



LAWS OF ALASKA

1976

Source

Chapter No.

HCS CSSB 443 am H(eff.date added)

129

AN ACT

Relating to disclosure requirements in takeover bids; and providing for an effective date.

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 57. TAKEOVER BID DISCLOSURE ACT.

Sec. 45.57.010. PROVISIONS OF TAKEOVER BIDS. The following provisions apply to every takeover bid:

(1) The period of time within which securities may be tendered by an offeree under a takeover bid shall not be less than 21 days nor more than 35 days from the date copies of the takeover bid are first published or sent or given to offerees.

(2) Securities deposited under a takeover bid may be withdrawn by an offeree or his attorney-in-fact by demand in writing on the offeror or the depository at any time within 21 days from the date copies of the takeover bid are first published or sent or given to offerees.

(3) When a takeover bid is made for less than all the shares or other units of a class and when a greater number of shares or other units is deposited under it than the offeror is bound or willing to take up and pay for, the shares or other units taken up by the offeror shall be taken up as nearly as may be pro rata, disregarding fractions, according to the number of shares or other units deposited.

(4) When an offeror varies the terms of a takeover bid before the expiration of it by increasing the consideration offered, the offeror shall pay the increased

consideration to each offeree whose securities are taken up even if they have been taken up and paid for before the variation of the takeover bid.

(5) When a takeover bid is sent by mail to offerees, it shall be accompanied by a copy of the statement filed with the department under sec. 20 of this chapter.

Sec. 45.57.020. DISCLOSURE. (a) No offeror may make a takeover bid unless at least 20 days before it he files with the department and with the registered agent of the offeree company a statement containing all the information required by (c) of this section and either

(1) within 10 days following the filing no hearing has been ordered by the department or requested by the offeree company; or

(2) a hearing has been ordered within that time and upon the hearing the department has adjudicated that the offeror proposed to make fair, full and effective disclosure to offerees of all information material to a decision to accept or reject the offer.

(b) A hearing shall begin within 20 days of the date of filing of the statement and adjudication shall be made within 30 days of the filing unless extended by the department for the convenience of the parties or protection of the offerees.

(c) The statement to be filed with the department under (a) of this section shall include the following information and the additional information that the department may require as necessary in the public interest or for the protection of offerees:

(1) the name, address and business experience of the offeror and each associate of the offeror;

(2) the terms and conditions of the takeover bid, which shall include the applicable provisions of sec. 10 of this chapter;

(3) the source and amount of the funds or other consideration used or to be used in making the takeover bid, and if any part of those funds or consideration is represented or is to be represented by funds or other consideration borrowed or otherwise obtained for the purpose of making the bid, a description of the transaction and the names of the parties to it, except that if a source of funds is a loan made in the ordinary course of business by a bank or financial institution customarily engaged in the business of making loans, it will be sufficient to so state;

(4) plans or proposals that the offeror may have to liquidate the offeree company, to sell its assets to or merge it with any other person, or to make any other material change in its business or corporate structure;

(5) the number of shares or other units of securities of each class presently owned by the offeror and each associate of the offeror;

(6) information as to any contracts, arrangements, or understandings with a person with respect to securities of the offeree company, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guaranties of loans, guaranties against loss or guaranties of profits, division of losses or profits, or the giving or withholding of proxies, naming the persons with whom those contracts, arrangements, or understandings have been entered into, and giving the details of them;

(7) complete information on the organization and operations of the offeror, including without limitation the year of organization, form of organization, jurisdiction in which it is organized, a description of each class of the offeror's capital stock and of its long-term debt, financial statements for the current period and for the three most recent annual accounting periods, a brief description of the location and general character of the principal physical properties of the offeror and its subsidiaries, a description of pending legal proceedings other than routine litigation to which the offeror or any of its subsidiaries is a party or of which any of their property is the subject, a brief description of the business done and projected by the offeror and its subsidiaries and the general development of that business over the past five years, the names of all directors and executive officers together with biographical summaries of each for the preceding five years to date, the approximate amount of any material interest, direct or indirect, of any of the directors or officers in a material transaction during the past three years or in a proposed material transaction to which the offeror or any of its subsidiaries was or is to be a party, and complete information concerning all inducements to officers and directors of the offeree company which are not made available to all security holders.

