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

SS
vs.
Comm CS

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 contendre 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

Tingle

Alaska House Bill 137

Following is an analysis of the principal defects in the above-noted bill, which would enact a general antitrust 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:**

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* If, contrary to the recommendations in part B hereof, sections 30 through 60 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 goad 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 harrassment. 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.

Anne

STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

February 19, 1975

M E M O R A N D U M

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.

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.)

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 06.05.235 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.

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.

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.

2

A M E N D M E N T

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."

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"

Original sponsor: Kerttula

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR CS FOR SPONSOR SUBSTITUTE FOR SENATE BILL NO. 5

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act prohibiting monopolies and combinations in restraint of trade."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45 is amended by adding a new chapter to read:

CHAPTER 52. MONOPOLIES; RESTRAINT OF TRADE.

ARTICLE 1. SUBSTANTIVE PROVISIONS.

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.

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.

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 sub-

stantially to lessen competition or tend to create a monopoly in any line of commerce. Original 040 deleted – Untair Competition; deceptive practices Already is in Consumer Protection statute

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.

Clayton

before deleted - don't penalize past actions

Redrafted redundant

(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.

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.

"or have been" deleted — Some argument 040 retroactive change

changed from "or" "need both elements now

(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.

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.

Pre-emption clause for Feds

(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; banks

(2) AS 10.15; and co-ops

(3) AS 31.05.110. - unitization

(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. - P. 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 Carriers Buses Air Carriers Ferries

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

General exemption Section

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

latory agency of the state are not forbidden by this chapter if the regulatory agency has given due consideration to the possible anti-competitive 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 ~~expressly~~ necessary ~~required under~~ to carry out the provisions of the Alaska Native Claims Settlement Act.

ARTICLE 2. ENFORCEMENT PROVISIONS.

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

Sec. 45.52.110. SUITS BY PERSONS INJURED. (a) A person who is injured in his business or property by a violation of secs. 10, 20, 30, 40 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 secs. 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 wilfull, the plaintiff shall be awarded threefold the amount of damages sustained by him, plus the costs of the suit, including reasonable attorney fees; and original version did not have "wilfull" mandatory treble damages are in fed statute

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

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

secs. 10, 20, 30, 40 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 offenses
– 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 contendre - criminal cases - plea of no contest (spite action) - if left in hands would ever plead nolo contendre

You can't use nolo contendre as evidence in civil suit as you could use "guilty plea"

plaintiff has to prove 51% (preponderence of evidence) prima facie evidence is enough to win suit

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

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

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

ARTICLE 3. INVESTIGATORY POWERS. Historically allowed to stall to prove A.G. had probable cause

Sec. 45.52.200. POWERS OF THE ATTORNEY GENERAL. If the attorney general has reasonable cause determines, upon complaint or otherwise, that a person has engaged in, or engages in, or is about to engage in an act or practice prohibited or declared unlawful by this chapter, or that a person has assisted or participated in a plan, scheme, agreement or combination of the nature described in this chapter, or when he believes it to be in 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

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

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

(b) Each demand shall

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

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

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

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

(c) No demand may

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

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

which pertain to matters affecting the state.

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

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

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

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

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

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

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

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

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

or to file a civil complaint or criminal information alleging a violation of this chapter.

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

(b) Each demand shall

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

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

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

"use immunity"
"transactional immunity" - more protective

(d) If a person ordered to attend the inquiry fails to attend without good cause, he is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both. If a person in attendance at the inquiry refuses to answer a question on the ground that he may be incriminated by his answer, and if the attorney general, or his designee, in a writing directed to the person being questioned orders the person to answer the question, the person shall comply with the order. After complying, and if but for this section he would have been privileged to withhold the answer given, he may not be prosecuted for an offense or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing concerning which he gave evidence. However, he may nevertheless be prosecuted or subjected to penalty or forfeiture for a perjury, false

Violation 5th Amend

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

ARTICLE 4. GENERAL PROVISIONS.

Sec. 45.52.300. DEFINITIONS. In this chapter

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

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

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

Offered: 2/10/75
Referred: Commerce

IN THE SENATE BY KERTTULA

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 5

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act prohibiting monopolies and combinations in restraint of trade."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 45 is amended by adding a new chapter to read:

CHAPTER 52. MONOPOLIES; RESTRAINT OF TRADE.

ARTICLE 1. SUBSTANTIVE PROVISIONS.

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.

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.

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 sub-

stantially to lessen competition or tend to create a monopoly in any line of commerce.

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

Already is in Consumer Protection

delete

Sec. 45.52.050. 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 other corporation whether or not acquired before 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.

delete Unconstitutional get monopolies under 020

(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, 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. However, the court may not order the divestiture or other disposition of the assets of the corporation unless it is

redrafted in CS to make clear

necessary to eliminate the lessening of competition or the tendency to create a monopoly.

(c) This section does not apply to mergers, acquisitions or holding companies permitted by AS 06.05.235 nor to a merger carried out in accordance with AS 21.69.590 - 21.69.600, nor 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.

Sec. 45.52.060. 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 or have been by virtue of their business and location or operation, competitors; or 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 this 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 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.

Sec. 45.52.070. 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 those 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 those laws of the United States which exempt those actions or arrangements from the antitrust laws of the United States or under the following statutes of this state:

(1) AS 06.05.235; and

(2) AS 10.15.

