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CS FOR SENATE BILL NO. 126(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR COSTELLO

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing an exemption for the offering and sale of certain securities."**

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

3 * **Section 1.** AS 45.55 is amended by adding a new section to article 4 to read:

4 **Sec. 45.55.175. Exemption for certain security sales and offerings.** (a) An
5 offer or sale of securities conducted solely in this state to a person who has established
6 residency in this state, by an issuer in a transaction that meets the requirements of this
7 section, is exempt from the requirements of AS 45.55.070 - 45.55.120 and 45.55.150
8 and is subject to the following limitations:

9 (1) the issuer of the security shall be a for-profit corporation, another
10 for-profit entity, or a business cooperative, have its principal place of business in this
11 state, and be licensed by the department;

12 (2) the transaction must meet the requirements of the federal
13 exemption for intrastate offerings in 15 U.S.C. 77c(a)(11) (Securities Act of 1933) and
14 17 C.F.R. 230.147; the securities must be offered to and sold only to persons who
15 have established residency in this state at the time of purchase; before any offer or sale

1 under this exemption, the seller shall obtain documentary evidence from each
2 prospective purchaser that provides the seller with a reasonable basis to believe the
3 investor has established residency in this state;

4 (3) the sum of all cash and other consideration to be received for all
5 sales of the security in reliance on this exemption may not exceed \$1,000,000, less the
6 aggregate amount received for all sales of securities by the issuer within the 12 months
7 before the first offer or sale made in reliance on this exemption;

8 (4) the issuer may not accept more than \$7,500 from a single purchaser
9 during a 12-month period unless the purchaser is an accredited investor as defined by
10 17 C.F.R. 230.501;

11 (5) the issuer reasonably believes that all purchasers of securities are
12 purchasing for investment and not for sale in connection with a distribution of the
13 security;

14 (6) a commission or remuneration may not be paid or given, directly or
15 indirectly, for any person's participation in the offer or sale of securities for the issuer
16 unless the person is registered as a broker-dealer, agent, investment adviser
17 representative, or state investment adviser under AS 45.55.030 or 45.55.035;

18 (7) the issuer of the security shall deposit in an escrow account in a
19 bank or other depository institution authorized to do business in this state all funds
20 received from investors until the minimum target dollar amount for the security
21 offering is met; the issuer shall file the escrow agreement with the administrator, and
22 the contents of the escrow agreement must include a statement that the proceeds of the
23 sale under this section will not be released from the escrow account until the minimum
24 target dollar amount for the security offering is met; all funds shall be used in
25 accordance with representations made to investors;

26 (8) not less than 10 days before the use of a general solicitation or
27 within 15 days after the first sale of a security under this exemption, if general
28 solicitation has not been used before the sale, whichever occurs first, the issuer shall
29 provide a notice to the administrator as prescribed in regulations for this section; the
30 notice must specify that the issuer is conducting an offering in reliance on this
31 exemption and must contain the names and addresses of

1 (A) the issuer;

2 (B) officers, directors, and any person who controls the issuer;

3 (C) all persons who will be involved in the offer or sale of
4 securities on behalf of the issuer; and

5 (D) the bank or other depository institution in which investor
6 funds will be deposited;

7 (9) the issuer may not be, either before or as a result of the offering,

8 (A) an investment company as defined by 15 U.S.C. 80a-1 -
9 80a-64 (Investment Company Act of 1940), or subject to the reporting
10 requirements of 15 U.S.C. 78m or 78o (Securities Exchange Act of 1934); or

11 (B) a broker-dealer, agent, investment adviser representative, or
12 state investment adviser subject to AS 45.55.030 or 45.55.035;

13 (10) the issuer shall inform all purchasers that the securities have not
14 been registered under AS 45.55.070 - 45.55.120, are exempt from AS 45.55.150, and
15 may not be resold unless the securities are registered or qualify for an exemption from
16 registration under AS 45.55.900; in addition, the issuer shall make the disclosures
17 required by 17 C.F.R. 230.147(f);