(d) The department may within 10 days of the filing order a hearing to determine whether fair, full and effective disclosure is proposed, if in the opinion of the department cause for a hearing exists. The offeree company may within 10 days of the filing request a hearing and the department shall upon receipt of the request order a hearing.

(e) All written soliciting material used by the offeror in connection with the takeover bid shall be filed with the department and the registered agent of the offeree company not later than three days before the time copies of the material are first published or sent or given to offerees.

(f) If, under an arrangement or understanding with the offeror, any persons are to be elected or designated as directors of the offeree company, otherwise than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the offeree company, then, before the time that person takes office as a director, the offeror shall file with the department, and transmit to all holders of record of securities of the offeree company who would be entitled to vote at a meeting for election of directors, information

substantially equivalent to the information which would be required by sec. 14(a) or 14(c) of the Securities Exchange Act of 1934 to be transmitted if the person was a nominee for election as a director at a meeting of the security holders.

Sec. 45.57.030. RECOMMENDATIONS TO ACCEPT OR REJECT. A written solicitation or recommendation to offerees, other than by the offeror, to accept or reject a takeover bid shall be filed with the department not later than the time copies of the solicitation or recommendation are first published or sent or given to offerees.

Sec. 45.57.040. DECEPTIVE PRACTICES. It is unlawful for a person to make or omit or cause to be made or omitted, in a document filed or in a proceeding under this chapter, a statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in a material respect. It is unlawful for a person to engage in a fraudulent, deceptive, or manipulative act or practice, in connection with a takeover bid, or a solicitation of offerees in opposition to or in favor of a takeover bid.

Sec. 45.57.050. INVESTIGATIONS AND SUBPOENAS. (a) The department in its discretion may

(1) make public or private investigations inside or outside this state as it considers necessary to determine whether a person has violated or is about to violate a provision of this chapter or an order under this chapter;

(2) require or permit a person to file a statement in writing, under oath or otherwise as the department 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 an order under this chapter.

(b) For the purpose of an investigation or proceeding under this chapter, the department or an officer designated by it 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 which the department considers relevant or material to the inquiry.

Sec. 45.57.060. INJUNCTIONS. When it appears to the department that a person has engaged or is about to engage in an act or practice in violation of a provision of this chapter or an order under this chapter, it may bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or order under this chapter. The court may not require the department to post a bond.

Sec. 45.57.070. CRIMINAL PENALTIES. A person who willfully violates a provision of this chapter, upon conviction, is punishable by a fine of not more than \$5,000, or by imprisonment for not more than three years, or by both. However, no person may be imprisoned for the violation of an order if he proves that he had no knowledge of the order. No indictment or information may be returned under this

chapter more than five years after the alleged violation.

Sec. 45.57.080. CIVIL LIABILITIES. (a) An offeror who (1) makes a takeover bid which does not comply with the provisions of this chapter or (2) makes a takeover bid by means of a statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in a material respect, and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, is liable to any offeree whose shares are taken up under the takeover bid. An offeree may bring civil action (1) to recover the shares, together with all dividends received, costs and reasonable attorney fees, upon the tender of the consideration received from the offeror, or (2) for the substantial equivalent in damages if the offeror no longer owns the shares.

(b) Every person who materially participates or aids in a takeover bid made by an offeror liable under (a) of this section, or who directly or indirectly controls an offeror who is liable, is also liable jointly and severally with and to the same extent as the offeror unless the person who so participates, aids or controls, sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There shall be contribution as in cases of contract among the several persons liable.

(c) A tender specified in this section may be made at any time before entry of judgment.

(d) No person may bring action under this section unless brought within two years after the transaction upon which it is based. If a person liable under this section makes a written offer, before suit is brought, to return the shares taken up under the takeover bid, together with all dividends received, upon the tender of the consideration received from the offeror, or to pay damages if the offeror no longer owns the shares, no person may maintain a suit under this section unless he rejected the offer in writing within 30 days of its receipt.

(e) Any condition, stipulation or provision binding an offeree to waive compliance with a provision of this chapter or a regulation issued under it is void.