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

ARTICLE 2. ENFORCEMENT PROVISIONS.

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

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

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

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

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

not criminal under Clayton Act
less serious offenses

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

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.

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.

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

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

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

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

ARTICLE 3. INVESTIGATORY POWERS.

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

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

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

(b) Each demand shall

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

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

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

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

(c) No demand may

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) Each demand shall

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

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

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

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

A grant of immunity does not prevent the attorney general from instituting civil contempt proceedings against a person who violates any of the above provisions.

ARTICLE 4. GENERAL PROVISIONS.

Sec. 45.52.300. DEFINITIONS. In this chapter

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

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

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

CSSB

28 AM

"An Act relating to the capacity of persons to consent to marriage; and providing for an effective date."

COMMITTEE REPORT

2/26/75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had CSSB 28 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 _____ AND THAT CS FOR _____ DO PASS

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

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

"An Act relating to the capacity of persons to consent to marriage; and providing for an effective date."

COMMITTEE REPORT

3/14/75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had HCS CSSB 28 am H under consideration. A Majority of the members of the Committee

( ) recommends it DO PASS

( ) recommends it DO NOT PASS

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

( ) recommends it BE REPLACED WITH CS FOR _____ AND THAT CS FOR _____ DO PASS

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

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends: Do Pass

_____ recommends:

_____ recommends:

_____ Chairman

AMENDMENT

OFFERED IN THE HOUSE: BY: Judiciary Committee

To: _____ HOUSE BILL No. _____

SENATE BILL No. HCS CS SB 20 am House

PAGE: _____ LINE: _____

Amendment adopted on floor:

page 1, line 20 DELETE "over 13" and INSERT "who has reached the age of 16"

JUDICIARY COMMITTEE AMENDMENTS

page 1, line 26 DELETE "over 13" and insert "who has reached the age of 14"

page 2, before line 1 ADD a new (1) that the parents have given their consent, or

renumber line 1 (1) to (2)

and line 7 (2) to (3)

House CS CSSB 28 am House

Judiciary committee recommendation, March 19, 1975

* Sec. 2. AS 25.05.171 is repealed and re-enacted to read:

Sec. 25.05.171. PERSONS CAPABLE OF CONSENTING TO MARRIAGE: MINIMUM AGES, AND CONSENT OF PARENTS OR GUARDIAN. (a) A person who has reached the age of 16 but under the age of 18 years shall be issued a marriage license if the written consent of the parents of each person who is underage, or of the parent having actual care, custody and control, or of his or her guardian is filed with the licensing officer issuing the marriage license as provided in sec. 111 of this chapter.

(b) A superior court judge may grant permission for a person who has reached the age of 14 but under 18 years of age to marry and order the licensing officer to issue the license if he finds, following a hearing at which the parents and children are given the opportunity to appear and be heard, .

(1) that the parents have given their consent, or

(2) that the parents are

(A) arbitrarily and capriciously withholding consent; or

(B) absent or oth rwide unaccountable; or

(C) in disagreement amongst themselves on the question; or

(D) unfit to decide the matter; and

(3) that the marriage is in the best interest of the minor.

as it appears with amend. adopted in 2nd rdg & Judiciary Committee proposed amendments

House CS CSSB 28 am House

Judiciary committee recommendation, March 19, 1975

* Sec. 2. AS 25.05.171 is repealed and re-enacted to read:

Sec. 25.05.171. PERSONS CAPABLE OF CONSENTING TO MARRIAGE: MINIMUM AGES, AND CONSENT OF PARENTS OR GUARDIAN. (a) A person who has reached the age of 16 but under the age of 18 years shall be issued a marriage license if the written consent of the parents of each person who is underage, or of the parent having actual care, custody and control, or of his or her guardian is filed with the licensing officer issuing the marriage license as provided in sec. 111 of this chapter.

(b) A superior court judge may grant permission for a person who has reached the age of 14 but under 18 years of age to marry and order the licensing officer to issue the license if he finds, following a hearing at which the parents and children are given the opportunity to appear and be heard,

(1) that the parents have given their consent, or

(2) that the parents are

(A) arbitrarily and capriciously withholding consent; or

(B) absent or otherwide unaccountable; or

(C) in disagreement amongst themselves on the question; or

(D) unfit to decide the matter; and

(3) that the marriage is in the best interest of the minor.

House Judiciary Committee
March 3, 1975

The meeting was called to order at 1:15 p.m. by Chairman Gardiner. All members were present except Rep. Bradley and Rep. Specking.

CS SB 28 am Marriage

Rep. Brown moved that the bill pass with the HESS amendment and the following amendments to lines 14 and 20: After 18 years of age ADD "but above the age of 13 years" Mr. Fink objected. Mr. Brown withdrew his motion. Mr. Brown moved the above amendment only. Amendment 1 to lines 14 and 20 passed.

Mr. Fink moved the following amendment to line 20 after parental consent INSERT language that in essence says "due to parental absence, disagreement between the two parents, or if the parents are determined unfit. Mr. Parr moved to amend Mr. Fink's amendment by adding that the parents withhold consent for arbitrary or capricious reasons. Amendment 2 as amended by Mr. Parr passed.

