Alaska Securities Act - HB 170
The Division of Banking and Securities (DCCED)

OVERVIEW: HB 170 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.
- Synthesizes 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.
- Includes the Innovating Alaska Act (SB 126) passed during the 29th Legislative Session that allows Alaskans to invest up to $10,000 in Alaskan businesses (crowdfunding).
- Eliminates filings for all in-state exemptions except crowdfunding.
- Deters investment scams using Alaska entities or harming Alaskans through:
  - Increased penalties against those who break the law and scam Alaskans.
  - Trebles penalties against those who harm an older or vulnerable person.
- Requires brokers and advisers to report financial exploitation and provides immunity for good faith reports and financial disbursement delays.
- Facilitates 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.
- Recognizes and incorporates current industry terms and standards, as well as updates 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 increase 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 or a vulnerable adult.
- 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 a potential $100,000 fine per violation.

Significant Changes to Civil Enforcement:

- Provides guidance regarding remedies available including injunctions, asset freezes and receivership.
- Allows for treble penalties where victim is 60 years of age or older or is a vulnerable adult.
- Allows for rescission, disgorgement and restitution.
- Allows for repayment of prejudgment or post judgment interest.
- Separates civil liability from rescission.
- Describes circumstances and remedies where sellers/issuers and purchasers are liable.
- Provides that 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 and the offeror must actually pay as promised.
- Offeror must demonstrate ability to pay and deliver the rescission offer in a way that ensures receipt.

Criminal Enforcement:

- Five year statute of limitations.
- "Willful violation" is changed to "intentional violation."
- Intentional violation is a Class C felony under AS 12.55.125 and fines up to $100,000.
- 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 current MAXIMUM civil penalty of $25,000 against Respondents for selling nearly $3.1 million in unregistered limited partnership interests in Texas oil and gas ventures to Alaskan investors. Dr. Bailey requested a hearing. The hearing was held in a Juneau court in May 2016. On March 14, 2017, the Courts issued an order finding that Mr. Bailey knowingly engaged in the offer and sale of unregistered securities and entered judgment against him for the *maximum amount of $25,000*. That civil penalty, if paid, will go into the General Fund. Under HB 170, Dr. Bailey's civil liability could be $300,000 plus over $3 million in restitution to the victims.

14-1442-S, Global Arena Capital Corp.: On October 23, 2015, the Division issued a Final Cease and Desist Order that included a total civil penalty of $150,000 against Global Arena and six of its employees for violating the Alaska Securities Act. A Global Arena employee 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 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. 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 $82,000 of a risky biotechnology stock. 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 a Final Cease and Desist Order assessing James a $25,000 civil penalty.

12-85-S, Troy Stafford and Patrick Williams: Stafford and Williams formed two Alaska LLCs, GS Capital and WS Seafood. Stafford offered an Alaska resident an opportunity to invest $40,000 in WS Seafood, promising him a management position at the company. 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 order and sought a court order to enforce it.