.00	1,648.00	.8
Other Securities	352.00	6,597.00	3,245.00	10,194.00	9,286.00	908.00	9.8
Federal Funds Sold and Securities Purchased Under Agreement to Re-sell	50,600.00	835.00	56,400.00	107,835.00	116,380.00	(8,545.00)	(7.3)
Loans and Discounts	275,230.00	160,314.00	841,460.00	1,286,004.00	1,122,316.00	163,688.00	14.6
Bank Premises, Furniture, Fixtures and Improvements	15,068.00	7,927.00	62,590.00	85,585.00	77,161.00	8,424.00	10.9
Real Estate Owned not Bank Premises	1,056.00	2,906.00	2,673.00	6,635.00	6,459.00	176.00	2.7
Investments in Unconsolidated Subsidiaries and Associated Companies	-0-	-0-	-0-	-0-	486.00	(486.00)	(100.0)
Customers Liability on Acceptances Outstanding	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Other Assets	8,742.00	3,882.00	23,187.00	35,811.00	36,024.00	(213.00)	(.6)
<b>TOTAL ASSETS</b>	<b>501,685.00</b>	<b>228,324.00</b>	<b>1,467,947.00</b>	<b>2,197,956.00</b>	<b>1,956,338.00</b>	<b>241,618.00</b>	<b>12.4</b>
<b>LIABILITIES</b>							
Demand Deposits of Individuals, Partnerships and Corporations	146,213.00	2,845.00	521,942.00	671,000.00	664,434.00	6,566.00	1.0
Time and Savings Deposits of Individuals, Partnerships and Corporations	146,820.00	153,009.00	408,381.00	708,210.00	652,210.00	56,000.00	8.6
Deposits of United States Government	12,057.00	-0-	15,754.00	27,811.00	23,575.00	4,236.00	18.0
Deposits of States and Political Subdivisions	127,814.00	35,470.00	254,233.00	417,517.00	303,951.00	113,566.00	37.4
Deposits of Foreign Governments and Official Institutions	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Deposits of Commercial Banks	57.00	-0-	6,918.00	6,975.00	3,663.00	3,312.00	90.4
Other Deposits (Certified and Officers' Checks, etc.)	5,812.00	-0-	20,718.00	26,530.00	28,738.00	(2,208.00)	(7.7)
<b>Total Deposits</b>	<b>438,773.00</b>	<b>191,324.00</b>	<b>1,227,946.00</b>	<b>1,858,043.00</b>	<b>1,676,571.00</b>	<b>181,472.00</b>	<b>10.8</b>
(a) Total Demand Deposits	[173,636.00]	[2,845.00]	[611,995.00]	[788,476.00]	[774,702.00]	[13,774.00]	[1.8]
(b) Total Time and Savings Deposits	[265,137.00]	[188,479.00]	[615,951.00]	[1,069,567.00]	[901,869.00]	[167,698.00]	[18.6]
Federal Funds Purchases	11,429.00	-0-	57,770.00	69,199.00	63,686.00	5,513.00	8.6
Other Liabilities for Borrowed Money	198.00	10,480.00	11,733.00	22,411.00	25,541.00	(3,130.00)	(12.3)
Mortgage Indebtedness	1,762.00	3,048.00	12,470.00	17,280.00	5,255.00	12,025.00	228.8
Acceptances Outstanding	-0-	-0-	-0-	-0-	-0-	-0-	-0-
Other Liabilities	7,402.00	6,466.00	38,906.00	52,764.00	30,471.00	22,293.00	73.2
<b>TOTAL LIABILITIES</b>	<b>459,564.00</b>	<b>211,308.00</b>	<b>1,348,825.00</b>	<b>2,019,697.00</b>	<b>1,801,534.00</b>	<b>218,163.00</b>	<b>12.1</b>
<b>RESERVES ON LOANS AND SECURITIES</b>	<b>2,059.00</b>	<b>-0-</b>	<b>7,596.00</b>	<b>9,655.00</b>	<b>8,683.00</b>	<b>972.00</b>	<b>11.2</b>
<b>CAPITAL ACCOUNTS</b>							
Capital Notes and Debentures	1,820.00	4,001.00	700.00	6,521.00	3,921.00	2,600.00	66.3
Common Stock	10,593.00	-0-	31,884.00	42,477.00	41,291.00	1,186.00	2.9
Surplus	20,358.00	13,015.00	41,067.00	74,440.00	66,565.00	8,875.00	13.5
Undivided Profits	9,212.00	-0-	43,587.00	52,799.00	41,971.00	10,828.00	25.8
Reserve for Contingencies and Other Capital Reserves	138.00	-0-	1,884.00	2,022.00	2,056.00	(34.00)	(1.7)
<b>TOTAL CAPITAL ACCOUNTS</b>	<b>42,121.00</b>	<b>17,016.00</b>	<b>119,122.00</b>	<b>178,259.00</b>	<b>154,804.00</b>	<b>23,455.00</b>	<b>15.4</b>
<b>TOTAL LIABILITIES AND CAPITAL ACCOUNTS</b>	<b>501,685.00</b>	<b>228,324.00</b>	<b>1,467,947.00</b>	<b>2,197,956.00</b>	<b>1,956,338.00</b>	<b>241,618.00</b>	<b>12.4</b>

