

year under his respective license or licenses and the locations and establishments from which such business was done, which shall be filed with the Board. The licensee shall pay to the Board the license fees accrued during such preceding year at the time of filing such affidavit or affidavits. Unless such affidavit or affidavits are so filed and fee paid, any licenses outstanding in the name of such applicant which have been issued under the laws in effect at the time of passage of this Act shall be forthwith cancelled by order of said Board. The failure to file the affidavit or affidavits or the cancellation of any existing license

shall not relieve any licensee from paying the fees as prescribed herein.

Sec. 3. If any provision hereof or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 4. **Effective Date.** This Act shall take effect upon its passage and approval or upon becoming law without such approval.

Became law without signature May 8, 1959

CHAPTER 198

AN ACT

Relating to securities; prohibiting fraudulent practices in relation thereto; requiring registration of broker-dealers, agents, and investment advisers; and declaring an effective date.

(J.C.S.S.B. 24)

Be it enacted by the Legislature of the State of Alaska:

Part I

Fraudulent and Other Prohibited Practices

Section 101. **Sales and Purchases.** It is unlawful for any person, in connection with the offer, sale, or purchase of any security, directly or indirectly.

(1) to employ any device, scheme, or artifice to defraud,

(2) to make any untrue statement of a material fact or to omit to state a material fact the omission of which would make any statement made misleading, or

(3) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

Sec. 102. **Advisory Activities.**

(a) It is unlawful for any person who receives any consideration from another person primarily for advising the other

person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise,

(1) to employ any device, scheme, or artifice to defraud the other person, or

(2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(b) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing

(1) that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;

(2) that no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) that the investment adviser, if a partnership, shall notify the other

party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Clause (1) does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment," as used in clause (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(c) It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if

(1) the Administrator by rule prohibits custody; or

(2) in the absence of rule, the investment adviser fails to notify the Administrator that he has or may have custody.

Part II

Registration of Broker-Dealers, Agents, and Investment Advisers

Sec. 201. Registration Requirements.

(a) It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is registered under this Act.

(b) It is unlawful for any broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during any period when he is not associated with a particular broker-dealer registered under this Act or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer,

or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the Administrator.

(c) It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this Act, (2) he is registered as a broker-dealer without the imposition of a condition under section 204 (b) (5), or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(d) Every registration expires one year from its effective date unless renewed. The Administrator may by rule or order prepare an initial schedule for registration renewals so that subsequent renewals of registrations effective on the effective date of this Act may be staggered by calendar months. For this purpose the Administrator may by rule reduce the registration fee proportionately.

Sec. 202. Registration Procedure.

(a) A broker-dealer, agent or investment adviser may obtain an initial or renewal registration by filing with the Administrator an application together with a consent to service of process pursuant to section 314 (g). The application shall contain whatever information the Administrator by rule requires concerning such matters as (1) the applicant's form and place of organization; (2) the applicant's proposed method of doing business; (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser, the qualifications and business history of any employee; (4) any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and (5) the applicant's financial condition and history. The Administrator may by rule or order require an applicant for initial registration to publish an announcement of the application in one or

more specified newspapers published in this state. If no denial order is in effect and no proceeding is pending under section 204, registration becomes effective at noon of the thirtieth day after an application is filed, except that registration shall become effective upon filing of the application by any of the persons subject to this Act who were doing business in Alaska upon the effective date of this Act. The Administrator may by rule or order specify an earlier effective date, and he may by order defer the effective date until noon of the thirtieth day after the filing of any amendment. Registration of a broker-dealer automatically constitutes registration of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions.

(b) Every applicant for initial or renewal registration shall pay a filing fee of \$50.00 in the case of a broker-dealer, \$25.00 in the case of an agent, and \$25.00 in the case of an investment adviser. When application is denied or withdrawn, the Administrator shall retain \$10.00 of the fee.

(c) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee.

(d) The Administrator may by rule require a minimum capital for registered broker-dealers and investment advisers, except that no requirement of minimum capital shall be made if a bond guaranteed by a corporate surety qualified to do business in Alaska is provided pursuant to Sec. 202 (e).

(e) The Administrator may by rule require registered broker-dealers, agents, and investment advisers to post surety bonds in amounts up to \$10,000, and may determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bonds so required. No bond may be required of any registrant whose net capital, which may be defined by rule, exceeds \$25,000. Every bond shall provide for suit thereon by any person who has a cause of action under section 310 and, if the Administrator by rule or order requires, by any

person who has a cause of action not arising under this Act. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within two years after the sale or other act upon which it is based.

Sec. 203. Post-Registration Provisions.

(a) Every registered broker-dealer and investment adviser shall make and keep accounts, correspondence, memoranda, papers, books and other records as the Administrator by rule prescribes. All records so required shall be preserved for three years unless the Administrator by rule prescribes otherwise for particular types of records.

(b) Every registered broker-dealer and investment adviser shall file such financial reports as the Administrator by rule prescribes.

(c) If the information contained in any document filed with the Administrator is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment unless notification of the correction has been given under section 201(b).

