



THE STATE  
*of* **ALASKA**  
GOVERNOR BILL WALKER

# UPDATING THE ALASKA SECURITIES ACT SB 108

## Senate Labor and Commerce Committee

Division of Banking and Securities

Director Kevin Anselm

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# What will SB 108 do?

- Recognize and incorporate current securities industry terms and standards
- Synthesize with other states' laws to make it easier for businesses, entrepreneurs and investors to understand their rights, responsibilities and opportunities in Alaska
- Open equity crowdfunding opportunities to Alaskans
- Deter investment scams using Alaska entities or harming Alaskans
- Enhance penalties against those who harm older Alaskans
- Separate securities statutes from Alaska Native Claims Settlement Act (ANCSA) related statutes to reduce confusion and improve understanding of both Acts



# What Does the Alaska Securities Act Do Now?

Provides the legal framework for offering or selling securities within Alaska or to Alaskans, including requirements for:

- Alaska state registration of the stock/bond/ownership and investment interests
  - Business plan and other disclosure to potential or current investors
  - Exemption from registration requirements
  - ANCSA
- Alaska state registration of the salesforce
  - Broker-dealers (stock brokerages)
  - Investment advisers
  - Salespersons
- Enforcement



# Alaska Native Claims Settlement Act Provisions

- ANCSA provisions remain unchanged in AS 45.55, including the enforcement and administration of related securities laws
- References to exempt ANCSA securities transactions are included in AS 45.56.210 (27)



# SB 108 New, Logical, Topical Format

- Outlines securities registration requirements generally
- Covers exemptions from the registration requirement
- Licensing (registration) of firms and salespersons
- Enforcement provisions
- Definitions



# Highlights

- Eliminates filings for all exemptions from registration, *except* rescission offers and crowdfunding
- Updates entity and law references (i.e., no longer includes notice by telegram)
- Includes 'bad actor' disqualifiers
- Improves enforcement and investor education provisions



# SB 108 Section 1

- Article 1.           General Provisions - pg. 1**
- Article 2.           Exemptions from the Registration of Securities – pg. 1**
- Article 3.           Registration of Securities and Notice Filing of Federal Covered Securities – pg. 17**
- Article 4.           Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives and Federal Covered Investment Advisers – pg. 29**
- Article 5.           Fraud and Liabilities – pg. 54**
- Article 6.           Administration and Judicial Review – pg. 56**
- Article 7.           Miscellaneous and Additional General Provisions (includes definitions) –pg. 78**



# Article 1. General Provisions

**Sec. 45.56.105.** Securities registration requirement. A person may not offer or sell a security in the state unless

- 1) the security is a federal covered security;
- 2) is registered under this chapter; or
- 3) the security or transaction is exempted from registration under AS 45.56.205 - 45.56.250.



## Article 2. Securities Exempt from Registration

Generally includes the same Registration and Transactional exemptions as the current Act:

AS 45.56.205/210 et seq

And adds:

**Sec. 45.56.220.** Small intrastate securities offerings. “Crowdfunding Exemption.”



# Intrastate Equity or Debt Crowdfunding

## **AS 45.56.220**

- Issuer must be AK business
- Purchasers must be AK residents, and issuer must have some evidence proving residency
- Total offering is capped at \$1 million
- Issuers can collect no more than \$5,000 per purchaser
- No commissions may be paid in connection with the sale of these securities unless salespeople are licensed in AK
- Notice filing required (10 days before general solicitation or within 15 days of first sale if no general solicitation)
- Notice filing must include information on the issuer, control persons, salespersons, and the bank where the funds will be deposited
- Issuer must disclose that securities are not able to be resold unless exempt or registered (are illiquid)
- Purchaser must acknowledge risk of investment
- Bad actor disqualifier from 45.56.230 applies



## Article 4. Licensing

Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers

- Licensing provisions
- New registration exemption for Mergers & Acquisition brokers and “snow birds”



## Article 5. Fraud and Liabilities

Fraud provisions generally remain the same.

- Adds a 'qualified immunity' clause to protect brokers from liability for defamation when they report true information to the administrator regarding another license's activities.