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# Bank Of North Reports Loss During 1978

Alaska National Bank of the North reports a \$595,000 loss for 1978. The 90-cents-per-share loss compares to total net income of \$1,421,000 for 1977.

Frank Murkowski, president of Alaska National, said in a statement released Tuesday that the loss was due to a shift in types of deposits in the Fairbanks area, higher operating costs and expansion.

Deposits in Fairbanks have shifted from lower interest demand and time deposits, checking and savings accounts to higher interest certificates of deposits, he said.

The Fairbanks-based bank increased operating expenses due to a new branch that opened in Juneau, construction of a computer facility in Anchorage and expansion of credit card operations.

The bank is in the process of completing the stockholders annual report. The annual stockholders meeting is scheduled for June 12.

Alaska National Bank of the North recently announced a planned stock transfer with a bank holding company in Fairbanks. The stock transfer is dependent on a pending transfer between Alaska Pacific Bank of Anchorage and the First National Bancorporation.

First National Bancorporation currently owns 81 percent of the First National Bank of Fairbanks and would be renamed Alaska Pacific Bancorporation if the merger with Alaska Pacific receives state and federal approval.

A ruling on the proposed Alaska Pacific and First National Bancorporation merger is expected from the division of banking, securities and corporations within the next few weeks. No action will be taken on the second transfer until approval is received for the first transfer.

Bank officials estimate that if approval for the stock transfer between Alaska National Bank of the North and First National Bancorporation is received from the state and federal government, the transfer will take place late this year or early next year.

ADB 250 file

Anch T 3/14/79

~~Jana  
Sewing stuff  
Tim Sunday~~

HB 250 Joe Donohue - Dept. Law

Mark Ashburn  
anti-trust

3-14-79 will send  
written comments

recording and (2) by imprisonment for a period of not more than one year, or by a fine of not more than \$1,000, or by both. In this section "owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master tape, master film or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded, and from which the transferred recorded sounds are directly derived. (§ 1 ch 134 SLA 1974; am § 1 ch 193 SLA 1975)

Effect of amendment. — The 1975 amendment in the first sentence, inserted "(1)" near the beginning, deleted "federally copyrighted" preceding "sound recording" and substituted the language beginning "or (2)" and ending "actual performer or group" for "of the master recording." The amendment also added the second sentence.

Sec. 45.51.020. Exemptions. The prohibition contained in § 10 of this chapter is not applicable to the reproduction of a sound recording that

(1) is used, or intended to be used, solely for broadcast by commercial or educational radio or television stations; or

(2) constitutes the verbatim transcript, or other public record, of the proceedings of a judicial, legislative or administrative agency, department or other public body for which a charge or fee may or may not be made or collected for the reproduced recording. (§ 1 ch 134 SLA 1974)

### Chapter 52. Monopolies; Restraint of Trade.

#### Article

- 1. Substantive Provisions (§§ 45.52.010 — 45.52.060)
- 2. Enforcement Provisions (§§ 45.52.100 — 45.52.170)
- 3. Investigatory Powers (§§ 45.52.200 — 45.52.220)
- 4. General Provisions (§ 45.52.300)

#### Article 1. Substantive Provisions.

Section	Section
10. Combinations in restraint of trade unlawful	40. Mergers, acquisitions, unlawful when competition lessened
20. Monopolies and attempted monopolies unlawful	50. Interlocking directorates and relationships
30. Transactions and agreements not to use or deal in commodities or services unlawful	60. Exemptions

Sec. 45.52.010. Combinations in restraint of trade unlawful. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce is unlawful. (§ 1 ch 53 SLA 1975)

Legislative committee report. — For report on ch. 53, SLA 1975 (HCS C53SSSB 5 am H), see 1975 Senate Journal, p. 598.