(d) All the records referred to in subsection (a) are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the Administrator, within or without this state, as the Administrator deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the Administrator, insofar as he deems it practicable in administering this subsection, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

Sec. 204. Denial, Revocation, Suspension, Cancellation, and Withdrawal of Registration.

(a) The Administrator may by order deny, suspend, or revoke any registration if he finds (1) that the order is in the public interest and (2) that the applicant

or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser.

(A) has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(B) has willfully violated or willfully failed to comply with any provision of this Act or a predecessor act or any rule or order under this Act or a predecessor act;

(C) has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(D) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(E) is the subject of an order of the Administrator denying, suspending, or revoking registration as a broker-dealer, agent, or investment adviser;

(F) is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a broker-dealer, agent or investment adviser, or the substantial equivalent of those terms as defined in this Act, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order; but (i) the Administrator may not institute a revocation or suspension proceeding under clause (F) more than one year from the date of the order relied on, and (ii) he may not enter an order under clause (F) on

the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section;

(G) has engaged in dishonest or unethical practices in the securities business;

(H) is insolvent, either in the sense that his liabilities exceed his assets or in the same sense that he cannot meet his obligations as they mature; but the Administrator may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; or

(I) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in subsection (b).

The Administrator may by order deny, suspend, or revoke any registration if he finds that (1) that the order is in the public interest and (2) that the applicant or registrant

(J) has failed reasonably to supervise his agents if he is a broker-dealer or his employees if he is an investment adviser; or

(K) has failed to pay the proper filing fee; but the Administrator may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected.

The Administrator may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next thirty days.

(b) The following provisions govern the application of section 204 (a) (2) (I):

(1) The Administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of any person other than (A) the broker-dealer himself if he is an individual or (B) an agent of the broker-dealer.

(2) The Administrator may not enter an order against an investment adviser on the basis of the lack of qualifica-

tion of any person other than (A) the investment adviser himself if he is an individual or (B) any other person who represents the investment adviser in doing any of the acts which make him an investment adviser.

(3) The Administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The Administrator shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The Administrator shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser.

(6) The Administrator may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser, provided that examinations required by this subsection shall not be required of registrants under this Act who were doing business in Alaska and are residents of Alaska on the effective date of this Act.

(c) The Administrator may by order summarily postpone or suspend registration pending final determination of any proceeding under this section. Upon the entry of the order, the Administrator shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons therefor and that within fifteen days after the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the Administrator, the order will remain in effect until it is modified or vacated by

the Administrator. If a hearing is requested or ordered, the Administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(d) If the Administrator finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the Administrator may by order cancel the registration or application.

(e) Withdrawal from registration as a broker-dealer, agent, or investment adviser becomes effective thirty days after receipt of an application to withdraw or within such shorter period of time as the Administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within thirty days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time and upon such conditions as the Administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the Administrator may nevertheless institute a revocation or suspension proceeding under section 204 (a) (2) (B) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which registration was effective.

(f) No order may be entered under any part of this section except the first sentence of subsection (c) without (1) appropriate prior notice to the applicant or registrant (as well as the employer or prospective employer if the applicant or registrant is an agent), (2) opportunity for hearing, and (3) written findings of fact and conclusions of law. Whenever not in conflict herewith, the Administrative Procedures Act will apply to all procedures.

PART III

General Provisions

Section 301. **Definitions.** When used in this Act, unless the context otherwise requires:

(a) "Administrator" means the Commissioner of Insurance until such time as the Commissioner of Commerce is appointed, at which time the Commissioner of Commerce or his designee shall assume the duties of Administrator.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer (except as provided in section 302) in effecting or attempting to effect purchase or sale of securities. A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include (1) an agent, (2) an insurer, (3) a bank, savings institution, or trust company, or (4) a person who has no place of business in this state if (A) he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve consecutive months he does not direct more than fifteen offers to sell or buy into this state in any manner to persons other than those specified in clause (A) whether or not the offeror or any of the offerees is then present in this state.

(d) "Fraud", "deceit", and "defraud" are not limited to common-law deceit.

(e) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(f) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writ-

ings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates, analyses or reports concerning securities. "Investment adviser" does not include (1) a bank, savings institution, or trust company; (2) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (4) a publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (5) a person whose advice, analyses, or reports relate only to securities exempted by section 302 (a) (1); (6) a person who has no place of business in this state if (A) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (B) during any period of twelve consecutive months he does not direct business communications into this state in any manner to more than five clients other than those specified in clause (A), whether or not he or any of the persons to whom the communications are directed is then present in this state; or (7) such other persons not within the intent of this paragraph as the Administrator may by rule or order designate.

(g) "Issuer" means any person who issues or proposes to issue any security, except that (1) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions or of the fixed, restricted management, or unit type, the term "insured" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the

trust or other agreement or instrument under which the security is issued; and (2) with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under such titles or leases, there is not considered to be an "insurer."

(h) "Person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government.

(i) (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issue, is considered to include an offer of the other security.

(6) The terms defined in this subsection do not include (A) any bona fide pledge or loan; (B) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock; (C) any act incident to a class vote by stockholders, pursuant to the certificate of incorpora-

tion or the applicable corporation statute, on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or (D) any act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

(j) "Securities Act of 1933", "Securities Exchange Act of 1934", "Public Utility Holding Company Act of 1935", and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after the effective date of this Act.