18 (11) the issuer shall require all purchasers to sign the following
19 statement at the time of sale: "I acknowledge that I am investing in a high-risk,
20 speculative business venture, that I may lose all of my investment, and that I can
21 afford the loss of my investment";

22 (12) this exemption may not be used in conjunction with any other
23 exemption under this chapter, except the exemption related to institutional investors
24 under AS 45.55.030(c) and for offers and sales to persons who control the issuer; sales
25 to persons who control the issuer do not count toward the limitation in (3) of this
26 subsection;

27 (13) this exemption may not be construed to remove a person from the
28 anti-fraud and other provisions under AS 45.55.010 - 45.55.028, and the exemption
29 may not be construed to provide relief from another provision of this chapter other
30 than as expressly stated.

31 (b) The administrator may by order deny or revoke the exemption specified in

1 this section with respect to a specific security if the administrator finds that the sale of
2 the security would work or tend to work a fraud on the purchasers of the security. An
3 order under this subsection may not operate retroactively. A person may not be
4 considered to have violated the order because of an offer or sale effected after the
5 entry of an order under this subsection if the person sustains the burden of proof that
6 the person did not know and, in the exercise of reasonable care, could not have known
7 of the order.

8 (c) The department shall assess a person who makes application to the
9 department for an exemption under this section a filing fee as prescribed in regulations
10 for this section.

11 (d) Exemption from registration under this section is not available for a
12 security or transaction if the issuer, or any of its officers, persons in control, or
13 promoters, is subject to a disqualifier described in the regulations adopted under 15
14 U.S.C. 78c(a)(39) (Dodd-Frank Wall Street Reform and Consumer Protection Act) as
15 of the date of the transaction or offer.

16 (e) In this section,

17 (1) "control" means having the power, directly or indirectly, to direct
18 the management or policies of the issuer, whether through ownership of securities, by
19 contract, or otherwise;

20 (2) "department" means the Department of Commerce, Community,
21 and Economic Development;

22 (3) "residency" has the meaning given in AS 01.10.055.

23 * **Sec. 2.** AS 45.55.900(b) is amended to read:

24 (b) The following transactions are exempted from AS 45.55.070 and
25 45.55.075:

26 (1) a transaction between the issuer or other person on whose behalf
27 the offering is made and an underwriter, or among underwriters;

28 (2) a transaction in a bond or other evidence of indebtedness secured
29 by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real
30 estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all
31 the bonds or other evidence of indebtedness, secured under those documents, is

1 offered and sold as a unit;

2 (3) a transaction by an executor, administrator, sheriff, marshal,
3 receiver, trustee in bankruptcy, guardian, or conservator;

4 (4) an offer or sale to a bank, savings institution, trust company,
5 insurance company, investment company as defined in 15 U.S.C. 80a-1 - 80a-64
6 (Investment Company Act of 1940), pension or profit-sharing trust, or other financial
7 institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting
8 for itself or in some fiduciary capacity;

9 (5) sales by an issuer

10 (A) to not more than 10 persons in this state other than those
11 designated in (4) of this subsection during a period of 12 consecutive months,
12 regardless of whether the seller or any of the buyers is then present in this
13 state, if

14 (i) a commission or other remuneration is not paid or
15 given directly or indirectly for soliciting a prospective buyer in this
16 state;

17 (ii) a legend is placed on the certificate or other
18 document evidencing ownership of the security, stating that the security
19 is not registered under this chapter and cannot be resold without
20 registration under this chapter or exemption from it; and

21 (iii) offers are made without public solicitation or
22 advertisement;

23 (B) to not more than 25 persons in this state other than those
24 designated in (4) of this subsection during a period of 12 consecutive months,
25 regardless of whether the seller or any of the buyers is then present in this
26 state, if

27 (i) the sales are made solely in this state;

