

HOUSE BILL NO. 308

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES HOLMES, Costello, Hawker, Edgmon

Introduced: 2/17/14

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the exemptions under the Alaska Securities Act and to securities**
2 **issued by Native corporations; and providing for an effective date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 45.55.900(b) is amended to read:

5 (b) The following transactions are exempted from AS 45.55.070 and
6 45.55.075:

7 (1) a transaction between the issuer or other person on whose behalf
8 the offering is made and an underwriter, or among underwriters;

9 (2) a transaction in a bond or other evidence of indebtedness secured
10 by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real
11 estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all
12 the bonds or other evidence of indebtedness, secured under those documents, is
13 offered and sold as a unit;

14 (3) a transaction by an executor, administrator, sheriff, marshal,

1 receiver, trustee in bankruptcy, guardian, or conservator;

2 (4) an offer or sale to a bank, savings institution, trust company,
3 insurance company, investment company as defined in 15 U.S.C. 80a-1 - 80a-64
4 (Investment Company Act of 1940), pension or profit-sharing trust, or other financial
5 institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting
6 for itself or in some fiduciary capacity;

7 (5) sales by an issuer

8 (A) to not [NO] more than 10 persons in this state other than
9 those designated in (4) of this subsection during a period of 12 consecutive
10 months, regardless of whether the seller or any of the buyers is then present in
11 this state, if

12 (i) a commission or other remuneration is not paid or
13 given directly or indirectly for soliciting a prospective buyer in this
14 state;

15 (ii) a legend is placed on the certificate or other
16 document evidencing ownership of the security, stating that the security
17 is not registered under this chapter and cannot be resold without
18 registration under this chapter or exemption from it; and

19 (iii) offers are made without public solicitation or
20 advertisement; [AND

21 (iv) THE ISSUER FILES WITH THE
22 ADMINISTRATOR A NOTICE SPECIFYING THE ISSUER, THE
23 SECURITY TO BE SOLD, AND THE TERMS OF THE OFFER AT
24 LEAST TWO DAYS BEFORE ANY SALES ARE MADE;]

25 (B) to not [NO] more than 25 persons in this state other than
26 those designated in (4) of this subsection during a period of 12 consecutive
27 months, regardless of whether the seller or any of the buyers is then present in
28 this state, if

29 (i) the sales are made solely in this state;

30 (ii) before a sale, each prospective buyer is furnished
31 information that is sufficient to make an informed investment decision,

1 which information shall be furnished to the administrator upon request;
2 in this sub-subparagraph, "information that is sufficient to make an
3 informed investment decision" includes a business plan, an income and
4 expense statement, a balance sheet, a statement of risks, and a
5 disclosure of any significant negative factors that may affect the
6 outcome of the investment;

7 (iii) commissions or other remuneration meet the
8 requirements of this chapter and are made only to persons registered
9 under AS 45.55.040;

10 (iv) a legend is placed on the certificate or other
11 document evidencing ownership of the security, stating that the security
12 is not registered under this chapter and cannot be resold without
13 registration under this chapter or exemption from it;

14 (v) the issuer obtains a signed agreement from the buyer
15 acknowledging that the buyer is buying for investment purposes and
16 that the securities will not be resold without registration under this
17 chapter; and

18 (vi) offers are made without public solicitation or
19 advertisement; [AND

20 (vii) THE ISSUER FILES WITH THE
21 ADMINISTRATOR A NOTICE SPECIFYING THE ISSUER, THE
22 SECURITY TO BE SOLD, AND THE TERMS OF THE OFFER AT
23 LEAST TWO DAYS BEFORE ANY SALES ARE MADE;]

24 (C) to not [NO] more than 10 persons who are to receive the
25 initial issue of shares of a nonpublicly traded corporation, limited liability
26 company, limited partnership, or limited liability partnership if the
27 requirements of (B)(ii) - (iv) and (vi) of this paragraph are met;

28 (D) to the buyer of an enterprise or a business and the assets
29 and liabilities of the enterprise or business if

30 (i) the transfer of stock to the buyer is solely incidental
31 to the sale of the enterprise or business and its assets and liabilities;

1 (ii) the seller provides full access to the buyer of the
2 books and records of the enterprise or business; and