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Sec. 45 commodi or make machinery patented fix a price on the c purchaser machinery competito contract f be substa any line o

Sec. 45 lessened. indirectly, o. any co the acquis or to tend in a secti purchasin or otherw substantia a corporat the actual and legitim all or a pa of the for

(b) Who share capi to create of compet order the assets and divestiture

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**Sec. 45.52.020. Monopolies and attempted monopolies unlawful.** It is unlawful for a person to monopolize, or attempt to monopolize, or combine or conspire with another person to monopolize any part of trade or commerce. (§ 1 ch 53 SLA 1975)

**Legislative committee report.** — For report on ch. 53, SLA 1975 (HCS CSSSSB 5 am E), see 1975 Senate Journal, p. 598.

**Sec. 45.52.030. Transactions and agreements not to use or deal in commodities or services unlawful.** It is unlawful for a person to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged for it, or discount from, or rebate upon, that price, on the condition, agreement, or understanding that the lessee or purchaser will not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or service of a competitor or competitors of the lessor or seller, if the effect of the lease, sale or contract for sale, or of the condition, agreement, or understanding may be substantially to lessen competition or tend to create a monopoly in any line of commerce. (§ 1 ch 53 SLA 1975)

**Sec. 45.52.040. Mergers, acquisitions, unlawful when competition lessened.** (a) It is unlawful for a person to acquire and hold, directly or indirectly, the whole or a part of the stock, other share capital, or assets of any corporation after the effective date of this Act if the effect of the acquisition and holding may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in the state or in a section of the state. This subsection does not apply to persons purchasing such stock solely for investment if it is not used by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nothing in this subsection prevents a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions of it, or from owning and holding all or a part of the stock of the subsidiary corporation, when the effect of the formation is not substantially to lessen competition.

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

(c) This section does not apply to mergers, acquisitions or holding companies permitted by AS 06.05.235 or to a merger carried out in

accordance with AS 21.69.590 — 21.69.600, or to mergers, acquisitions or holding companies permitted and regulated by a regulatory agency of the United States having jurisdiction and control over those mergers and acquisitions. (§ 1 ch 53 SLA 1975)

**Sec. 45.52.050. Interlocking directorates and relationships.** (a) It is unlawful for a person to be at the same time a director, officer, partner, or trustee in any two or more firms, partnerships, trusts, associations, or corporations or any combination of them engaged in commerce, if these firms, partnerships, trusts, associations, or corporations or a combination of them, are by virtue of their business and location or operation, competitors and if the effect may be substantially to lessen competition or tend to create a monopoly.

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

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

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

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

(f) The court, upon finding that a director, officer, or trustee is holding office in violation of this section, shall order the person to terminate the interlocking relationship, and, in the case of a trustee, the court may, when it considers it appropriate, order the trustee to vacate his office. A remedy provided in this section does not limit and is in addition to any other remedy available under another section of this chapter or another law. (§ 1 ch 53 SLA 1975)

**Sec. 45.52.060. Exemptions.** (a) This chapter does not forbid the existence or operation of labor, agricultural or horticultural organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of this chapter.

(b) This chapter does not forbid actions or arrangements authorized or regulated under the laws of the United States which exempt these actions or arrangements from application of the antitrust laws of the United States or under the following statutes of this state:

- (1) AS 06.05.235;

(2) AS 10.1

(3) AS 31.0

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(e) This ch AS 42.15, and

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**Section**  
100. Contracts  
110. Suits by pe  
120. Certain  
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130. Injunction

**Sec. 45.52.**  
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**Sec. 45.52.**  
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(2) AS 10.15; and

(3) AS 31.05.110.

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

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

(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.

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

(g) This chapter does not forbid activities expressly required by a regulatory agency of the state. Activities permitted by a regulatory agency of the state are not forbidden by this chapter if the regulatory agency has given due consideration to the possible anticompetitive effects before permitting the activities, and enforcement of the provisions of this chapter would be disruptive of the regulatory scheme.

(h) This chapter does not forbid actions or arrangements necessary to carry out the provisions of the Alaska Native Claims Settlement Act. (§ 1 ch 53 SLA 1975)

Legislative committee report. — For report on ch. 53, SLA 1975 (HCS CSSSSB 5 a:n H), see 1975 Senate Journal, p. 598.

**Article 2. Enforcement Provisions.**

Section	Section
100. Contracts voidable	140. Jurisdiction of court
110. Suits by persons injured	150. Consent judgment
120. Certain violations constitute misdemeanor	160. Judgment in favor of the state as evidence in action
130. Injunction by attorney general	170. Limitation of actions

**Sec. 45.52.100. Contracts voidable.** A contract or agreement in violation of a provision of this chapter is voidable by either party as to future performance by either party; however, the court may, in its discretion, order payment for goods or services already received to prevent unjust enrichment. (§ 1 ch 53 SLA 1975)

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

(1) for damages sustained by him, and if the judgment is for the plaintiff and the trier of fact finds that the defendant's conduct was wilful, the plaintiff shall be awarded threefold the amount of damages

## Bank Antitrust Law

In all states that have antitrust statues, no blanket exemption has been made for banks except in Alaska.\*

Illinois and Maryland exempt banks "to the extent that such actiivities are regulated or supervised by officers of the state or federal government under the banking laws of this State or the United States."

