



LAWS OF ALASKA

1975

Source

Chapter No.

HCS CSSSSB 5 am H

53

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 substantially to lessen competition or tend

to create a monopoly in any line of commerce.

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

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

(c) This section does not apply to mergers, acquisitions or holding companies permitted by AS 06.05.235 or to a merger carried out in accordance with AS 21.69.590 - 21.69.600, or to mergers, acquisitions or holding companies permitted and regulated by a regulatory agency of the United States having jurisdiction and control over those mergers and acquisitions.

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

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

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

(d) The attorney general may bring an action at any time to cause a director, officer, or trustee who may be

occupying such a position in violation of this section to vacate the office or offices to effect the termination of the prohibited interlocking relationship.

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

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

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

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

- (1) AS 06.05.235;
- (2) AS 10.15; and
- (3) AS 31.05.110.

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

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

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

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

(g) This chapter does not forbid activities expressly required by a regulatory agency of the state. Activities permitted by a regulatory agency of the state are not forbidden by this chapter if the regulatory agency has given

due consideration to the possible 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 necessary 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 wilful, the plaintiff shall be awarded threefold the amount of damages sustained by him, plus the costs of the suit, including reasonable attorney fees; and

(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.

(b) When the state, a home rule or general law city or borough or other governmental 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 sec. 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.

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 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 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. If the attorney general 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. 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

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attorney general 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.

(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 a 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.