3 (iii) a legend is placed on the certificate or other
4 document evidencing ownership of the security, stating that the security
5 is not registered under this chapter and cannot be resold without
6 registration under this chapter or exemption from it;

7 (6) an offer or sale of a preorganization certificate or subscription if

8 (A) a commission or other remuneration is not paid or given
9 directly or indirectly for soliciting a prospective subscriber;

10 (B) the number of subscribers does not exceed 10; and

11 (C) a payment is not made by any subscriber;

12 (7) a transaction under an offer to existing security holders of the
13 issuer, including persons who, at the time of the transaction, are holders of convertible
14 securities, nontransferable warrants, or transferable warrants exercisable [WITHIN]
15 not later [MORE] than 90 days after [OF] their issuance, if

16 [(A)] a commission or other remuneration, other than a standby
17 commission, is not paid or given directly or indirectly for soliciting a security
18 holder in this state; [OR

19 (B) THE ISSUER FIRST FILES A NOTICE SPECIFYING
20 THE TERMS OF THE OFFER AND THE ADMINISTRATOR DOES NOT
21 BY ORDER DISALLOW THE EXEMPTION WITHIN THE NEXT FIVE
22 FULL BUSINESS DAYS;]

23 (8) an offer, but not a sale, of a security for which registration
24 statements have been filed under both this chapter and 15 U.S.C. 77a - 77bbbb
25 (Securities Act of 1933) if a stop order or refusal order is not in effect and a public
26 proceeding or examination looking toward an order is not pending under either this
27 chapter or 15 U.S.C. 77a - 77bbbb (Securities Act of 1933);

28 (9) an isolated nonissuer transaction, regardless of whether effected
29 through a broker-dealer, if the seller is not a promoter or controlling person as the
30 administrator may define by regulation or order or if the administrator at the request of
31 the seller waives the requirement that the seller not be a promoter or controlling

1 person;

2 (10) a nonissuer transaction effected by or through a registered broker-
3 dealer under an unsolicited order or offer to buy; however, the administrator may by
4 regulation require that the customer acknowledge on a specified form that the sale was
5 unsolicited, and that a signed copy of each form be preserved by the broker-dealer for
6 a specified period;

7 (11) a transaction executed by a bona fide pledgee without intending to
8 evade this chapter;

9 (12) a transaction incident to a right of conversion or a statutory or
10 judicially approved reclassification, recapitalization, reorganization, quasi-
11 reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

12 (13) a stock dividend, regardless of whether the corporation
13 distributing the dividend is the issuer of the stock, if nothing of value is given by
14 stockholders for the dividend other than the surrender of a right to a cash or property
15 dividend when each stockholder may elect to take the dividend in cash or property or
16 in stock;

17 (14) an act incident to a statutory vote by security holders on a merger,
18 consolidation, reclassification of securities, or sale of assets in consideration of the
19 issuance of securities of another issuer;

20 (15) the offer or sale by a registered broker-dealer, acting either as
21 principal or agent, of securities previously sold and distributed to the public if the
22 securities

23 (A) are sold at prices reasonably related to the current market
24 price at the time of sale, and, if the broker-dealer is acting as agent, the
25 commission collected by the broker-dealer on account of the sale is not in
26 excess of usual and customary commissions collected with respect to securities
27 and transactions having comparable characteristics;

28 (B) do not constitute the whole or a part of an unsold allotment
29 to or subscription or participation by the broker-dealer as an underwriter of the
30 securities or as a participant in the distribution of the securities by the issuer,
31 by an underwriter, or by a person or group of persons in substantial control of

1 the issuer or of the outstanding securities of the class being distributed; and

2 (C) have been lawfully sold and distributed in this state under
3 this chapter;

4 (16) offers or sales of certificates of interest or participation in oil, gas,
5 or mining rights, titles, or leases, or in payments out of production under those
6 [SUCH] rights, titles, or leases, if the purchasers

7 (A) are or have been during the preceding two years engaged
8 primarily in the business of exploring for, mining, producing, or refining oil,
9 gas, or minerals; or

10 (B) have been found by the administrator upon written
11 application to be substantially engaged in the business of exploring for,
12 mining, producing, or refining oil, gas, or minerals so as not to require the
13 protection provided by AS 45.55.070;