28 (ii) before a sale, each prospective buyer is furnished
29 information that is sufficient to make an informed investment decision,
30 which information shall be furnished to the administrator upon request;
31 in this sub-subparagraph, "information that is sufficient to make an

informed investment decision" includes a business plan, an income and expense statement, a balance sheet, a statement of risks, and a disclosure of any significant negative factors that may affect the outcome of the investment;

(iii) commissions or other remuneration meet the requirements of this chapter and are made only to persons registered under AS 45.55.040;

(iv) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(v) the issuer obtains a signed agreement from the buyer acknowledging that the buyer is buying for investment purposes and that the securities will not be resold without registration under this chapter; and

(vi) offers are made without public solicitation or advertisement;

(C) to not more than 10 persons who are to receive the initial issue of shares of a nonpublicly traded corporation, limited liability company, limited partnership, or limited liability partnership if the requirements of (B)(ii) - (iv) and (vi) of this paragraph are met;

(D) to the buyer of an enterprise or a business and the assets and liabilities of the enterprise or business if

(i) the transfer of stock to the buyer is solely incidental to the sale of the enterprise or business and its assets and liabilities;

(ii) the seller provides full access to the buyer of the books and records of the enterprise or business; and

(iii) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

1 (6) an offer or sale of a preorganization certificate or subscription if

2 (A) a commission or other remuneration is not paid or given
3 directly or indirectly for soliciting a prospective subscriber;

4 (B) the number of subscribers does not exceed 10; and

5 (C) a payment is not made by any subscriber;

6 (7) a transaction under an offer to existing security holders of the
7 issuer, including persons who, at the time of the transaction, are holders of convertible
8 securities, nontransferable warrants, or transferable warrants exercisable not later than
9 90 days after their issuance, if a commission or other remuneration, other than a
10 standby commission, is not paid or given directly or indirectly for soliciting a security
11 holder in this state;

12 (8) an offer, but not a sale, of a security for which registration
13 statements have been filed under both this chapter and 15 U.S.C. 77a - 77bbbb
14 (Securities Act of 1933) if a stop order or refusal order is not in effect and a public
15 proceeding or examination looking toward an order is not pending under either this
16 chapter or 15 U.S.C. 77a - 77bbbb (Securities Act of 1933);

17 (9) an isolated nonissuer transaction, regardless of whether effected
18 through a broker-dealer, if the seller is not a promoter or controlling person as the
19 administrator may define by regulation or order or if the administrator at the request of
20 the seller waives the requirement that the seller not be a promoter or controlling
21 person;

22 (10) a nonissuer transaction effected by or through a registered broker-
23 dealer under an unsolicited order or offer to buy; however, the administrator may by
24 regulation require that the customer acknowledge on a specified form that the sale was
25 unsolicited, and that a signed copy of each form be preserved by the broker-dealer for
26 a specified period;

27 (11) a transaction executed by a bona fide pledgee without intending to
28 evade this chapter;

29 (12) a transaction incident to a right of conversion or a statutory or
30 judicially approved reclassification, recapitalization, reorganization, quasi-
31 reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(13) a stock dividend, regardless of whether the corporation distributing the dividend is the issuer of the stock, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock;

(14) an act incident to a statutory vote by security holders on a merger, consolidation, reclassification of securities, or sale of assets in consideration of the issuance of securities of another issuer;

(15) the offer or sale by a registered broker-dealer, acting either as principal or agent, of securities previously sold and distributed to the public if the securities

(A) are sold at prices reasonably related to the current market price at the time of sale, and, if the broker-dealer is acting as agent, the commission collected by the broker-dealer on account of the sale is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(B) do not constitute the whole or a part of an unsold allotment to or subscription or participation by the broker-dealer as an underwriter of the securities or as a participant in the distribution of the securities by the issuer, by an underwriter, or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(C) have been lawfully sold and distributed in this state under this chapter;

(16) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles, or leases, or in payments out of production under those rights, titles, or leases, if the purchasers

