



# Representative Sam Kito

## Alaska State Legislature

### Sectional Analysis House Bill 170

*“AK Securities Act; Penalties; Crt. Rules”*

**SECTIONS 1 – 14 (pp. 1-11)** include the corresponding changes to statutes that refer to former AS 45.55 provisions that have been moved to AS 45.56.

**SECTIONS 15 – 24 (pp. 11-14)** modify AS 45.55 as necessary to delete references to statutes that have no bearing on the Alaska Native Claims Settlement Act corporations because of the enactment of AS 45.56.

**SECTION 25 (p. 15)** proposed new Chapter AS 45.56.

#### **Article 1. General Provisions (p. 15)**

**Sec. 45.56.105. Securities registration requirement** – same as current law (AS 45.55.070). Securities must be registered before offer or sale unless federally covered or exempt.

#### **Article 2. Exemptions from Registration of Securities (pp. 15-30)**

**Sec. 45.56.205. Exempt securities** – generally the same as current law (AS 45.55.900(a)) with a few additions including securities issued by an insurance company; certain options, warrants and rights that are not federal covered securities; certain cooperatives and equipment trust certificates.

**Sec. 45.56.210. Exempt transactions** – similar to current law (AS 45.55.900(b)), reorganized with additions reflecting transactions allowed under the Uniform Securities Act of 2002 (USA).

**Sec. 45.56.220. Small intrastate securities offerings** (referred to as “crowdfunding”) – allows for offerings within Alaska of up to \$1,000,000 with a maximum single investment of \$10,000, incorporated into the Alaska Securities Act by SB 126 (2016).

**Sec. 45.56.230. Disqualifier** – prohibits persons who have been subject to regulatory action or participated in certain crimes from using exemptions from the registration requirement.

**Sec. 45.56.240. Waiver and modification** – broadens the administrator’s authority to waive or change requirements or conditions for exemptions.

**Sec. 45.56.250. Denial, suspension, revocation, condition, or limitation of exemptions** – same as current law, although the appeal rights and hearing information is moved to Article 6.

#### **Article 3. Registration of Securities and Notice Filing of Federal Covered Securities. (pp. 30-42)**

No significant changes to registration provisions from AS 45.55. Material changes noted by section.

**Sec. 45.56.305. Securities registration by coordination** – registration statement must be on file with the Administrator for 20 days (may be reduced by regulation). References to prompt notice by telegram are deleted.

**Sec. 45.56.310. Securities registration by qualification** – adds a new requirement that registrants disclose pending litigation that may materially affect the issuer or litigation that is known to be contemplated but not yet filed.

**Sec. 45.56.320. Securities registration filings** – allows the administrator to set escrow time by regulation or order for certain securities issued to a promoter or to other persons at a price substantially less than the public offering price.

**Sec. 45.56.330. Notice filing of federal covered securities** – adds fees for late filings.

**Sec. 45.56.340. Viatical settlement interests** – combines current AS 45.55.120 and AS 45.55.905(c) to explain the joint regulation of these interests by the Securities and Insurance statutes.

**Sec. 45.56.350. Waiver and modification** – the administrator’s waiver authorities are consolidated in this section instead of throughout the chapter.

**Sec. 45.56.360. Denial, suspension, and revocation of securities registration** – adds requirement to establish regulations explaining what conduct may be fraud upon purchasers; unreasonable discounts, compensation, profits (including options, etc.) and terms that are unfair, unjust or inequitable.

**Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers. (pp. 42-70)**

Firm, salesperson, and adviser registration (licensing) provisions are reorganized into one article, making it more user-friendly than current law. Notable changes are listed below.

**Sec. 45.56.405. Broker-dealer registration requirement and exemptions** – includes a new exemption to facilitate ongoing broker-customer relationships with customers who have established a second or other residence and clarifies the number of transactions a broker-dealer may effect annually (3) if not registered in Alaska.

**Sec. 45.56.410. Limited registration of Canadian broker-dealers and agents** – changes annual renewal to December 31 from December 1 for easier state and firm processing.

**Sec. 45.56.420. Registration exemption for merger and acquisition broker** – this new provision exempts merger and acquisition brokers from registration (licensing) requirements because these transactions are typically between knowing parties with adequate legal counsel and scrutiny. The exemption is not available if the broker actually handles the securities exchanged in the transaction, otherwise represents an issuer or public shell company, or is subject to an SEC action.