14 (17) a nonissuer transaction by a registered agent of a registered
15 broker-dealer, and a resale transaction by a sponsor of a unit investment trust
16 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), in a
17 security of a class that has been outstanding in the hands of the public for at least 90
18 days if, at the time of the transaction,

19 (A) the issuer of the security is actually engaged in business
20 and not in the organization stage or in bankruptcy or receivership and is not a
21 blank check, blind pool, or shell company whose primary plan of business is to
22 engage in a merger or combination of the business with, or an acquisition of,
23 an unidentified person or persons;

24 (B) the security is sold at a price reasonably related to the
25 current market price of the security;

26 (C) the security does not constitute the whole or part of an
27 unsold allotment to, or a subscription or participation by, the broker-dealer as
28 an underwriter of the security;

29 (D) a nationally recognized securities manual, which may be
30 designated by rule or order of the administrator, or a document filed with the
31 United States Securities and Exchange Commission that is publicly available

1 through the United States Securities and Exchange Commission's electronic
2 data gathering and retrieval system, contains

3 (i) a description of the business and operations of the
4 issuer;

5 (ii) the names of the issuer's officers and directors, if
6 any, or, in the case of an issuer not domiciled in the United States, the
7 corporate equivalents of the issuer's officers and directors in the issuer's
8 country of domicile;

9 (iii) an audited balance sheet of the issuer **dated not**
10 **earlier than** [AS OF A DATE WITHIN] 18 months **before the**
11 **transaction** or, in the case of a reorganization or merger **in which**
12 [WHERE] parties to the reorganization or merger had that audited
13 balance sheet, a pro forma balance sheet; and

14 (iv) an audited income statement for each of the issuer's
15 immediately preceding two fiscal years or for the period of existence of
16 the issuer if the issuer has been in existence for less than two years or,
17 in the case of a reorganization or merger where the parties to the
18 reorganization or merger had that audited income statement, a pro
19 forma income statement; and

20 (E) the issuer of the security has a class of equity securities
21 listed on a national securities exchange registered under 15 U.S.C. 78a - 78lll
22 (Securities Exchange Act of 1934) or designated for trading on the National
23 Association of Securities Dealers Automated Quotation System, unless the
24 issuer of the security

25 (i) is a unit investment trust registered under 15 U.S.C.
26 80a-1 - 80a-64 (Investment Company Act of 1940);

27 (ii) including predecessors, has been engaged in
28 continuous business for at least three years; or

29 (iii) has total assets of at least \$2,000,000 based on an
30 audited balance sheet **dated not earlier than** [AS OF A DATE
31 WITHIN] 18 months **before the transaction** or, in the case of a

1 reorganization or merger in which the [WHERE] parties to the
 2 reorganization or merger had that balance sheet, a pro forma balance
 3 sheet;

4 (18) an offer or a sale of a security by an issuer that has a specific
 5 business plan or purpose, is not in the development stage, and has not indicated that its
 6 business plan is to engage in a merger or acquisition with an unidentified company or
 7 other entity or person, under the following conditions:

8 (A) sales of securities are made only to persons who are or the
 9 issuer reasonably believes are accredited investors as defined in 17 C.F.R.
 10 230.501(a), as that regulation exists on or after October 1, 2013 [1999];

11 (B) the issuer reasonably believes that all purchasers are
 12 purchasing for investment and not with the view to or for sale in connection
 13 with a distribution of the security; a resale of a security sold in reliance on this
 14 exemption [WITHIN 12 MONTHS OF SALE] is presumed to be with a view
 15 to distribution and not for investment if the resale occurs not later than 12
 16 months after sale, except a resale under a registration statement under
 17 AS 45.55.070 - 45.55.120 or to an accredited investor under an exemption
 18 available under this chapter;

19 (C) the exemption in this paragraph is not available to an issuer
 20 if the issuer, a predecessor of the issuer, an affiliated issuer, a director, an
 21 officer, or a general partner of the issuer, a beneficial owner of 10 percent or
 22 more of a class of the issuer's equity securities, a promoter of the issuer
 23 presently connected with the issuer in any capacity, an underwriter of the
 24 securities to be offered, or a partner, a director, or an officer of the underwriter