(A) are or have been during the preceding two years engaged primarily in the business of exploring for, mining, producing, or refining oil, gas, or minerals; or

(B) have been found by the administrator upon written application to be substantially engaged in the business of exploring for,

1 mining, producing, or refining oil, gas, or minerals so as not to require the
2 protection provided by AS 45.55.070;

3 (17) a nonissuer transaction by a registered agent of a registered
4 broker-dealer, and a resale transaction by a sponsor of a unit investment trust
5 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), in a
6 security of a class that has been outstanding in the hands of the public for at least 90
7 days if, at the time of the transaction,

8 (A) the issuer of the security is actually engaged in business
9 and not in the organization stage or in bankruptcy or receivership and is not a
10 blank check, blind pool, or shell company whose primary plan of business is to
11 engage in a merger or combination of the business with, or an acquisition of,
12 an unidentified person or persons;

13 (B) the security is sold at a price reasonably related to the
14 current market price of the security;

15 (C) the security does not constitute the whole or part of an
16 unsold allotment to, or a subscription or participation by, the broker-dealer as
17 an underwriter of the security;

18 (D) a nationally recognized securities manual, which may be
19 designated by rule or order of the administrator, or a document filed with the
20 United States Securities and Exchange Commission that is publicly available
21 through the United States Securities and Exchange Commission's electronic
22 data gathering and retrieval system, contains

23 (i) a description of the business and operations of the
24 issuer;

25 (ii) the names of the issuer's officers and directors, if
26 any, or, in the case of an issuer not domiciled in the United States, the
27 corporate equivalents of the issuer's officers and directors in the issuer's
28 country of domicile;

29 (iii) an audited balance sheet of the issuer dated not
30 earlier than 18 months before the transaction or, in the case of a
31 reorganization or merger in which parties to the reorganization or

merger had that audited balance sheet, a pro forma balance sheet; and

(iv) an audited income statement for each of the issuer's immediately preceding two fiscal years or for the period of existence of the issuer if the issuer has been in existence for less than two years or, in the case of a reorganization or merger where the parties to the reorganization or merger had that audited income statement, a pro forma income statement; and

(E) the issuer of the security has a class of equity securities listed on a national securities exchange registered under 15 U.S.C. 78a - 78lll (Securities Exchange Act of 1934) or designated for trading on the National Association of Securities Dealers Automated Quotation System, unless the issuer of the security

(i) is a unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);

(ii) including predecessors, has been engaged in continuous business for at least three years; or

(iii) has total assets of at least \$2,000,000 based on an audited balance sheet dated not earlier than 18 months before the transaction or, in the case of a reorganization or merger in which the parties to the reorganization or merger had that balance sheet, a pro forma balance sheet;

(18) an offer or a sale of a security by an issuer that has a specific business plan or purpose, is not in the development stage, and has not indicated that its business plan is to engage in a merger or acquisition with an unidentified company or other entity or person, under the following conditions:

(A) sales of securities are made only to persons who are or the issuer reasonably believes are accredited investors as defined in 17 C.F.R. 230.501(a), as that regulation exists on or after October 1, 2013;

(B) the issuer reasonably believes that all purchasers are purchasing for investment and not with the view to or for sale in connection with a distribution of the security; a resale of a security sold in reliance on this

1 exemption is presumed to be with a view to distribution and not for investment
2 if the resale occurs not later than 12 months after sale, except a resale under a
3 registration statement under AS 45.55.070 - 45.55.120 or to an accredited
4 investor under an exemption available under this chapter;

5 (C) the exemption in this paragraph is not available to an issuer
6 if the issuer, a predecessor of the issuer, an affiliated issuer, a director, an
7 officer, or a general partner of the issuer, a beneficial owner of 10 percent or
8 more of a class of the issuer's equity securities, a promoter of the issuer
9 presently connected with the issuer in any capacity, an underwriter of the
10 securities to be offered, or a partner, a director, or an officer of the underwriter

