

CS FOR HOUSE BILL NO. 527(STA)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE STATE AFFAIRS COMMITTEE

Offered: 4/7/04

Referred: Judiciary, Finance

Sponsor(s): HOUSE STATE AFFAIRS COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Securities Act, including reports, proxies, consents,**
2 **authorizations, proxy statements, and other materials, civil penalties, refunds of**
3 **proceeds from violations, restitution, attorney fees and costs, state jurisdiction, and**
4 **investment adviser representatives; amending Rules 54(d), 79, and 82, Alaska Rules of**
5 **Civil Procedure; and providing for an effective date."**

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

7 *** Section 1.** AS 37.10.050(a) is amended to read:

8 (a) A state agency may not charge a fee for the provision of state services
9 unless the fee (1) is set or otherwise authorized by statute; and (2) where a regulation
10 is necessary, is set by or provided for in a regulation that meets the standards of
11 AS 44.62.020 and 44.62.030. Unless specifically exempted by statute, a state agency
12 authorized to collect or receive fees, licenses, taxes, or other money belonging to the
13 state shall account for and remit the receipts, less fees to which the collector is entitled

1 by statute or regulation, to the Department of Revenue at least once each month. The
 2 commissioner of administration shall separately account under AS 37.05.142 for
 3 receipts deposited under this subsection. A fee or other charge that is set by regulation
 4 may not exceed the estimated actual costs of the state agency in administering the
 5 activity or providing the service unless otherwise provided by the statute under which
 6 the regulation is adopted; however, this limitation does not apply to sale or lease of
 7 property by a state agency, fees charged by a resource agency for a designated
 8 regulatory service as defined in AS 37.10.058, [OR] fees adopted by the Department
 9 of Natural Resources under AS 44.37.025 or 44.37.027, **or fees that are collected**
 10 **under AS 45.55 (Alaska Securities Act).**

11 * **Sec. 2.** AS 44.55.139 is amended to read:

12 **Sec. 45.55.139. Reports of corporations.** A copy of all annual reports,
 13 proxies, consents or authorizations, proxy statements, and other materials relating to
 14 proxy solicitations distributed, published, or made available by any person to at least
 15 30 Alaska resident shareholders of a corporation that has [TOTAL ASSETS
 16 EXCEEDING \$1,000,000 AND] a class of equity security held of record by **250** [500]
 17 or more persons and **that** [WHICH] is exempted from the registration requirements of
 18 AS 45.55.070 by AS 45.55.138, shall be filed with the administrator concurrently with
 19 its distribution to shareholders.

20 * **Sec. 3.** AS 45.55.920(b) is amended to read:

21 (b) The administrator may issue an order against an applicant, registered
 22 person, or other person who knowingly or intentionally violates this chapter or a
 23 regulation or order of the administrator under this chapter, imposing a civil penalty of
 24 not more than **\$100,000** [\$2,500] for a single violation, or not more than **\$1,000,000**
 25 [\$25,000] for multiple violations, in a single proceeding or a series of related
 26 proceedings.

27 * **Sec. 4.** AS 45.55.920(c) is amended to read:

28 (c) For violations not covered by (b) of this section, the administrator may
 29 issue an order against an applicant, registered person, or other person who violates this
 30 chapter or a regulation or order of the administrator under this chapter, imposing a
 31 civil penalty of not more than **\$100,000** [\$500] for a single violation, or not more than

1 **\$1,000,000** [\$5,000] for multiple violations, in a single proceeding or a series of
2 related proceedings.

3 * **Sec. 5.** AS 45.55.920(e) is amended to read:

4 (e) After an order issued by the administrator under (b) or (c) of this section
5 becomes final and all rights of appeal are exhausted, the administrator may petition the
6 superior court to enter a judgment against a person who is a respondent in the order for
7 the amount of the civil penalty levied **or the amount of restitution ordered** against
8 the person **and attorney fees and costs as allowed under (g) of this section**. Subject
9 to AS 44.62.570, the filing of the petition for a judgment does not reopen the final
10 order to further substantive review unless the court orders otherwise. A judgment
11 entered under this subsection may be executed on and levied under in the manner
12 provided in AS 09.35.