## Article 6. Administration

### Investor Education

- Allows development and implementation of investor education initiatives through collaboration and the legal ability to accept grants or donations for that specific purpose

### Investor Education Fund

- 1/3 of money received through civil penalties is deposited into the fund
- Legislature may appropriate the funds to support investor education and training

### Variable Annuity Transactions with Investors

- Subject to applicable provisions of the Securities Act



# Enforcement

## Administrative, Civil and Criminal Enforcement

- Existing basic provisions remain the same
- Significantly reorganized and expanded from current law



# Administrative Enforcement

## Significant changes:

- Civil penalties increased to \$100,000 per violation with no maximum limit per case
- Treble damages when victim is an “Older Alaskan”
- Restitution may be ordered by the administrator
- Superior Court can hold a person in violation of a final administrative order in civil contempt, subject to potential \$100,000 fine per violation



# Civil Enforcement and Liability

- Civil liability is separated from rescission
- Describes circumstances and remedies where
  - the *seller/issuer* is liable to the *purchaser*
  - the *purchaser* is liable to the *seller/issuer*
- Salespeople who violate the act are liable to their clients, who may recover damages
- Statute of limitations is generally three years from the date of sale, unless there is fraud



# Rescission Offers

Updates include:

- Aggrieved party has 30 days to accept rescission offer
- Offeror must demonstrate ability to pay
- Rescission offer must be delivered in a way that ensures receipt
- Offeror must actually pay as promised



# Criminal Enforcement

Similar to current AS 45.55.925

- Five year statute of limitations
- For certain provisions, “willful violation” is changed to “knowing violation”
  - Knowing violations
    - Class C felony under AS 12.55.125
    - Fine increased from \$5,000 to \$100,000
  - Unknowing violations
    - Class A misdemeanor
- Altering or destroying evidence is a Class C felony



# Alaska's Securities Industry

## **Securities sales and advice:**

1,234 broker-dealers

765 investment advisers

90,000+ salespersons

## **Securities registrations/filings:**

6,000+ mutual fund/unit investment trust filings

599 securities registrations/filings



# FY 2015 Securities Enforcement Actions

In FY 2015, the division issued 35 final orders

- 17 – Securities related

The screenshot shows the official website for the Division of Banking and Securities. The header includes the State of Alaska logo and navigation links for myAlaska, My Government, Resident, Business in Alaska, Visiting Alaska, and State Employees. The main navigation bar features links for HOME, BANKING, SECURITIES, and CONSUMER FINANCE. A search bar is located in the top right corner. Below the navigation bar, there is a banner image showing a stock market floor. The main content area is titled "DIVISION OF BANKING AND SECURITIES" and "ENFORCEMENT ORDERS". It includes a "Welcome to the Enforcement Orders webpage" message and instructions on how to search for orders by year, business name, order number, or other relevant word or phrase. It also provides information on how to interpret order codes (e.g., -B for Banking orders, -S for Securities orders, -C for Consumer Finance orders).

State of Alaska > Commerce > Banking & Securities > Enforcement Orders

**Division Quick Links**

- Banking and Securities Home Page
- Alaska Banking Statutes
- Alaska Banking Admin Code
- Alaska Securities Statutes
- Alaska Securities Admin Code
- Enforcement Orders

**Banking**

- Banking Home Page
- Comparative Statements of Banks and Credit Unions
- Complaints

**Securities**

**DIVISION OF BANKING AND SECURITIES**

**ENFORCEMENT ORDERS**

Welcome to the Enforcement Orders webpage

Enforcement actions are organized by year. Clicking on the year will show you all orders issued that year. To search for a specific Order you may enter the business name, order number, or other relevant word or phrase into the Search Box in the upper right hand corner of this webpage and click the "search" button. When using the Search Box, make sure the radio button next to DCCED-DBS is selected.

Generally, orders ending with -B are Banking orders, orders ending with -S are Securities orders, and orders ending with -C are Consumer Finance orders.

If you are looking for older orders, or know of a specific order issued by the Division but you

[commerce.alaska.gov/web/dbs/enforcementorders](http://commerce.alaska.gov/web/dbs/enforcementorders)



# Article 7 Administration

## Adds new definitions

- Disqualifier
- Filing
- Institutional investor (reflects federal law)
- Insurance company
- Insured
- International Banking Institution
- Offer to purchase
- Older Alaskan – a person residing in the state that is age 60 or older (from AS 47.26.290(6))
- Price amendment
- Record
- Self-regulatory organization
- Sign



# Mission

## **Division of Banking and Securities' mission:**

Protect consumers of financial service and promote safe and sound financial systems

## **Supporting the department's mission:**

Promote a healthy economy, support strong communities, and protect consumers in Alaska



## Mission

# Questions?

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