Mr. Cotton moved that a section be added to state that members of the military service of the U.S. are not prevented from marriage by any sections of this act. Amendment 3 passed.

The committee asked that a CS be prepared to incorporate the above amendments before the committee moves the bill out of committee.

HB 59 Teacher Tenure

Mr. Brown moved the bill out of committee with a do pass. There being no objection, the bill was passed out of committee.

House Judiciary Committee
March 6, 1975

The meeting was called to order at 11:30 a.m. by Chairman Gardiner. All members were present except Reps. Brown and Parr.

CS CS SB 28 Marriage

The committee reviewed the proposed Judiciary CS. Mr. Fink moved and asked unanimous consent that H CS for CS for SB 28 pass out of committee with a do pass recommendation. There being no objections, it was so ordered.

HB 237/238 Divorce

Speaker Bradner, sponsor of the legislation testified that HB 237 was intended to provide for an informal forum outside the Rules of Court Procedure. He suggested the following amendments:

p 1, line 14 - within 30 days after
p 1, line 23 - delete "himself"
p 2 - delete section (e)
add a section stating that counsel may be present

He explained the purposes of HB 238 as follows: if custody is at issue, the court will be notified and will consider the possibility of appointing a lawyer for the child. It specifies the method of payment for the lawyer. Mr. Fink raised the question of why legal services would have a special exception.

The meeting adjourned at 12:10 p.m. and was reconvened at 1:20 p.m. All members were present except Mr. Parr and Mr. Brown.

Art Snowden testified that the Court system had no objections to the bills.

Don Clocksin of Alaska Legal Services stated that they supported HB 237 with the following amendments:
- p 1, line 14 - within 30 days after all necessary papers (cross complaints) had been filed
- p 1, line 20 - may, at any time,
- p 1, line 23 - delete "himself"
- p 2 - delete section (e)

Mr. Fink stated that if (e) were deleted, "himself could be retained for those circumstances where only the judge would be qualified to do the mediation. There was no objection from anyone present.
Mr. Clocksin continued that he thought that the right to counsel in attendance at mediation was implied, but if there was a question to add language to that effect. "Parties to the action and their counsel, if they choose . . "

586-1458

LEAGUE OF WOMEN VOTERS OF ALASKA
128-B Behrends Avenue
Juneau, Alaska 99801

Representative Terry Gardiner
Chairman, House Judiciary Committee
Alaska State Legislature
Pouch V, State Capitol
Juneau, Alaska 99801

re: CSSB 28 am - Age for Consent to Marriage

Dear Representative Gardiner:

The League of Women Voters of Alaska supports CSSB 28 am only if Section 1(c) is amended to permit a judge to have more latitude in making a decision.

We agree there is a need to revise the law in elation to the age for consent to marriage because of the revisor statute error in 1974. However, we do not feel it is necessary to alter the law in such a way as to make it more restrictive in its other provisions such as would be the case with the proposed (c) of Section 1 - "where there is evidence of actual or potential physical trauma."

A person under the age of 18 years may be an emancipated youth or may have other reasons that prevent him from obtaining parental consent. Each case should be judged on its own merits. Therefore we recommend the following amendment to CSSB 28 am:

Section 1(c): remove all wording in line 22 after the word "marry" and substitute the words "if there is substantial reason to believe that marriage is in the best interests of the persons involved."

Or,

---reinstate Section 1(b)(1) from SB 28
---change Section 1(b)(2) to read: "if parental consent is unobtainable, after such showing as the superior court may require, an order of the court granting permission to the underage person to marry."
---reinstate Section 1(c)

Very truly yours,

LEAGUE OF WOMEN VOTERS OF ALASKA

Judy Hopkins

c: Robert H. Ziegler, Sr.

SB

44

"An Act relating to the negligent use of smoking materials."

COMMITTEE REPORT

2-6-75

HOUSE

Mr. Speaker: Date Feb. 13, 1975

The Committee on JUDICIARY has had SB 44 under consideration. A Majority of the members of the Committee

(X) recommends it DO PASS

( ) recommends it DO NOT PASS

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

( ) recommends it BE REPLACED WITH CS FOR SB44 AND THAT CS FOR SB44 DO PASS

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

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

House Judiciary Committee
Statement of Intent - House CS SB 44

This new criminal offense is not intended to preclude prosecutions for other criminal offenses in appropriate cases.

Original Sponsor: Ray

IN THE SENATE BY THE JUDICIARY COMMITTEE

HOUSE CS FOR SENATE BILL NO. 44

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act relating to the negligent use of combustible materials."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 11.15 is amended by adding a new section to read:

Sec. 11.15.340. NEGLIGENT USE OF COMBUSTIBLE MATERIALS. A person who negligently or recklessly causes a fire which results in physical harm to another person or in damage to the property of another is guilty of a misdemeanor, and upon conviction is punishable by imprisonment for not more than one year, or by a fine of not more than $500, or by both.

changes

1.) property of another

2.) all negligently or recklessly

3.) Text

AUTION

ANCE OF THE CITY AND BOROUGH OF JUNEAU, ALASKA

Serial No. 70-27

IT IS UNLAWFUL TO SMOKE IN BED

32.05.010. SMOKING. Whoever, by reason of careless or willful conduct in smoking or in the use of lighters or matches shall set fire to any bedding, carpet, curtains, drapes, furniture, household equipment or other goods or chattels or to any building shall be guilty of a misdemeanor.

