

Chapter 55. Alaska Native Claims Settlement Act Corporations Proxy Solicitations

Sec. 45.55.138. Application to Alaska Native Claims Settlement Act corporations. The initial issue of stock of a corporation organized under Alaska law under [pursuant to] 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) is not a sale of a security under **AS 45.56.105** [AS 45.55.070] and **AS 45.56.900(27)**[45.56.990(28)] .

Sec. 45.55.139. Reports of corporations. A copy of all annual reports, proxies, consents or authorizations, proxy statements, and other materials relating to proxy solicitations distributed, published, or made available by any person to at least 30 Alaska resident shareholders of a corporation organized under Alaska law under 43 U.S.C. 1601 et. seq. (Alaska Native Claims Settlement Act) that has total assets exceeding \$1,000,000 and a class of equity security held of record by 500 or more persons [AND WHICH IS EXEMPTED FROM THE REGISTRATION REQUIREMENTS OF AS 45.55.070 BY 45.55.138], shall be filed with the administrator concurrently with its distribution to shareholders.

Sec. 45.55.160. Misleading filings. A person may not, in a document filed with the administrator or in a proceeding under this chapter, make or cause to be made an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

Sec. 45.55.905. Administration of chapter. (a) The Department of Commerce, Community, and Economic Development shall administer this chapter.

(b) The administrator or an officer or employee of the administrator may not use for personal benefit information that is filed with or obtained by the administrator and that is not made public. A [NO] provision of this chapter **does not authorize** [AUTHORIZES] the administrator or an officer or employee of the administrator to disclose the information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. A [NO] provision of this chapter **does not** either **create or derogate** [CREATES OR DEGROGATES] from any privilege that exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the administrator or an officer or employee of the administrator.

Sec. 45.55.910. Investigations and subpoenas; confidentiality. (a) The administrator may

(1) make public or private investigations inside or outside this state considered necessary to determine whether a person has violated or is about to violate any provision of this chapter or a regulation or order under this chapter, or to aid in the enforcement of this chapter or in the adopting

regulations and forms under this chapter;

(2) require or permit a person to file a statement in writing, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated; and

(3) publish information concerning a violation of this chapter or a regulation or order under this chapter.

(b) For the purpose of an investigation or proceeding under this chapter, the administrator or an officer designated by the administrator may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records that the administrator considers relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to, a person, the superior court, upon application by the administrator, may issue to the person an order requiring the person to appear before the administrator, or the officer designated by the administrator, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) A person is not excused from attending and testifying or from producing a document or record before the administrator, or in obedience to the subpoena of the administrator or officer designated by the administrator, or in a proceeding instituted by the administrator, on the ground that the testimony or evidence required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. However, an individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which the person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

(e) Notwithstanding AS 45.55.905(b), all investigative files are confidential, except that they must be disclosed by the administrator as required for discovery in an administrative or a judicial proceeding.

Sec. 45.55.920. Orders, injunctions, and civil penalties. (a) If it appears to the administrator that a person has engaged or is about to engage in an act or practice in violation of a provision of this chapter or regulation or order under this chapter, the administrator may

(1) in the public interest [OR FOR THE PROTECTION OF INVESTORS,] issue an order

(A) directing the person to cease and desist from continuing the act or practice;

(B) directing the person, for a period not to exceed three years, to file the annual reports, proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 with the administrator for examination and review 10 working days before a distribution to shareholders; and

(C) voiding the proxies obtained by a person required to file under AS 45.55.139, including their future exercise or actions resulting from their past exercise, if the proxies were solicited by means of an untrue or misleading statement prohibited under AS 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or regulation or order under this chapter, and upon a proper showing, the appropriate remedy must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.

(b) The administrator may issue an order against **a person** [AN APPLICANT, REGISTERED PERSON, OR OTHER PERSON] who knowingly or intentionally violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$2,500 for a single violation, or not more than \$25,000 for multiple violations, in a single proceeding or a series of related proceedings.

(c) For violations not covered by (b) of this section, the administrator may issue an order against **a person** [AN APPLICANT, REGISTERED PERSON, OR OTHER PERSON] who violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$500 for a single violation, or not more than \$5,000 for multiple violations, in a single proceeding or a series of related proceedings.