**Sec. 45.56.430. Agent registration requirement and exemptions** – the rewrite of this section includes a statement of the types of business covered here instead of in a definitional section.

**Sec. 45.56.435. Investment adviser registration requirement and exemptions** – includes a per client exemption similar to the broker-dealer exemption in Sec. 45.56.405.

**Sec. 45.56.440. Investment adviser representative registration requirement and exemptions** – these provisions mirror the broker-dealer agent requirements in Sec. 45.56.430.

**Sec. 45.56.445. Federal covered investment adviser notice filing requirement** – these provisions are not separately stated in the current law.

**Sec. 45.56.450. Registration by broker-dealer, agent, investment adviser, and investment adviser representative** – combines provisions in current statute and regulations and extends the automatic registration from 30 to 45 days unless the registration is denied.

**Sec. 45.56.455. Succession and change in registration of broker-dealer or investment adviser** – clarifies that an organizational change can generally be completed by amendment instead of a new registration (for instance a sole proprietorship moving to a limited liability company).

**Sec. 45.56.460. Termination of employment or association of agent and investment adviser representative and transfer of employment or association** – requires the registrant file a notification with the division. Allows for an immediate temporary effective registration with a new firm when there is no new disciplinary information added.

**Sec. 45.56.465. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative** – extends the effective date of registration withdrawal up to 60 days and allows a revocation proceeding to commence within one year.

**Sec. 45.56.470. Filing fees** – are established and may be paid through a designee by regulation.

**Sec. 45.56.475. Post registration requirements** – in addition to current requirements, adds the provision for continuing education by regulation.

**Sec. 45.56.480. Protecting older and vulnerable adults from financial exploitation** – adds a new provision adopting model legislation to protect vulnerable adults from financial exploitation that requires certain individuals to report financial exploitation of an older Alaskan or vulnerable adult to Adult Protective Services and the Administrator. Also allows a broker dealer or investment adviser to delay a financial disbursement if it may result in financial exploitation. Provides immunity for good faith reports and financial disbursement delays.

**Sec. 45.56.485. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration** – in addition to current provisions, allows the administrator to bar a person or firm from registration including for actions taken by other regulators. Civil penalty for registrants is increased from \$2,500-\$10,000 per violation to up to \$100,000 per violation.

#### **Article 5. Fraud and Liabilities. (pp. 66-69)**

**Sec. 45.56.505. General fraud** – same as current AS 45.55.010.

**Sec. 45.56.510. Prohibited conduct in providing investment advice** – allows administrator to define prohibited conduct by regulation.

**Sec. 45.56.520. Misleading filings** – same as current AS 45.55.160.

**Sec. 45.56.530. Misrepresentations concerning registration or exemption** – same content as AS 45.55.170.

**Sec. 45.56.540. Evidentiary burden** – similar content to current AS 45.55.900(c) and adds the citation to affirmative defense in criminal law.

**Sec. 45.56.550. Filing of sales and advertising literature** – same content as AS 45.55.150.

**Sec. 45.56.560. Qualified immunity** – registered persons are not liable to other registered persons, under state defamation laws, for statements contained in disclosure records required to be filed with the administrator for purposes of licensing and potential discipline.

#### **Article 6. Administration and Judicial Review. (pp. 72-93)**

**Sec. 45.56.605. Administration** – adds a new provision allowing the administrator to develop and implement investor education initiatives and accept grants or donations for investor education.

**Sec. 45.56.610. Administrative files and opinions** – requires the administrator keep records according to a retention schedule and outlines publicly disclosable documents.

**Sec. 45.56.615. Public records; confidentiality** – clarifies and specifies record confidentiality.

**Sec. 45.56.620. Uniformity and cooperation with other agencies** – expands opportunity for coordination with governmental units, regulatory organizations for collaborative efforts including regulation and enforcement to reduce the burden of raising capital by small business.

**Sec. 45.56.625. Securities investor education and training fund** – creates an investor education and training fund within the general fund. 33% of the money received from civil penalties may be used for investor education and training if appropriated by the legislature.

**Sec. 45.56.630. Service of process** – same as current AS 45.55.980.

**Sec. 45.56.635. Applicability of the chapter** – same as current AS 45.55.980.

**Sec. 45.56.640. Regulations, forms, orders, interpretative opinions, and hearings** – combines existing AS 45.55.950 and 45.55.970 and clarifies that GAAP compliant financial statements may only be required as allowed by federal law.