(f) The rights and remedies provided by this chapter shall be in addition to any and all other rights and remedies that may exist at law or in equity.

Sec. 45.57.090. CONSENT TO SERVICE OF PROCESS. A nonresident offeror, except a foreign corporation which has complied with AS 10.05.597 - 10.05.696, who makes a takeover bid affecting an offeree company is considered to have appointed the commissioner of commerce and economic development as his agent upon whom may be served, in any matter arising under this chapter, any process, notice, order or demand except one issued by the department. Service may be made on the commissioner or any of his staff at his office. He shall send it by registered or certified mail addressed to the offeror at his latest address on file and keep a

record of it. A process, notice, order or demand issued by the department shall be served by being mailed by the commissioner or any of his staff by registered or certified mail addressed to the offeror at his latest address on file.

Sec. 45.57.100. REGULATIONS. The department may make and adopt regulations, and adopt forms, that are necessary or desirable to carry out the provisions of this chapter.

Sec. 45.57.110. DEFINITIONS. As used in this chapter, unless the context requires otherwise,

(1) "department" means the Department of Commerce and Economic Development;

(2) "exempt offer" means, with respect to any class of equity securities of the offeree company,

(A) an isolated offer to purchase equity securities from individual shareholders and not made to shareholders generally;

(B) an offer made by an issuer to purchase its own equity securities or equity securities of a subsidiary at least two-thirds of the voting stock of which is owned beneficially by the issuer;

(C) an offer to purchase equity securities to be effected by a registered broker-dealer on a stock exchange or in the over-the-counter market if the broker performs only the customary broker's function, and receives no more than the customary broker's commissions, and neither the principal nor the broker solicits or arranges for the solicitation of orders to sell equity securities of the offeree company;

(D) an offer to purchase equity securities made to all holders of the securities if the number of such holders does not exceed 100 at the time of the offer;

(E) an offer which the board of directors of the offeree company recommends to the security holders of the company if the terms of the offer, including any inducements to officers or directors which are not available to all security holders, have been furnished to security holders;

(3) "offeree" means a person, whether a security holder of record or a beneficial owner, to whom a takeover bid is made;

(4) "offeree company" means a corporation incorporated under the laws of Alaska or a corporation which has its principal office and substantial assets located in Alaska, whose equity securities are the subject of a takeover bid;

(5) "offeror" means a person who makes a takeover bid, and includes two or more persons

(A) whose takeover bids are made jointly or

in concert, or

(B) who intend to exercise jointly or in concert any voting rights attaching to the equity securities for which a takeover bid is made;

(6) "offeror's presently owned equity securities" means, with respect to any class of securities of an offeree company, the aggregate number of shares or other units which, on the date of a takeover bid, are beneficially owned or subject to a right of acquisition directly or indirectly by the offeror or an associate of the offeror;

(7) "associate of the offeror" means

(A) a corporation or other organization of which the offeror is an officer, director or partner, or is, directly or indirectly, the beneficial owner of 10 per cent or more of any class of equity securities;

(B) a person who is, directly or indirectly, the beneficial owner of 10 per cent or more of any class of equity securities of the offeror;

(C) a trust or other estate in which the offeror has a substantial beneficial interest or as to which the offeror serves as trustee or in a similar fiduciary capacity;

(D) a relative or spouse of the offeror or a relative of the spouse, who has the same home as the offeror;

(E) a person directly or indirectly controlling, controlled by, or under common control with, the offeror;

(8) "takeover bid" means an offer, other than an exempt offer;

(9) "offer" means an offer made by any person directly or through an agent by advertisement or any other written or oral communication to offerees to purchase the number of shares or other units of any class of equity security of the offeree company that, together with the offeror's presently owned shares, will in the aggregate exceed five per cent of the outstanding shares of that class;

(10) "Securities Exchange Act of 1934" means the federal statutes of that name as in effect or subsequently amended.

Sec. 45.57.120. SHORT TITLE. This chapter may be cited as the Takeover Bid Disclosure Act.

* Sec. 2. This Act takes effect immediately in accordance with AS 01.10.070(c).