32.05.020. DEFINITION. The term "careless conduct in smoking" shall include as used herein, any of the following acts of commission or ommission.

Permitting a spark or sparks from a lighted cigar, cigarette, or pipe to fall upon or into anything flammable; placing any lighted smoking material on or about or in close proximity to any flammable article or articles; falling asleep with lighted smoking material of any kind at hand; throwing lighted smoking material out of a window or into an elevator pit or elsewhere than in a proper receptacle therefore; dropping a lighted cigarette or cigar or part thereof into a mail chute in any building; failure to extinguish the fire of a match or any kind of lighter device after use of the same; failure to destroy the lighted part of a cigar or cigarette when disposing of it; failure to destroy the burning smidgen or smidgens of tobacco from a pipe when cleaning or unloading a pipe.

32.05.030. NOTICE TO BE POSTED. A plainly printed notice of the provisions of this chapter shall be posted in a conspicious place in every sleeping room of every hotel, motel, rooming house, tourist home, tourist court, or other place renting rooms for the accomodation of the public. Such notice shall be posted by the owner, proprietor, lessee or managing agent of such establishment.

32.05.040. VIOLATIONS A MISDEMEANOR. Any person, firm, copartnership or corporation violating any of the provisions of this ordinance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than three hundred dollars ($300.00) and imprisoned for not more than thirty (30) days, or both.

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HB 6

Amendmert proposed by Rep. Parr

Line 13

in da age to the property of another,

---

language in SB 44 which has passed the Senate

Line 13

to another person is guilty

---

proposed language of letter of intent

This new criminal offense is not intended to preclude prosecutions for homicide in appropriate cases.

A M E N D M E N T

IN THE HOUSE BY THE JUDICIARY COMMITTEE

TC: HOUSE BILL NO. 6

Page 1, line 6: delete all matter and insert:

"For an Act entitled: "An Act relating to the negligent use of flammable materials."

Page 1, line 10: delete all matter and insert:

"Sec. 11.15.340. NEGLIGENT USE OF FLAMMABLE MATERIALS. A person who negligently or recklessly causes a fire-"

Page 1, line 13: delete all matter and insert:

"to another person or in damage to the property of another, is guilty of a misdemeanor,-"

House Judiciary Committee
February 5, 1975

The meeting was called to order at 1:35 by Chairman Gardiner.
Members present: Gardiner, Parr, Cotton, Brown

HB 6 - Smoking materials

SB 44

Representative Jim Duncan gave a brief description of the bill. He stated that the city and borough of Juneau presently have such an ordinance and the passage of this bill would not jeopardize anyone's option to file suit as the result of a fire.

The question was raised as to whether the passage of this bill would eliminate the possible felony prosecution of negligent homicide.

Rep. Parr offered a proposed amendment to line 13: in damage to the property of another to eliminate the possibility of being fined for damage to one's own property.

Rep. Brown suggested that a letter of intent accompany the bill to state that "This new criminal offense is not intended to preclude prosecutions for homicide in appropriate cases."

HJR 3 - Grand Jury

Dan Hickey, District Attorney stated that the 5th amendment guarantee in the U.S. Constitution of grand jury indictment is not transferred to the states through the 14th amendment. He cited two Supreme Court decisions.

He indicated that if the bill passes, prosecutors would still choose grand jury indictments in cases of: fugitive defendents, corrupt public conduct, doubtful cases, and to get testimony under oath.

He stated that 12.80.020 should also be amended. The committee agreed that, should HJR 3 receive voter approval, there would still be time for the next legislature to amend the above statute prior to the existence of a conflict.

Mr. Hickey favored the proposed amendment to line 12 - felony. He suggested that "presentment" be deleted in line 12 since in Alaska persons are not held on a presentment. In line 14 he suggested that the language, "or magistrate" be added after "judge." In line 14 eliminate "hearing" and insert "examination."

In response to a question from Rep. Parr, Senator Rader stated that the committee chairman's power would probably be greater under a unicameral system but since there would be more committees, areas of jurisdiction would be more narrow. The whole system would be more open and the number of people with power to stop legislation would be limited. Rep. Specking stated that we need rules changes not a whole new system.

Rep. Gardiner asked the committee how they wanted to handle this piece of legislation. All members present indicated that they wished to pass it out of committee after amended. Rep. Gardiner stated that announcements would be made to the press of a public hearing to be held in about three weeks. In the mean time, amendments would be drawn up and considered.

HB 55 - SB 53

The proposed statement of intent was approved by the committee on a voice vote. Rep. Brown moved and asked unanimous consent that House CS for SB 53 be passed out of committee. There being no objections, the motion passed.

HB 6

Rep. Fink suggested an amendment to change the language to general recklessness or negligence and delete the reference to smoking materials. The committee asked that research be done into the present statutes on negligence. The title too would have to be amended.

SB44

House Judiciary Committee
February 13, 1975

The meeting was called to order at 1:35 p.m. by Chairman Gardiner. Members present: Gardiner, Fink, Specking, and Brown.