25 (i) within the last five years has filed a registration
 26 statement that is the subject of a currently effective registration stop
 27 order entered by a state securities administrator or the United States
 28 Securities and Exchange Commission;

29 (ii) within the last five years has been convicted of a
 30 criminal offense in connection with the offer, purchase, or sale of a
 31 security, of a criminal offense involving fraud or deceit, or of a felony;

1 (iii) is currently subject to a state or federal
2 administrative enforcement order or judgment entered in the past
3 [WITHIN THE LAST] five years finding fraud or deceit in connection
4 with the purchase or sale of a security; or

5 (iv) is currently subject to an order, judgment, or decree
6 of a court of competent jurisdiction entered in the past [WITHIN THE
7 LAST] five years, temporarily, preliminarily, or permanently
8 restraining or enjoining the person from engaging in or continuing to
9 engage in conduct or a practice involving fraud or deceit in connection
10 with the purchase or sale of a security;

11 (D) the nonavailability of the exemption under (C) of this
12 paragraph does not apply if

13 (i) the person subject to the disqualification is licensed
14 or registered to conduct securities related business in the state in which
15 the order, judgment, or decree creating the disqualification was entered
16 against the person;

17 (ii) before the first offer under this exemption, the state
18 securities administrator or the court or regulatory authority that entered
19 the order, judgment, or decree waives the disqualification; or

20 (iii) the issuer establishes that it did not know and, in
21 the exercise of reasonable care, based on a factual inquiry, could not
22 have known that a disqualification existed under this paragraph;

23 (E) a general announcement of the proposed offering may be
24 made by any means and may include only the following information unless the
25 administrator specifically permits additional information:

26 (i) the name, address, and telephone number of the
27 issuer of the security;

28 (ii) the name, a brief description, and the price, if
29 known, of the security to be issued;

30 (iii) a brief description in 25 words or less of the
31 business of the issuer;

1 (iv) the type, number, and aggregate amount of
2 securities being offered;

3 (v) the name, address, and telephone number of the
4 person to contact for additional information;

5 (vi) a statement that sales will be made only to
6 accredited investors;

7 (vii) a statement that money or other consideration is
8 not being solicited or will not be accepted by way of this general
9 announcement; and

10 (viii) a statement that the securities have not been
11 registered with or approved by a state securities agency or the United
12 States Securities and Exchange Commission and are being offered and
13 sold under an exemption from registration;

14 (F) the issuer in connection with any offer may provide
15 information in addition to the general announcement under (E) of this
16 paragraph if the information is delivered

17 (i) through an electronic database that is restricted to
18 persons who have been prequalified as accredited investors; or

19 (ii) to a prospective purchaser that the issuer reasonably
20 believes is an accredited investor;

21 (G) a telephone solicitation is not permitted unless, before
22 placing the call, the issuer reasonably believes that the prospective purchaser
23 being solicited is an accredited investor;

24 (H) dissemination of the general announcement of the proposed
25 offering to persons who are not accredited investors does not disqualify the
26 issuer from claiming this exemption;

27 (I) the issuer shall file a notice of the transaction with the
28 administrator, a copy of the general announcement, and the fee for exemption
29 filings established by regulation within 15 days after the first sale in this state;

30 (19) an offer to repay, under AS 45.55.930, the buyer of a security if
31 the offeror first files with the administrator a notice specifying the terms of the offer at

1 least 10 [TWO] days before the offer is made;

2 (20) a transaction involving only family members who are related,
3 including related by adoption, within the fourth degree of affinity or consanguinity, or
4 involving only those family members and the corporations, partnerships, limited
5 liability companies, limited partnerships, limited liability partnerships, associations,
6 joint-stock companies, or trusts that are organized, formed, or created by those family
7 members or at the direction of those family members;

8 (21) a security that is not part of an initial issue of stock covered
9 by AS 45.55.138, but that is issued by a corporation organized under state law in
10 accordance with 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), if
11 the corporation qualifies for exempt status under 43 U.S.C. 1625(a).

12 * **Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 APPLICABILITY. This Act applies to transactions entered into on or after the
15 effective date of this Act.

16 * **Sec. 3.** This Act takes effect July 1, 2014.