11 (i) within the last five years has filed a registration
12 statement that is the subject of a currently effective registration stop
13 order entered by a state securities administrator or the United States
14 Securities and Exchange Commission;

15 (ii) within the last five years has been convicted of a
16 criminal offense in connection with the offer, purchase, or sale of a
17 security, of a criminal offense involving fraud or deceit, or of a felony;

18 (iii) is currently subject to a state or federal
19 administrative enforcement order or judgment entered in the past five
20 years finding fraud or deceit in connection with the purchase or sale of
21 a security; or

22 (iv) is currently subject to an order, judgment, or decree
23 of a court of competent jurisdiction entered in the past five years,
24 temporarily, preliminarily, or permanently restraining or enjoining the
25 person from engaging in or continuing to engage in conduct or a
26 practice involving fraud or deceit in connection with the purchase or
27 sale of a security;

28 (D) the nonavailability of the exemption under (C) of this
29 paragraph does not apply if

30 (i) the person subject to the disqualification is licensed
31 or registered to conduct securities related business in the state in which

1 the order, judgment, or decree creating the disqualification was entered
2 against the person;

3 (ii) before the first offer under this exemption, the state
4 securities administrator or the court or regulatory authority that entered
5 the order, judgment, or decree waives the disqualification; or

6 (iii) the issuer establishes that it did not know and, in
7 the exercise of reasonable care, based on a factual inquiry, could not
8 have known that a disqualification existed under this paragraph;

9 (E) a general announcement of the proposed offering may be
10 made by any means and may include only the following information unless the
11 administrator specifically permits additional information:

12 (i) the name, address, and telephone number of the
13 issuer of the security;

14 (ii) the name, a brief description, and the price, if
15 known, of the security to be issued;

16 (iii) a brief description in 25 words or less of the
17 business of the issuer;

18 (iv) the type, number, and aggregate amount of
19 securities being offered;

20 (v) the name, address, and telephone number of the
21 person to contact for additional information;

22 (vi) a statement that sales will be made only to
23 accredited investors;

24 (vii) a statement that money or other consideration is
25 not being solicited or will not be accepted by way of this general
26 announcement; and

27 (viii) a statement that the securities have not been
28 registered with or approved by a state securities agency or the United
29 States Securities and Exchange Commission and are being offered and
30 sold under an exemption from registration;

31 (F) the issuer in connection with any offer may provide

1 information in addition to the general announcement under (E) of this
2 paragraph if the information is delivered

3 (i) through an electronic database that is restricted to
4 persons who have been prequalified as accredited investors; or

5 (ii) to a prospective purchaser that the issuer reasonably
6 believes is an accredited investor;

7 (G) a telephone solicitation is not permitted unless, before
8 placing the call, the issuer reasonably believes that the prospective purchaser
9 being solicited is an accredited investor;

10 (H) dissemination of the general announcement of the proposed
11 offering to persons who are not accredited investors does not disqualify the
12 issuer from claiming this exemption;

13 (I) the issuer shall file a notice of the transaction with the
14 administrator, a copy of the general announcement, and the fee for exemption
15 filings established by regulation within 15 days after the first sale in this state;

16 (19) an offer to repay, under AS 45.55.930, the buyer of a security if
17 the offeror first files with the administrator a notice specifying the terms of the offer at
18 least 10 days before the offer is made;

19 (20) a transaction involving only family members who are related,
20 including related by adoption, within the fourth degree of affinity or consanguinity, or
21 involving only those family members and the corporations, partnerships, limited
22 liability companies, limited partnerships, limited liability partnerships, associations,
23 joint-stock companies, or trusts that are organized, formed, or created by those family
24 members or at the direction of those family members;

25 (21) a security that is not part of an initial issue of stock covered by
26 AS 45.55.138, but that is issued by a corporation organized under state law in
27 accordance with 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), if the
28 corporation qualifies for exempt status under 43 U.S.C. 1625(a);

29 **(22) a transaction exempt under AS 45.55.175.**