HCR 5 Drivers License Regulations

Charlie Smith and Dennis Robertson from the Department of Public Safety testified that the following changes had been made: The effective date was July 1, the implimentation date January 1. The maximum weight a towed vehicle could be with a regular license was increased from 5,000 to 6,000 lbs.

The committee suggested that a separate category of license be created for 5th wheel, boats and recreation vehicles but not house trailers.
Special permits could also be issued for limited times.

Public Safety will make the requested changes and appear again before committee with a copy of the new regulations.

HB 112 Conspiracy

Dan Hickey, District Attorney explained the proposed CS. It is limited to specific crimes in section (a). Section (b) contains an area open to court interpretation: whether one could be prosecuted for an agreement made outside the state with an overt act within the state. Section (c) is just slightly changed. He also suggested no effective date, but would have the legislation go into effect 90 days after enactment.

Committee suggestions included adding to the list of covered crimes, forgery and drugs, adding a definition of overt act and agree to commit, and that some language should be added to cover those who renounce the crime and actually attempt to thwart its success.

Mr. Weberg and Mr. Wellington of Public Safety supported the bill and urged inclusion of narcotics offenses.

HB 6/SB 44

Gary Crouse, Deputy Fire Marshall testified for the bill. The committee agreed to accept the proposed amendments of Mr. Fink and Mr. Parr and submit House CS for SB 44.

SB

53

"An Act repealing the requirement that a plaintiff suing the state post bond for costs at the filing of the complaint; and providing for an effective date."

1/30/75

COMMITTEE REPORT

HOUSE

Mr. Speaker: Date Feb. 6, 1975

The Committee on Judicia has had SB 53 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 SB 53 AND THAT CS FOR SB 53 DO PASS

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

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

_____ _____ _____

_____ _____ _____

_____ _____ _____

_____ _____ _____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

Statement of Intent
HCS SB 53 - "An Act repealing the requirement that a plaintiff suing the state post bond for costs at the filing of the complaint; and providing for an effective date."

by the House Judiciary Committee
February 6, 1975

The purpose of this bill is to clarify the language of the existing law authorizing suits against incorporated units of local government and to prohibit any requirement that bond be posted before suing the state or any incorporated unit of local government. It is not the committee's intent to amend the rules of court relating to the court's discretionary powers to require security in matters involving injunctive relief.

Requirement to post bond: to sue state { Page 194 of House Journal

1. serves no real purpose
2. Federal govt. doesn't require
3. Courts now only require nominal bonds to be posted

Our bill goes beyond Senate and strikes bond requirements as related to local governments
SB simply repealed 260

Attorney general was mildly opposed and would have preferred discretionary judgement ~~of~~ for bond requirement by the judge

~~Brown~~
Paar

Fed. govt. doesn't require bond to file suit

State insured by tort liability

lawsuits vs. injunctions
court rules

this act affects only wage earners

A. F. - Mildly opposed

Why not have discretionary
provision for the court

Judge makes decision re V

Spencer wanted it clear
that bill didn't apply to injunctions

Question re drafting re line 14 & 15, 16

FAIRBANKS OFFICE
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Grace Berg Schaible
Howard Staley
Dennis E. Cook
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300 Barnette Street
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MERFAIR

February 3, 1975

Mr. Terry Gardner
House Judiciary Committee
House of Representatives
Pouch V
Juneau, Alaska 99801

Re: Senate Bill 53

Dear Representative Gardner:

I would urge you to give serious and favorable consideration to Senate Bill 53 which would eliminate the requirement of AS 09.50.260 that a party filing an action against the State file an undertaking or bond in an amount to be fixed by the judge as security for any costs incurred by the State if the party fails to prosecute the action or if the State wins the action. My acquaintance with the problem arises from the fact that I frequently represent the State's insurance carrier in tort actions against the State. Examples of such actions are those arising out of automobile accidents with vehicles driven by State Troopers, or actions against the State for personal injuries arising out of alleged negligence of the State Highway Department in highway maintenance. I have handled a number of these cases from the time they were filed until the time when they were settled or tried, and I have yet to see one case in which this statute gave any real protection to either the State or its insurance company, or in which it served to discourage the filing of irresponsible lawsuits. Most of the judges consider the requirement of the undertaking to be rather unfair, and seem to feel that it places an unfair burden upon someone suing the State, that is not placed upon other litigants. As a consequence, the judges tend to fix the bond in a very nominal amount, frequently $250 or less, which is hardly worth the paper work involved in seeing that the requirement is met. Attorneys who represent litigants against the State generally fell that the requirement is very unfair, and at least one of them, Representative Steve Cowper, has maintained that the requirement constitutes an unconstitutional discrimination among litigants. I think the requirement should be eliminated because it imposes a useless complication in litigation against the State which does not benefit anyone including the State.

