

HB

143

HOUSE COMMITTEE REPORT

(7)

Date referred: 2/20/87

FURTHER REFERRALS: Judiciary-
Finance

DATE: 3/10/87

The Labor & Commerce Committee has considered HB 143

"An Act relating to the assessment of civil penalties under the Alaska Securities Act; and providing for an effective date."

RECOMMENDS:

- replace with CS HB143 (LTC) the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

David Douley

[Signature]

[Signature]

[Signature]

SIGNING OTHER RECOMMENDATIONS:

W. Furman

David Douley
Chairman's signature

Original sponsor: Rules/Governor

1 IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 143 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Securities Act; and
7 providing for an effective date."

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

9 * Section 1. AS 45.55.140(a)(5) is amended to read:

10 (5) a security [AN INVESTMENT CONTRACT] issued in connec-
11 tion with an employee's stock purchase, savings, pension, profit-
12 sharing, or similar employee's benefit plan [IF THE ADMINISTRATOR IS
13 NOTIFIED IN WRITING 30 DAYS BEFORE THE INCEPTION OF THE PLAN OR, WITH
14 RESPECT TO PLANS WHICH ARE IN EFFECT ON MAY 9, 1959, WITHIN 60 DAYS
15 THEREAFTER, OR WITHIN 30 DAYS BEFORE THEY ARE REOPENED IF THEY ARE
16 CLOSED ON MAY 9, 1959];

17 * Sec. 2. AS 45.55.200 is repealed and reenacted to read:

18 Sec. 45.55.200. ORDERS, INJUNCTIONS, AND CIVIL PENALTIES. (a)
19 If it appears to the administrator that a person has engaged or is
20 about to engage in an act or practice in violation of a provision of
21 this chapter or regulation or order under this chapter, the adminis-
22 trator may

23 (1) in the public interest or for the protection of inves-
24 tors, issue an order

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

27 (B) directing the person, for a period not to exceed
28 three years, to file the annual reports, proxies, consents or
29 authorizations, proxy statements, or other materials relating to

1 proxy solicitations required under AS 45.55.139 with the adminis-
2 trator for examination and review 10 working days before a dis-
3 tribution to shareholders; and

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

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

15 (b) The administrator may issue an order against an applicant,
16 registered person, or other person who knowingly or intentionally vio-
17 lates this chapter or a regulation or order of the administrator under
18 this chapter, imposing a civil penalty of not more than \$2,500 for a
19 single violation, or not more than \$25,000 for multiple violations, in
20 a single proceeding or a series of related proceedings.

21 (c) For violations not covered by (b) of this section, the
22 administrator may issue an order against an applicant, registered per-
23 son, or other person who violates this chapter or a regulation or
24 order of the administrator under this chapter, imposing a civil
25 penalty of not more than \$500 for a single violation, or not more than
26 \$5,000 for multiple violations, in a single proceeding or a series of
27 related proceedings.

28 (d) Before issuing an order under (a)(1), (b), or (c) of this
29 section, the administrator shall give reasonable notice of and an

1 opportunity for a hearing. However, the administrator may issue a
2 temporary order under (a)(1) of this section pending the hearing,
3 which remains in effect until 10 days after the hearing is held and
4 which becomes final if the person to whom notice is addressed does not
5 request a hearing within 15 days after the receipt of notice.

6 * Sec. 3. AS 45.55.210(a) is amended to read:

7 (a) In addition to the civil penalties assessed under AS 45.55.-
8 200, a [A] person who wilfully violates a provision of this chapter
9 except AS 45.55.160, or who wilfully violates a regulation or order
10 under this chapter, or who wilfully violates AS 45.55.160 knowing the
11 statement made to be false or misleading in a material respect or the
12 omission to be misleading by any material respect, upon conviction, is
13 punishable by a fine of not more than \$5,000, or by imprisonment for
14 not less than one year nor more than five years, or both. Upon con-
15 viction of an individual for a felony under this chapter, imprisonment
16 for not less than one year is mandatory. However, an individual may
17 not be imprisoned for the violation of a regulation or order if the
18 individual proves that the individual had no knowledge of the regu-
19 lation or order. An indictment or information may not be returned
20 under this chapter more than five years after the alleged violation.

21 * Sec. 4. AS 45.55.260(c) is amended to read:

22 (c) For the purpose of this section, an offer to sell or to buy
23 is made in this state, whether or not either party is then present in
24 this state, when the offer

25 (1) originates from this state; [OR]

26 (2) is directed by the offeror to this state and received at
27 the place to which it is directed, or at a post office in this state
28 in the case of a mailed offer;

29 (3) is for an interest or participation in an oil, gas, or

1 mining right, title, or lease on land in the state, including sub-
2 merged land, regardless of where the offer is made;

3 (4) is for an interest or participation in payments out of
4 production under an oil, gas, or mining right, title or lease on land
5 in the state, including submerged land, regardless of where the offer
6 is made; or

7 (5) is for an interest or participation in real property
8 located in the state; or in a domestic corporation or a domestic
9 limited partnership; jurisdiction under this paragraph may be ex-
10 ercised only when the exercise is not inconsistent with the consti-
11 tution of this state or of the United States.

