

Alaska Securities Act CSHB 194\N
House Judiciary Committee
April 4, 2016

OVERVIEW: HB 194 repeals and reenacts the Alaska Securities Act. This Act provides the legal framework for offering or selling securities in Alaska or to Alaskans including provisions for crowdfunding, registration of the securities and salesforce, taking action against those who violate the Act, and providing education about securities and investments to Alaskans, including citizens, entrepreneurs and industry.

Highlights:

- Separates securities statutes from Alaska Native Claims Settlement Act (ANCSA) related statutes to reduce confusion and improve understanding of each Act
- Synthesize with other states' laws to make it easier for businesses, entrepreneurs and investors to understand their rights, responsibilities and opportunities in Alaska. Clarifies disclosure requirements.
- Eliminates filings for all exemptions except crowdfunding
- Allows Alaskans to invest up to \$5,000 in Alaskan businesses that file disclosure materials with the division including information about the business, control persons, salespersons and depository (crowdfunding).
- Deters investment scams using Alaska entities or harming Alaskans through
 - Increased penalties against those who break the law and scam Alaskans
 - Trebled penalties against those who harm older persons
- Facilitates requirements for broker/agent continuing education
- Allows the division to develop and implement investor education initiatives and to accept grants or donation for those specific purposes
 - 1/3 of civil penalties received may be deposited into an Investor Education Fund (IED);
 - Legislature may appropriate IED funds for investor education and training
- Recognize and incorporate current industry terms and standards, as well as update legal citations (removes telegram notice about effective registrations)
- Facilitates use of electronic records and signatures
- Improves statutory organization

Significant Changes to Administrative Enforcement (Division ordered)

- Civil penalties increased from \$25,000 to \$100,000 per violation with no maximum limit
- Penalties may be trebled when the victim is 60 years of age or older
- Division may order the bad actor to pay losses to the investor (restitution)
- Division can bar a bad actor from having an Alaska securities license
- Superior Court can hold a person in violation of a final administrative order in civil contempt, subject to potential \$100,000 fine per violation

Significant Changes to Civil Enforcement

- Provides guidance regarding remedies available including injunctions, asset freezes and receivership
- Treble penalties where victim is age 60 or older
- Order of rescission or disgorgement
- Restitution
- Ordering repayment of prejudgment or post judgment interest
- Civil liability is separated from rescission
- Describes circumstances and remedies where sellers/issuers and purchasers are liable
- 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

Significant changes to rescission offers:

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

Criminal Enforcement.

- 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 and fine increased from \$5,000 to \$100,000
- An unknowing violation is a Class A misdemeanor
- Altering or destroying evidence is a Class C felony

WHY DOES ALASKA NEED TO UPDATE THE SECURITIES LAW NOW?

13-1095-S, Fortune Oil & Gas, Russell Vera and R. Gerald Bailey: On February 3, 2014, the Division issued a Final Cease and Desist Order that included the MAXIMUM civil penalty of \$25,000 against Respondents for selling over \$3.1 million in unregistered limited partnership interests in Texas Oil and Gas ventures, mainly to Alaskan investors.

14-1442-S, Global Arena Capital Corp.: On October 23, 2015, the Division issued a Final Cease and Desist Order that included a civil penalty of \$150,000 against Global Arena and six of its employees for violations of the Alaska Securities Act. Specifically, an employee of Global Arena contacted an elderly Alaska halibut fisherman in poor health and sold him junk bonds, although the investor believed he was buying something like a CD. The investigation revealed that the agents were instructed to offer and sell the junk bonds as “safe investments.” The fisherman invested \$27,000 in the bonds, which rapidly lost value. The firm even attempted to sell the investor to purchase other bonds, including one that would not reach maturity until the investor was 119 years old. The investment lost nearly \$16,000. Global Arena was cited for deceptive and misleading representations and offering unsuitable securities. Under the current statute, money received by the state from a court judgment goes into the General Fund. Currently, the Division can only get money back for a defrauded investor with an agreement with a bad actor to pay restitution directly to the investor. In this case, the Division successfully negotiated with one of the Respondents to pay restitution to the investor.

15-1520-S/15-1520-2-S, Garden State Securities/Garland James: Garland James, previously an agent at Global Arena Capital Corp., went to work for Garden State. He cold-called the same elderly Alaskan fleeced by Global and tried to sell him purchase \$82,000 of a risky biotechnology stock. When he made the call, James was not registered as a broker-dealer agent in Alaska. The Division entered into a consent agreement with Garden State to withdraw its registration in Alaska and pay a \$25,000 civil penalty (maximum) for failing to supervise James. The Division issued Temporary Cease and Desist Order against James on March 21, 2016 for unregistered activity and for offering an unsuitable security to the investor, seeking a \$25,000 civil penalty.

12-85-S, Troy Stafford and Patrick Williams: Stafford and Williams formed an Alaska LLC, GS Capital and WS Seafood. Stafford offered an Alaska resident an opportunity to invest \$40,000 in WS Seafood and employment. Stafford also stated, falsely, that another corporation had promised a \$10 million loan to assist the endeavors. The investor invested his money. The deal fell through and the investor never received the promised management role. The Division negotiated a settlement with the Respondents, requiring them to offer rescission to the investor, which Respondents agreed to do and promised to pay, even filing a notice of rescission with the Division. Respondents never paid the investor as promised. The Division issued a Cease and Desist and received a court order to enforce it.