HB92

It is also my understanding that another bill will be introduced to repeal AS 09.50.290, which provides, "Actions against the state under §§ 250-300 of this chapter shall be tried by the court without a jury." This of course means that an action against the

State is tried by a judge without a jury. In virtually all other litigation, either the plaintiff or the defendant can ask for a jury trial. This provision, like the rest of our State Tort Claims Act, has been taken almost word for word from the Federal Tort Claims Act. I believe the intent of this statute is that the State should be protected by any arbitrary or impassioned action of a jury, and that the State's interests would actually be protected by requiring trial before a judge. This has not worked out in practice. As an attorney representing the State and its insurance carrier, I would greatly prefer to have the trial of a personal injury action against the State tried to a jury rather than to a judge. I believe that many judges, either consciously or unconsciously, give considerable weight to the fact that the State does have insurance, and recent awards by judges in personal injury actions against the State have tended to be considerably higher than juries probably would have awarded. Repealing AS 09.50.290 would put the State on the same basis with other litigants. In a personal injury action or other action against the State, both the party suing the State and the State itself would have the same right to a jury trial as other litigants. If neither the State nor the party suing the State requested a jury, of course the action would still be decided by a judge.

I think in the final analysis it is probably immaterial whether repealing this statute would be a benefit or a detriment to the State. Our State Constitution and our legal system is generally based upon respect for the jury trial, and I can't see any good reason why actions involving the State should be an exception. Of course in a jury trial, the judge still determines what is relevant evidence, and the judge can still determine whether or not there is enough evidence on any particular issue of fact that the issue should be submitted to the jury. There is therefore no danger of a jury making new law in regard to actions involving the State tried to a jury because the scope of the jury's decision, the evidence it may consider, and the principles of law to be applied to that evidence are supplied to the jury by the judge.

I would like to thank you in advance for your serious consideration of Senate Bill 53 and the other bill which I expect will be forthcoming during this session, both of which I feel would substantially improve the ground rules laid down by statute regarding litigation against the State.

Yours sincerely,

Howard Staley

Howard Staley

HS:jb

Proposed statement of intent

HB 55/SB 53

The purpose of this bill is to clarify the language of the existing law authorizing suits against incorporated units of local government and to prohibit any requirement that bond be posted before suing the state or any incorporated unit of local government. It is not the committee's intent to amend the rules of court relating to the court's discretionary powers to require security in matters involving injunctive relief.

SB 53

February 28, 1975

TO: Mike Miller

FROM: Terry Gardiner

SUBJECT: SB 53

I would suggest that the House not recede to the Senate. The basic difference between our bill and the Senate bill is that our bill includes municipalities. Under the Senate bill a municipality could require that a person post a bond for cost at the filing of a complaint. According to Rep. Cowper the only community that now requires this is Fairbanks. If it's good enough for the state policy, it's good enough for the municipal policy. Furthermore, Rep. Cowper also feels that this requirement is probably unconstitutional. We are not talking about a case of whether the state is trying to set municipal policy, it is more a matter of an individual's right to file a complaint.

Terry--
for your information--
Mike M.

Alaska State Legislature
Senate

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99801

MESSAGE TO THE HOUSE

Date: 2-27-75

MI. SPEAKER

The Senate has failed to concur in the House amendment to SENATE BILL NO. 53 (namely HOUSE COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 53) and respectfully requests that the House recede from its amendment.

SENATE BILL NO. 53 (repealing the requirement that a plaintiff suing the state post bond for costs at the filing of the complaint; eff. date)

Senate Secretary

SB

60

"An Act relating to arbitrary discrimination; and providing for an effective date."
a

COMMITTEE REPORT

4/29/75

HOUSE

Mr. Speaker: Date 5/2/75

The Committee on JUDICIARY has had CSSB 60 (Rules) [illegible] 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)

(X) recommends it BE REPLACED WITH CS FOR CSSB 60 AND THAT CS FOR [illegible] DO PASS

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

( ) reports it back WITHOUT RECOMMENDATION

( ) "other"

Members signing the Majority report:

Terry Hardin
[illegible]
[illegible]
Richard Peña

Members NOT concurring in the Majority report:

[illegible] recommends: [illegible]

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

Terry Hardin Chairman

R. E. ROBERTSON (1885-1961)
F. O. EASTAUGH
J. B. BRADLEY
W. G. RUDDY
L. B. JACOBSON
R. B. BAKER (ANCHORAGE)
M. T. THOMAS
L. J. BARKER (ANCHORAGE)
W. F. BRATTAIN II
J. F. CLARK
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OF COUNSEL
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ANCHORAGE, ALASKA 99510
PHONE (907) 277-6693
TELEX (090) 26-486

PLEASE REPLY TO
☒ JUNEAU OFFICE
☐ ANCHORAGE OFFICE

May 6, 1975

Honorable Terry Gardiner
Chairman
House Judiciary Committee
Alaska State House of Representatives
Pouch "V", State Capitol Building
Juneau, Alaska 99811

Re: CSSB 60 (Rules) Amended

Dear Chairman Gardiner:

This letter is written on behalf of Beneficial Management Corporation, a company affiliated with Beneficial Finance Company.

Beneficial Management has no objection to the laudable purposes of the referenced bill. It has come to our attention, however, that compliance with its provisions relating to loan applications would involve loan companies in violation of the Alaska Small Loans Act, and specifically AS 06.20.240. That section reads:

> "Loans for purpose of obtaining higher interest. No licensee may induce or permit any borrower to split up or divide any loan. No licensee may induce or permit any person, nor any husband and wife jointly or severally, to become obligated, directly or contingently or both, under more than one loan contract at the same time, for the purpose or with the result of obtaining a higher rate of interest than would otherwise be permitted by § 230 of this chapter."