**Sec. 45.56.645. Investigations and subpoenas** – similar to existing AS 45.55.910 and allows broader cooperation with other regulators.

**Sec. 45.56.650. Administrative enforcement** – time period for a respondent to request a hearing after an action is taken is extended from 15 days to 30 days. Civil penalties are increased from \$2,500 for a single violation and \$25,000 for multiple violations to a maximum of \$100,000 for a single violation with no cap for multiple violations. If a victim is an “older person” (a person over 60 years old) or a “vulnerable adult,” the respondent is subject to treble damages. Restitution and actual costs of investigation may be ordered. The administrator may deny the use of securities exemptions under Article 2 and registration (licensing) exemptions under Article 4 if a person violates the Act. The administrator may petition the Superior Court to enforce a final order and the Court may hold a person in contempt for violating an order of the administrator, punishable by up to \$100,000 per violation, in addition to any administrative penalties that were originally assessed.

**Sec. 45.56.655. Civil enforcement** – the administrator may seek remedies such as asset freezes, an order of rescission, restitution, and civil penalties of up to \$100,000 per violation, and all damages may be trebled if the victim is an “older person” (person over 60 years of age) or “vulnerable adult.”

**Sec. 45.56.660. Civil liability** – outlines instances where the seller is liable to the purchaser and potential remedies (actual damages including interest as determined by the court); also describes instances where the buyer may be liable to the seller.

**Sec. 45.56.665. Rescission offers** – outlines the rescission offer process, including a new requirement that the offeror must demonstrate the ability to pay and then actually pay as promised.

**Sec. 45.56.670. Criminal enforcement** – intentional violations of the Act and fraud are generally punishable as class C felonies punishable by imprisonment under AS 12.55.125, or a fine of up to \$100,000, or both. A person convicted of violation a regulator order may be fined but not imprisoned if the person did not know of the regulation or order. Individuals who intentionally alter or destroy evidence are guilty of a class C felony and may be imprisoned as provided in AS 12.55.125, assessed a fine of not more the \$500,000, or both.

**Sec. 45.56.675. Judicial review** – appellants have 30 days to request review of a final order.

#### **Article 7. Miscellaneous and Additional General Provisions. (pp. 93-104)**

**Sec. 45.56.710. Reimbursement of expenses incident to examination or investigation** – expands recovery of expenses from current AS 45.55.915 to cover all examination expenses including staff time, travel and per diem.

**Sec. 45.56.720. Electronic records and signatures** – facilitates filing of electronic records and signatures. Consumers must consent and have the option to withdraw such consent.

**Sec. 45.56.730. References to federal statutes** – a list of all federal statutes referenced in the Act.

**Sec. 45.56.740. References to federal agencies** – notes that a reference to an agency of the United States is also a reference to a successor agency.

**Sec. 45.56.900. Definitions.** Updates federal citations. New definitions include:

- Disqualifier
- Filing
- Institutional investor (reflects federal law)
- Insurance company
- Insured
- International Banking Institution
- Offer to purchase
- Older person – a person that is age 60 or older (from AS 47.65.290(6))
- Price amendment
- Record
- Self-regulatory organization
- Sign
- Vulnerable adult (from AS 47.24.900(21))

**Sec. 45.56.995. Short title.** This chapter may be cited as the Alaska Securities Act.

**SECTIONS 26 – 28 (pp. 104-109)**. Citations are modified to reflect Chapter 45.56 in place of Chapter 45.55 references; federal law citations are updated.

**SECTION 29 (p. 109)** – Repeals statutes that are no longer needed in AS 45.55 because they do not apply to Alaska Native Claims Settlement Act corporation proxy solicitations.

**SECTION 30 (p. 109)** – Amends indirect Court Rules relating to changes in AS 45.56.

**SECTION 31 (p. 110)** – Allows the department to adopt transition regulations.

**SECTION 32 (p. 110)** – Amends the law to effect transition and application of AS 45.55 for existing proceedings, existing rights and duties.

**SECTION 33 (p. 110-111)** – Reviser’s instruction to rename AS 45.55 to Alaska Native Claims Settlement Act Corporations Proxy Solicitations and Initial Issuance of Stock.

**SECTION 34 (p. 111)** – Conditional effect of certain provisions upon constitutionally required vote of each house.

**SECTION 35-36** – January 1, 2018 effective date, except for section 31.