Missouri and Nevada have provisions for excluding the activities of industries that are regulated by other statutes from their antitrust laws.

Delaware lacks an antitrust statute.

\*The language of some antitrust statutes is such that whether banks are included is open to interpretation. However, in these ambiguous cases, no references were made to cases where courts held banks to be exempt. (However, in a few instances, courts did rule that some insurance companies were exempt.)

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BILL ANALYSIS

ASSIGNMENT DATE \_\_\_\_\_

UNASSIGNED \_\_\_\_\_

DEPARTMENT Commerce & Economic Development	SPONSOR (PRINCIPAL) McKinnon	BILL NO. HB 250
DEPARTMENT POSITION		
DIVISION DIRECTOR Julius J. Bredt Banking & Securities	DATE 2/22/79	COMMISSIONER DATE
GOVERNOR'S OFFICE USE		
<input type="checkbox"/> POSITION NOTED	<input type="checkbox"/> POSITION APPROVED	<input type="checkbox"/> POSITION DISAPPROVED
BY:	DATE:	
SUMMARY		
(1) RELATED BILLS (SIMILAR OR CONFLICTING)	None of which I am aware.	
(2) OTHER AGENCIES AFFECTED BY BILL	None of which I am aware.	
(2) a. ORGANIZATIONAL SUPPORT FOR BILL None of which I am aware		(2) b. ORGANIZATIONAL OPPOSITION TO BILL Alaska Bankers Association is very likely opposed to the bill (they were last year).
(3) PROGRAM EFFECTS OF BILL Would repeal the explicit exemption from the State anti-trust statutes (AS 45.52) for banks and thereby subject banks to the same standards as other corporations doing business in the State.		
(4) FISCAL IMPACT:	<input checked="" type="checkbox"/> NONE	<input type="checkbox"/> FISCAL ANALYSIS ATTACHED
(5) AMENDMENTS PROPOSED: None.		

(6) COMMENTS: A similar bill was submitted during the past Alaska Legislature (HB 27), and a variation of the provision was added to the Administration's banking bill (SB 98) for a time during the 1978 session. However, the provision was later dropped and SB 98 was enacted. My position remains unchanged on the proposed repeal of the exemption. That is, there is no good reason to maintain the exemption, however, at the same time, the department has not been made aware of complaints which would have necessitated use of the provisions of AS 45.52.

(Over)

While the article is becoming somewhat dated, I would direct your attention to an article appearing in the Business Lawyer, entitled: "The Development of Bank Regulations and Its Appropriate Competitive Standards: Gray's Harbor Gathering Storm," by Steven J. O'Brien, dated November 1975. In that article it is pointed out that banks are subject to the federal anti-trust laws as well as the prior screening devices for anti-competitive behavior imposed by the 1970 amendments to the Federal Bank Holding Company Act and the 1966 Bank Merger Act. That is, in essence, these federal statutes require federal banking authorities to apply federal anti-trust standards and permits those authorities to take a very narrow view of the anti-trust regulations, thereby prohibiting bank mergers which would not be subject to prohibition under the general anti-trust law. To this extent then, the federal anti-trust law, as applied to banks is more restrictive than the state anti-trust laws found at AS 45.52, assuming the exemption for banks is repealed.

The repeal of the exemption would, however, give the State authority to take action on anti-trust violations which might otherwise go unheeded by the U.S. Department of Justice.

THE LEGISLATURE OF THE STATE OF ALASKA  
ELEVENTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. HB 250  
 Title "An Act removing the exemption of banks and financial institutions  
 Requested by from the state antitrust law." Date 3-6-79

II. FISCAL DETAIL

Agency Affected Commerce and Economic Development  
 Program Category Affected Public Protection  
 Budget Request Unit(s) Affected Banking

EXPENDITURES (Thousands of Dollars)

	FY 79	FY 80	FY 81	FY 82	FY 83	FY 84
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

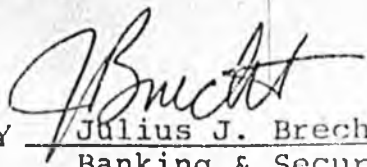
GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER (Specify)	0					

POSITIONS

FULL TIME	0					
PART TIME	0					
TEMPORARY	0					

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

This bill has no fiscal impact.

IV. DATE 3-6-79 PREPARED BY  Julius J. Brecht  
 AGENCY Banking & Securities  
 PHONE 465-2521  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)