

Introduced: 5/19/75  
Referred: Commerce

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 HCSC 5

SENATE BILL NO. 443 *am H (ref. d. added)*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to disclosure requirements in takeover  
7 bids."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 45 is amended by adding a new chapter to read:

10 CHAPTER 57. TAKEOVER BID DISCLOSURE ACT.

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

13 (1) The period of time within which shares may be deposited  
14 under a takeover bid shall not be less than 21 days nor more than 35  
15 days from the date of the first invitation to deposit shares.

16 (2) Shares deposited under a takeover bid may be withdrawn  
17 by an offeree or his attorney-in-fact by demand in writing on the  
18 offeror or the depository at any time within 21 days from the date of  
19 the first invitation to deposit shares.

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

25 (4) When an offeror varies the terms of a takeover bid before  
26 the expiration of it by increasing the consideration offered, the  
27 offeror shall pay the increased consideration to each offeree whose  
28 securities are taken up even if they have been taken up and paid for  
29 before the variation of the takeover bid.

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

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

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

10 (2) a hearing has been requested by the offeree company  
11 within that time but the department has found that no cause for hearing  
12 exists; or

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

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

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

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

25 (3) the source and amount of the funds or other consideration  
26 used or to be used in making the takeover bid, and if any part of those  
27 funds or consideration is represented or is to be represented by funds  
28 or other consideration borrowed or otherwise obtained for the purpose  
29 of making the bid, a description of the transaction and the names of

1 the parties to it, except that if a source of funds is a loan made in  
2 the ordinary course of business by a bank or financial institution  
3 customarily engaged in the business of making loans, it will be suffi-  
4 cient to so state;

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

9 (5) the number of the offerors' presently owned shares;

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

18 (7) complete information on the organization and operations  
19 of the offeror, including without limitation the year of organization,  
20 form of organization, jurisdiction in which it is organized, a descrip-  
21 tion of each class of the offeror's capital stock and of its long-term  
22 debt, financial statements for the current period and for the three  
23 most recent annual accounting periods, a brief description of the loca-  
24 tion and general character of the principal physical properties of  
25 the offeror and its subsidiaries, a description of pending legal pro-  
26 ceedings other than routine litigation to which the offeror or any of  
27 its subsidiaries is a party or of which any of their property is the  
28 subject, a brief description of the business done and projected by the  
29 offeror and its subsidiaries and the general development of that

1 business over the past five years, the names of all directors and  
2 executive officers together with biographical summaries of each for  
3 the preceding five years to date, and the approximate amount of any  
4 material interest, direct or indirect, of any of the directors or  
5 officers in a material transaction during the past three years, or in  
6 a proposed material transaction to which the offeror or any of its  
7 subsidiaries was or is to be a party.

8 (c) The department may within 10 days of the filing order a hear-  
9 ing to determine whether fair, full and effective disclosure is proposed  
10 if in the opinion of the department cause for a hearing exists. The  
11 offeree company may within 10 days of the filing request a hearing and  
12 the department may order a hearing if in its opinion cause exists.

13 (d) All written soliciting material used by the offeror in con-  
14 nection with the takeover bid shall be filed with the department and  
15 the registered agent of the offeree company not later than 10 days  
16 before the time copies of the material are first published or sent or  
17 given to offerees.

18 (e) If, under an arrangement or understanding with the offeror,  
19 any persons are to be elected or designated as directors of the offeree  
20 company, otherwise than at a meeting of security holders, and the  
21 persons so elected or designated will constitute a majority of the  
22 directors of the offeree company, then, before the time that person  
23 takes office as a director, the offeror shall file with the department,  
24 and transmit to all holders of record of securities of the offeree  
25 company who would be entitled to vote at a meeting for election of  
26 directors, information substantially equivalent to the information  
27 which would be required by sec. 14(a) or 14(c) of the Securities  
28 Exchange Act of 1934 to be transmitted if the person was a nominee for  
29 election as a director at a meeting of the security holders.

1           Sec. 45.57.030. RECOMMENDATIONS TO ACCEPT OR REJECT. A written  
2 solicitation or recommendation to offerees to accept or reject a take-  
3 over bid shall be filed with the department not later than the time  
4 copies of the solicitation or recommendation are first published or sent  
5 or given to offerees.

6           Sec. 45.57.040. DECEPTIVE PRACTICES. It is unlawful for a person  
7 to make an untrue statement of a material fact or omit to state a  
8 material fact necessary in order to make the statements made, in the  
9 light of the circumstances under which they are made, not misleading,  
10 or to engage in a fraudulent, deceptive, or manipulative act or practice,  
11 in connection with a takeover bid, or a solicitation of offerees in  
12 opposition to or in favor of a takeover bid.

13           Sec. 45.57.050. INVESTIGATIONS AND SUBPOENAS. (a) The depart-  
14 ment in its discretion may

15           (1) make public or private investigations inside or outside  
16 this state as it considers necessary to determine whether a person has  
17 violated or is about to violate a provision of this chapter or an order  
18 under this chapter, or to aid in the enforcement of this chapter or in  
19 the prescribing of forms under this chapter;

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

23           (3) publish information concerning a violation of this chapter  
24 or an order under this chapter.

25           (b) For the purpose of an investigation or proceeding under this  
26 chapter, the department or an officer designated by it may administer  
27 oaths and affirmations, subpoena witnesses, compel their attendance,  
28 take evidence, and require the production of books, papers, correspon-  
29 dence, memoranda, agreements, or other documents or records which the

1 department considers relevant or material to the inquiry.