12 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).
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A M E N D M E N T

Offered in the HOUSE

By Gruenberg

TO: HB 143

Page 1, line 6:

Delete: "assessment of civil penalties under the"

Page 1, following line 9, insert a new bill section to read:

"* Section 1. AS 45.55.140(a)(5) is amended to read:

(5) a security [AN INVESTMENT CONTRACT] issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar employee's benefit plan [IF THE ADMINISTRATOR IS NOTIFIED IN WRITING 30 DAYS BEFORE THE INCEPTION OF THE PLAN OR, WITH RESPECT TO PLANS WHICH ARE IN EFFECT ON MAY 9, 1959, WITHIN 60 DAYS THEREAFTER, OR WITHIN 30 DAYS BEFORE THEY ARE REOPENED IF THEY ARE CLOSED ON MAY 9, 1959];"

Page 1, line 10:

Delete "* Section 1."

Insert "* Sec. 2."

Renumber the following bill section accordingly.

Page 3, following line 11, insert a new bill section to read:

"* Sec. 4. AS 45.55.260(c) is amended to read:

(c) For the purpose of this section, an offer to sell or to buy

is made in this state, whether or not either party is then present in this state, when the offer

(1) originates from this state; [OR]

(2) is directed by the offeror to this state and received at the place to which it is directed, or at a post office in this state in the case of a mailed offer;

(3) is for an interest or participation in an oil, gas, or mining right, title, or lease on land in the state, including submerged land, regardless of where the offer is made;

(4) is for an interest or participation in payments out of production under an oil, gas, or mining right, title, or lease on land in the state, including submerged land, regardless of where the offer is made; or

(5) is for an interest or participation in real property located in the state, or in a domestic corporation or a domestic limited partnership; jurisdiction under this paragraph may be exercised only when the exercise is not inconsistent with the constitution of this state or of the United States."

Renumber the following bill section accordingly.

STEVE COWPER
GOVERNOR

71B143



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

February 18, 1987

The Honorable Ben Grussendorf
Speaker of the House
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to amend the penalty provisions of the Alaska Securities Act.

The bill provides that the administrator of securities, generally known as the director of the division of banking, securities and corporations, Department of Commerce and Economic Development, may assess civil fines of up to \$5,000 against a person who violates the Alaska Securities Act, and up to \$25,000 if the violations are done knowingly or intentionally. These provisions of the bill are based on sec. 602(b)(4) of the Revised Uniform Securities Act, promulgated in 1985 by the National Conference of Commissioners on Uniform State Laws.

Although current Alaska law permits criminal prosecution of individuals who wilfully violate the Act (AS 45.55.210), by authorizing the department to assess civil penalties the state will be able to avoid the substantial time and expense of criminal investigation and prosecution in many cases. On a number of occasions, individuals have wilfully violated the Act and then ignored orders issued by the administrator to stop the practice, because these individuals recognized that the administrator has no authority to enforce his or her own orders. Passage of this bill would correct this problem.

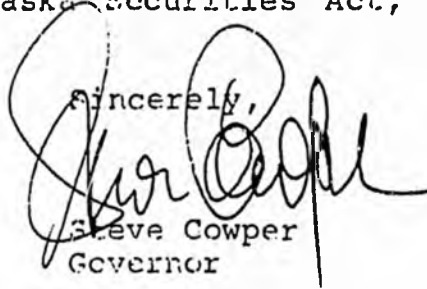
It should be noted that the assessment of civil fines is not without precedent in Alaska. For example, AS 21.09.260 and AS 21.36.320 provide that the director of the division of insurance may assess civil fines of up to \$25,000 for violations of the Alaska Insurance Code. Similarly, I am proposing legislation to provide that the commissioner of the Department of Revenue may assess a civil fine against a person who attempts to obtain permanent fund dividends by means of fraud.

Hon. Ben Grussendorf

Page 2

This bill represents a valuable tool for the Department of Commerce and Economic Development to prevent wilful violations of the Alaska Securities Act, and I urge your support of it.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name and title.

Steve Cowper
Governor

STATE OF ALASKA 1986 LEGISLATIVE SESSION.
FISCAL NOTE

Bill Version: HB 143
Publish Date: HOUSE 2/20/87

REQUEST
Bill/Resolution No.: _____
Title: An Act assessing civil penalties
under the Alaska Securities Act.
Sponsor: Rules Committee
Requestor: Governor
Date of Request: _____

FISCAL DETAIL
Agency Affected: Commerce & Econ. Dev.
BRU: Banking, Securities & Corporations
Components: Consumer Protection

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Edward C. Watkins
Division: Banking, Securities & Corporations

Phone: 465-2521
Date: November 20, 1986

Approved by Commissioner: _____
Agency: Commerce & Economic Development

Date: 11/19/86

Distribution (by Agency preparing fiscal note):

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