In the common situation where a husband or wife applied for a loan when a loan was already outstanding to the spouse of the applicant, the quoted section would require denial

of the application, exactly because of the marital status of the applicant. This would be a violation of AS 18.80.250 as amended by the pending bill.

We believe that the protections afforded by each of the conflicting provisions can best be retained by allowing the application of the second spouse to be processed normally, unless under the circumstances the intent is not to extend credit separately to the second spouse, but rather to split up an application for a loan exeeeding the small loan limits into two loans in order to extract interest not otherwise lawful for a loan of the total amount applied for. For example, when a couple wants a loan for a single purpose, and as part of a single transaction loans are granted to each to avoid the small loan limits, the purpose of the pending bill is not being furthered, and AS 06.20.240 should control.

I have drafted an amendment to Sec. 12 of the act, adding a subsection (c) to AS 18.80.250, which hopefully will effectively deal with this problem. That amendment is enclosed.

I am sorry that other commitments preclude my attendance at your hearing this afternoon. I hope the Committee will favorably consider the proposed amendment, and will contact me if further information or input will be helpful.

Thank you for considering this letter.

Very truly yours,

M. T. THOMAS

MTT:kh

Enclosure

(c) No action by a financial institution or other commercial institution extending credit taken in compliance with (a) of this section, including the extension of credit or the making of a loan, shall be a violation of AS 06.20.240, unless done with the intent or purpose of obtaining a higher rate of interest than would otherwise be permitted by AS 06.20.230.

National Observer
May 1975

Rules on Credit Aim to End Bias Against Women

By Barbara J. Katz

Women who seek credit from retail stores, mortgage institutions, and other concerns may soon have an easier time of it.

Regulations proposed by the Federal Reserve Board last week would prohibit creditors from discriminating against credit seekers on the basis of sex or marital status. The regulations were issued to implement the Equal Credit Opportunity Act, passed by Congress last year.

The act, which goes into effect Oct. 28, was sought by women's and consumer groups who contended that women were often denied credit solely because they were women. Divorced, separated, and widowed women often found that after years of obtaining credit under their husbands' names, they were unable to get credit in their own name.

To remedy these and other discriminatory practices, the proposed regulations would forbid creditors from:

- Terminating credit because of a change in a person's marital status without evidence that the credit applicant's financial circumstances had been unfavorably affected.
- Requiring the signature of a spouse on a credit application if the applicant is creditworthy in his or her own right.
- Assigning any value to sex or marital status in the "point system" used by many creditors.
- Ruling that married persons are more creditworthy than unmarried or separated persons.
- Asking—as many creditors have asked women in the past—whether the applicant uses birth control or intends to have children.
- Discounting any part of a person's income because of sex or marital status, a common practice of mortgage lenders when evaluating a working wife's income.

The proposed regulations also would require creditors to do such things as consider alimony and child support as part of a person's income, and supply a written statement of reasons for denying or terminating credit when a rejected applicant requests an explanation.

The regulations also would require creditors to establish separate accounts for husbands and wives who apply for credit separately and are creditworthy in their own right, and to extend credit in any legal name designated by a qualified applicant.

Among the more far-reaching proposals put forth is one that would require creditors by Oct. 28, 1976—one year after the act takes effect—to maintain accounts used by both a husband and wife in both names. This regulation is aimed particularly at solving the problem of the newly divorced woman who is unable to get credit because she has never held credit in her own name.

The board will hold a hearing on these and other proposed regulations on May 28 and 29 in Washington, D.C. Persons who wish to testify are to notify the secretary of the board of governors of the Federal Reserve System by May 14. Persons who wish to submit written testimony are to do so by June 30.

ALASKA STATE COMMISSION FOR HUMAN RIGHTS

JAY S. HAMMOND, Governor

March 26, 1975

The Honorable Patrick Rodey
Alaska State Legislature
State Capitol
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

The following is a short explanation of the changes proposed for AS 18.80:

AS 18.80.060(b)(3) is amended to put subpoena and discovery powers into a separate subsection (new subsection 18.80.060(b)(4)), thereby expressly making these powers independent of the power to hold hearings. Such a move would end procedural challenges alleging that the Commission does not have discovery powers during its investigation of a discrimination complaint.

AS 18.80.060(b)(4) this new subsection makes express the Commission's power to require discovery during investigation of alleged discriminatory conduct. The language is substantially the same as that which appears in AS 42.06.160(c) (Alaska Pipeline Commission discovery powers) and AS 42.07.141(d) (Alaska Transportation Commission discovery powers).

AS 18.80.130(a)(1) as presently written could be construed as limiting the relief that may be granted to an aggrieved person to that which is set out in the statute. The amendment would clarify the Commission's power to shape appropriate relief. Federal court decisions and many other states' court decisions make it clear that the Commission does have discretion in shaping relief.

AS 18.80.130(a)(2) is amended to provide some form of adequate relief for a person who has been discriminated in housing. The present statutory relief is inadequate in that the housing accommodation sought to be rented, leased or purchased is often unavailable at the time the Commission issues an order. The Civil Rights Act of 1968 provides for an award of actual damages and not more than $1,000 punitive damages, together with costs and reasonable attorney's fees. (See sec. 812(c)). A similar relief should be provided for citizens who file a complaint with the State.