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

9 (d) No person is excused from attending and testifying or from  
10 producing a document or record before the department, or in obedience  
11 to the subpoena of the department or officer designated by it, or in a  
12 proceeding instituted by the department, on the ground that the testi-  
13 mony or evidence required of him may tend to incriminate him or subject  
14 him to a penalty or forfeiture. However, no individual may be prose-  
15 cuted or subjected to a penalty or forfeiture for or on account of a  
16 transaction, matter, or thing concerning which he is compelled, after  
17 claiming his privilege against self-incrimination, to testify or produce  
18 evidence, documentary or otherwise, except that the individual testifying  
19 is not exempt from prosecution and punishment for perjury or contempt  
20 committed in testifying.

21 Sec. 45.57.060. INJUNCTIONS. When it appears to the department  
22 that a person has engaged or is about to engage in an act or practice  
23 in violation of a provision of this chapter or an order under this  
24 chapter, it may bring an action in the superior court to enjoin the  
25 acts or practices and to enforce compliance with this chapter or order  
26 under this chapter. Upon a proper showing, the appropriate remedy shall  
27 be granted. The court may not require the department to post a bond.

28 Sec. 45.57.070. CRIMINAL PENALTIES. (a) A person who wilfully  
29 violates a provision of this chapter, upon conviction, is punishable

1 by a fine of not more than \$5,000, or by imprisonment for not more than  
2 three years, or by both. However, no person may be imprisoned for the  
3 violation of an order if he proves that he had no knowledge of the  
4 order. No indictment or information may be returned under this chapter  
5 more than two years after the alleged violation.

6 Sec. 45.57.080. CIVIL LIABILITIES. (a) An offeror who (1) makes  
7 a takeover bid which does not comply with the provisions of this chapter  
8 or (2) makes a takeover bid by means of an untrue statement of a  
9 material fact or an omission to state a material fact necessary in order  
10 to make the statement made, in the light of the circumstances under  
11 which it was made, not misleading (the offeree not knowing of the  
12 untruth or omission), and who does not sustain the burden of proof that  
13 he did not know, and in the exercise of reasonable care could not have  
14 known, of the untruth or omission, is liable to any offeree whose shares  
15 are taken up under the takeover bid who may bring civil action (A) to  
16 recover the shares, together with all dividends received, costs and  
17 reasonable attorney fees, upon the tender of the consideration received  
18 from the offeror, or (B) for the substantial equivalent in damages if  
19 the offeror no longer owns the shares.

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

29 (c) A tender specified in this section may be made at any time

1 before entry of judgment.

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

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

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

17 Sec. 45.57.090. CONSENT TO SERVICE OF PROCESS. A nonresident  
18 offeror who makes a takeover bid is considered to have appointed the  
19 commissioner of commerce as his agent upon whom may be served, in any  
20 matter arising under this chapter, any process, notice, order or demand  
21 except one issued by the department. Service may be made on the com-  
22 missioner or any of his staff at his office. He shall send it by  
23 registered or certified mail addressed to the offeror at his latest  
24 address on file and keep a record of it. A process, notice, order  
25 or demand issued by the department shall be served by being mailed by  
26 the commissioner or any of his staff by registered or certified mail  
27 addressed to the offeror at his latest address on file.

28 Sec. 45.57.100. REGULATIONS. The department may make and adopt  
29 regulations, and adopt forms, that are necessary or desirable to carry

1 out the provisions of this chapter.

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

4 (1) "department" means the Department of Commerce;

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

7 (A) an isolated offer to purchase shares from individual  
8 shareholders and not made to shareholders generally;

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

12 (C) an offer to purchase shares to be effected by a  
13 registered broker-dealer on a stock exchange or in the over-the-  
14 counter market if the broker performs only the customary broker's  
15 function, and receives no more than the customary broker's commis-  
16 sions, and neither the principal nor the broker solicits or  
17 arranges for the solicitation of orders to sell shares of the  
18 offeree company;

19 (D) an offer to purchase shares of a class not regis-  
20 tered under sec. 12 of the Securities Exchange Act of 1934;

21 (E) an offer which the board of directors of the  
22 offeree company recommends to the shareholders of the company,  
23 and to which at least two-thirds of the shareholders of the offeree  
24 company have consented after a solicitation of proxies under  
25 sec. 14 of the Securities Exchange Act of 1934;

26 (F) an offer which the department by order, after notice  
27 to the offeror and to the offeree company, exempts from the pro-  
28 visions of this chapter as not entered into for the purpose of,  
29 and not having the effect of changing or influencing the control

1 of the offeree company or otherwise as not comprehended within  
2 the purposes of this chapter;

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

5 (4) "offeree company" means a corporation incorporated under  
6 the laws of Alaska and doing business in Alaska, whose shares are the  
7 subject of a takeover bid;

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

10 (A) whose takeover bids are made jointly or in concert,

11 or

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

15 (6) "offeror's presently owned shares" means the aggregate  
16 number of shares of an offeree company which, on the date of a takeover  
17 bid, are beneficially owned or subject to a right of acquisition directly  
18 or indirectly by the offeror or an associate of the offeror;

19 (7) "associate of the offeror" means

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

24 (B) a person who is, directly or indirectly, the bene-  
25 ficial owner of 10 per cent or more of any class of equity  
26 securities of the offeror;

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

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

(8) "takeover bid" means an offer, other than an exempt offer, made by an offeror directly or through an agent by advertisement or any other written or oral communication to offerees to purchase the number of shares of any class of equity security of the offeree company that, together with the offeror's presently owned shares, will in the aggregate exceed 10 per cent of the outstanding shares of that class;

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

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