(d) Before issuing an order under (a)(1), (b), or (c) of this section, the administrator shall give reasonable notice of and an opportunity for a hearing. However, the administrator may issue a temporary order under (a)(1) of this section pending the hearing, which remains in effect until 10 days after the hearing is held and which becomes final if the person to whom notice is addressed does not request a hearing within 15 days after the receipt of notice.

(e) After an order issued by the administrator under (b) or (c) of this section becomes final and all rights of appeal are exhausted, the administrator may petition the superior court to enter a judgment against a person who is a respondent in the order for the amount of the civil penalty levied against the person. Subject to AS 44.62.570, the filing of the petition for a judgment does not reopen the final order to further substantive review unless the court orders otherwise. A judgment entered

under this subsection may be executed on and levied under in the manner provided in AS 09.35.

Sec. 45.55.925. Criminal penalties. (a) In addition to the civil penalties assessed under AS 45.55.920, a person who wilfully violates a provision of this chapter except AS 45.55.160 [AS 45.55.030(e), 45.55.040(h), 45.55.075, or 45.55.160], or who wilfully violates a regulation or order under this chapter, or who wilfully violates AS 45.55.160 knowing the statement made to be false or misleading in a material respect or the omission to be misleading by any material respect, upon conviction, is punishable by a fine of not more than \$5,000, or by imprisonment for not less than one year nor more than five years, or both. Upon conviction of an individual for a felony under this chapter, imprisonment for not less than one year is mandatory. However, an individual may not be imprisoned for the violation of a regulation or order if the individual proves that the individual had no knowledge of the regulation or order. An indictment or information may not be returned under this chapter more than five years after the alleged violation.

(b) The administrator may refer the evidence that is available concerning violations of this chapter or a regulation or order under this chapter to the attorney general who may, with or without a reference, institute appropriate criminal proceedings under this chapter.

(c) Nothing in this chapter limits the power of the state to punish a person for conduct that constitutes a crime by statute or at common law.

Sec. 45.55.950. Regulations, forms, orders, and hearings. (a) The administrator may make, adopt, amend, and rescind the regulations, forms, and orders that are necessary to carry out this chapter [INCLUDING REGULATIONS AND FORMS GOVERNING REGISTRATION STATEMENTS, APPLICATIONS, AND REPORTS, AND DEFINING TERMS, WHETHER OR NOT USED IN THIS CHAPTER INsofar as the definitions are not inconsistent with this chapter. for the purpose of regulations and forms, the administrator may classify securities, persons, and matters within the jurisdiction of the administrator, and prescribe different requirements for different classes].

(b) A regulation, form, or order may not be made, adopted, amended, or rescinded unless the administrator finds that the action is necessary or appropriate in the public interest [OR FOR THE PROTECTION OF INVESTORS AND CONSISTENT WITH THE PURPOSES FAIRLY INTENDED BY THE POLICY AND PROVISIONS OF THIS CHAPTER. IN ADOPTING REGULATIONS AND FORMS THE ADMINISTRATOR MAY COOPERATE WITH THE SECURITIES ADMINISTRATORS OF OTHER STATES AND THE SECURITIES AND EXCHANGE COMMISSION WITH A VIEW TO EFFECTUATING THE POLICY OF THIS SECTION TO ACHIEVE MAXIMUM UNIFORMITY IN THE FORM AND CONTENT OF

REGISTRATION STATEMENTS, APPLICATIONS AND REPORTS WHEREVER PRACTICAL].

(c) All financial statements shall be prepared in accordance with generally accepted accounting practices. The administrator may by regulation or order prescribe

(1) the form and content of financial statements required under this chapter;

(2) the circumstances under which consolidated financial statements shall be filed; and

(3) whether any required financial statements shall be certified by independent or certified public accountants.

(d) A provision of this chapter imposing liability does not apply to an act done or omitted in good faith in conformity with a regulation, form, or order of the administrator, notwithstanding that the regulation, form, or order may be later amended or rescinded or be determined by judicial or other authority to be invalid.

(e) Every hearing in an administrative proceeding shall be public unless the administrative law judge, in the exercise of discretion, grants a request joined in by all the respondents that the hearing be conducted privately.

Sec. 45.55.985 Definitions. In this chapter, unless the context otherwise requires, “administrator” means the commissioner of commerce, community, and economic development or a designee of the commissioner.