AS 18.80.130(e) is based upon the language in the Clean Air Act, 42 U.S.C. §1857 et seq. In a case of first impression under that act an award of counsel fees and costs to an unsuccessful litigant was upheld. Citizens Association of Georgetown v. Washington, United States District Court for the District of Columbia, September 30, 1974.

an award of attorney's fees to any private party is meant to avoid the type of problem encountered by the courts in applying the "prevailing party" language found in various statutes. (See, for example, Hughes, Award of Attorney's Fees in Alaska: An Analysis of Rule 82.) Furthermore, in the civil rights field, awarding attorney's fees to an unsuccessful complainant has been held proper if the complainant performed a valuable public service in bringing the suit.

The word "private" is meant to indicate that a public agency such as the Commission would not be entitled to recover expenses but a private attorney who may be designated by the executive director to present a case before the Commission (as was the situation in ASCHR v. University of Alaska) could recover reasonable attorney fees.

AS 18.80.240. In the sale, lease or rental of commercial property or commercially zoned property, it is legal in the State of Alaska to discriminate against a person on the basis of that person's race, color, religion, sex, marital status, changes in marital status, pregnancy or national origin. The proposed change in the title of this section would fill this large loophole and more adequately protect our citizens.

AS 18.80.240(4) thru (7). These, subsections are designed to bring the state's statutes up to federal standards. Subsections (4) and (5) are taken from the Washington statutes against discrimination (RCW 49.60.220). Subsections (6) and (7) are taken and are substantially similar to Sections 804(d) and (e) of the Civil Rights Act of 1968 (Title VII, Fair Housing).

AS 18.80.300(8). This definition is the same as that which was adopted by Washington at RCW 49.60.040.

AS 18.80.310. Presently, it is questionable whether or not second-class boroughs and possibly other local governments have the power to protect their citizens on a local level. This section authorizes local governments to set up local human rights commissions to handle discrimination complaints on a local level. The wording of this section is taken from Section 962.1 of the Pennsylvannia Human Rights Act.

I will be available to answer any questions you may have on the Commission's proposed amendments or these explanations anytime before April 1, 1975. After that date, please contact Larry Shaw in the Juneau Office for assistance desired.

Sincerely,

Tim Stearns
Administrative Counsel

TS:kc

A M E N D M E N T

TO: HCS FOR CS FOR SENATE BILL NO. 60 BY PARKER

Page 6, line 5: after "origin," insert "or because of the fact that that person has control or custody of a minor child who will occupy the premises;"

Page 6, line 10: after "origin" insert ", or because of the fact that that person has control or custody of a minor child who will occupy the premises,"

Page 6, line 24: after "origin" insert ", or the fact that the person has control of a minor child who will occupy the premises,"

Page 7, line 1: after "person" insert ", or because of the fact that that person has control or custody of a minor child who will occupy the premises"

Page 7, line 7: after "origin," insert "or the fact that the person has control of a minor child who will occupy the premises,"

HCS CSSB 60

Page 3, Lines 9 through 17:

(b) Therefore, it is the policy of the state and the purpose of this chapter to eliminate and prevent discrimination in employment, in credit and financing practices, in places of public accommodation,[IN HOUSING ACCOMMOD...ONS] and in the sale, [OR] lease, or rental of real [OF UNIMPROVED] property because of race, religion, color, national origin, [OR, IN THE CASE OF EMPLOYMENT, BECAUSE OF] sex, [OR] age, marital status, changes in marital status, pregnancy or parenthood. It is not the purpose of this chapter to supersede laws pertaining to child labor, the age of majority or other age restrictions or requirements.

Drafting Correction

SB

62

"An Act relating to conflicts of interests; and providing for an effective date."

COMMITTEE REPORT

3/26/75

HOUSE

Mr. Speaker: Date _____

The Committee on JUDICIARY has had CSSB 62 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 _____ AND THAT CS FOR _____ DO PASS

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

( ) reports it back WITHOUT RECOMMENDATION

( ) "other" Ind. Rec

Members signing the Majority report:

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Members NOT concurring in the Majority report:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ recommends:

_____ Chairman

HOUSE ROLL CALL

Permanent Fund

_____ 19__

Subject

W/D - Withdrew sponsor 3 2 4

O - Not originally sponsors

Effective date

	Yea	Nay	Absent
ANDERSON	✓		
BEIRNE X			
BOWMAN			
BRADLEY			
BRADNER			
BROWN			
BUCHHOLDT			
COTTEN			
COWPER			
DAVIS	✓		
DUNCAN			
ELIASON	✓		
FINK O			
FISCHER	✓		
FREEMAN	✓		
GARDINER			
GRUENING			
GUY O			
HACKNEY	✓		
HAUGEN X			
HERSHBERGER	✓		
HUNTINGTON O			
ITTA	✓		
KELLEY			
MCKINNON			
MALONE			
MILLER			
NAUGHTON			
OSE ?			
OSTERBACK	✓		
OSTROSKY			
PARKER			
PARR			
RHODE ?			
SMITH			
SPECKING X			
SULLIVAN			
SWANSON			
URION	✓		
WALLIS O			

YEAS _____

NAYS _____

ABSENT _____

EXCUSED _____

The _____ passed

The _____ did not pass