13 * **Sec. 6.** AS 45.55.920 is amended by adding new subsections to read:

14 (f) In an order under (b) or (c) of this section, if another person has been
15 harmed as a result of the violation, the administrator may also require the violator to
16 refund to the administrator the proceeds received by the violator from the violation
17 and to make restitution to all persons harmed as a result of the violation. The amount
18 of the restitution paid to the harmed person may be two times the amount of loss
19 caused to the person by the violator.

20 (g) If the administrator is the prevailing party in a court action brought by the
21 administrator under this section, the court shall award to the administrator the actual
22 reasonable attorney fees and actual reasonable costs incurred by the administrator in
23 the action, including all expert witness fees.

24 * **Sec. 7.** AS 45.55.980 is amended by adding a new subsection to read:

25 (j) When determining the jurisdiction of the state over persons and acts under
26 this chapter, this section shall be interpreted to apply to persons and activities to the
27 fullest extent allowed by the Constitution of the State of Alaska and the Constitution
28 of the United States.

29 * **Sec. 8.** AS 45.55.990(15) is amended to read:

30 (15) "investment adviser representative"

31 (A) means a natural person who

1 (i) makes a recommendation or otherwise renders
 2 advice regarding securities; manages accounts or portfolios of clients;
 3 determines which recommendation or advice regarding securities
 4 should be given; solicits, offers, or negotiates for the sale of or sells
 5 advisory services; or supervises employees who perform an activity
 6 described in this sub-subparagraph; and

7 (ii) is a supervised person of a state investment adviser
 8 that is registered or required to be registered under this chapter **or is a**
 9 **supervised person of a federal covered adviser and has a place of**
 10 **business located in this state**, if a substantial portion of the business of
 11 the supervised person is providing to clients who are natural persons
 12 the services described in (i) of this subparagraph [, OR WHO IS A
 13 SUPERVISED PERSON OF A FEDERAL COVERED ADVISER,
 14 HAS A PLACE OF BUSINESS LOCATED IN THIS STATE, AND
 15 HAS SIX OR MORE CLIENTS WHO ARE NATURAL PERSONS,
 16 IF A SUBSTANTIAL PORTION OF THE BUSINESS OF THE
 17 SUPERVISED PERSON IS PROVIDING TO CLIENTS WHO ARE
 18 NATURAL PERSONS THE SERVICES DESCRIBED IN (i) OF
 19 THIS SUBPARAGRAPH];

20 (B) means other persons who are not otherwise covered by this
 21 paragraph but who are designated by regulation or order of the administrator;

22 (C) except persons covered by (36)(A)(ii) of this section, does
 23 not include a person that would not be defined as an investment adviser
 24 representative under 17 C.F.R. 275.203A-3 adopted under 15 U.S.C. 80b-3a
 25 (Investment Advisers Act of 1940), as that regulation exists on or after
 26 October 1, 1999;

27 * **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section to
 28 read:

29 INDIRECT COURT RULE CHANGES. AS 45.55.920(g), added by sec. 6 of this
 30 Act, has the effect of changing

31 (1) Rule 82, Alaska Rules of Civil Procedure, by establishing different rules

1 relating to the award of attorney fees in actions that are brought under AS 45.55;

2 (2) Rules 54(d) and 79, Alaska Rules of Civil Procedure, by establishing
3 different rules relating to the award of costs in actions that are brought under AS 45.55.

4 * **Sec. 10.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 **CONDITIONAL EFFECT.** AS 45.55.920(g), enacted by sec. 6 of this Act, takes
7 effect only if sec. 9 of this Act receives the two-thirds majority vote of each house required by
8 art. IV, sec. 15, Constitution of the State of Alaska.

9 * **Sec. 11.** This Act takes effect immediately under AS 01.10.070(c).