(k) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or for some other specified period. "Security" does not include a certificate of membership or share in any cooperative corporation.

(l) "State" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico.

Sec. 302. Exemptions.

(a) Agents of issuers with respect to the following securities are excepted from sections 301 (b) and 303:

(1) any security (including a revenue obligation) issued or guaranteed by

the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; or any certificate of deposit for any of the foregoing;

(2) any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution, savings and loan associations, building and loan associations, or trust company organized and supervised under the laws of any state or of the United States;

(4) any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal;

(5) any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if the Administrator is notified in writing thirty days before the inception of the plan or, with respect to plans which are in effect on the effective date of this Act, within sixty days thereafter (or within thirty days before they are reopened if they are closed on the effective date of this Act.

(b) Agents of issuers with respect to the following transactions are excepted from sections 301 (b) and 303:

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

(2) any transaction in a bond or

other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds, or other evidence of indebtedness, secured thereby, is offered and sold as a unit;

(3) any transaction by a receiver or trustee in bankruptcy;

(4) any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(5) any transaction pursuant to an offer directed by the offeror to not more than twenty persons (other than those designated in paragraph (4)) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if (A) the seller reasonably believes that all the buyers in this state are purchasing for investment, and (B) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state; but the Administrator may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in Class (A) and (B) with or without the substitution of a limitation on remuneration;

(6) any offer or sale of preorganization certificate or subscription if (A) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (B) the number of subscribers does not exceed ten, and (C) no payment is made by any subscriber;

(7) any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, non-transferable warrants, or transferable warrants exercis-

able within not more than ninety days of their issuance, if (A) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state, or (B) the issuer first files a notice specifying the terms of the offer and the Administrator does not by order disallow the exemption within the next five full business days;

(8) any offer (but not a sale) of a security for which registration statements have been filed under both this Act and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act;

(9) any transaction effected with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

(c) In any proceeding under this Act, the burden of proving an exception from a definition is upon the person claiming it.

Sec. 303. Filing of Sales and Advertising Literature. The Administrator may by rule or order require any registered broker-dealer or agent to file any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature addressed or intended for distribution to prospective investors, except with respect to the securities and transactions specified in section 302.

Sec. 304. Misleading Filings. It is unlawful for any person to make or cause to be made, in any document filed with the Administrator or in any proceeding under this Act, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

Sec. 305. Unlawful Representations Concerning Registration or Exemption.

(a) Neither (1) the fact that an application for registration has been filed nor (2) the fact that a person is effectively registered constitutes a finding

by the Administrator that any document filed under this Act is true, complete, and not misleading. Neither any such fact nor the fact that an exception is available means that the Administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection (a).

Sec. 306. Administration of Act.

(a) This Act shall be administered by the Office of the Insurance Commissioner until that agency is succeeded by a department of commerce or the appropriate division thereof.

(b) It is unlawful for the Administrator or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the Administrator and which is not made public. No provision of this Act authorized the Administrator or any of his officers or employees to disclose any such information except among themselves or when necessary or appropriate in a proceeding or investigation under this Act. No provision of this Act either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the Administrator or any of his officers or employees.

Sec. 307. Investigations and Subpoenas.

(a) The Administrator in his discretion (1) may make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provision of this Act or any rule or order hereunder, or to aid in the enforcement of this Act or in the prescribing of rules and forms hereunder, (2) may require or permit any person to file a statement in writing, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning the matter to be investigated, and (3) may publish information concerning any violation of this Act or any rule or order hereunder.

(b) For the purpose of any investigation or proceeding under this Act, the Administrator or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the Administrator deems relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to any person, the Superior Court, or the U. S. District Court for the District of Alaska upon application by the Administrator, may issue to the person an order requiring him to appear before the Administrator, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending any testifying or from producing any document or record before the Administrator, or in obedience to the subpoena of the Administrator or any officer designated by him, or in any proceeding instituted by the Administrator, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing, concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Sec. 308. Injunctions. Whenever it appears to the Administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Act or any rule or order hereunder, he may in his discretion bring an action in the Superior Court to enjoin the acts or practices and to enforce compliance with this Act or any rule or order hereunder.

Upon a proper showing a permanent or temporary injunction, restraining order, or writs of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the Administrator to post a bond.

Sec. 309. Criminal Penalties.

(a) Any person who wilfully violates any provision of this Act except section 304, or who wilfully violates any rule or order under this Act, or who wilfully violates section 304 knowing the statement made to be false or misleading in any material respect, shall upon conviction be fined not more than \$5,000 or imprisoned not more than three years, or both; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned under this Act more than five years after the alleged violation.

(b) The Administrator may refer such evidence as is available concerning violations of this Act or of any rule or order hereunder to the attorney general who may, with or without such a reference, institute the appropriate criminal proceedings under this Act.

(c) Nothing in this Act limits the power of the state to punish any person for any conduct which constitutes a crime by statute or at common law.

Sec. 310. Civil Liabilities.

(a) Any person who

(1) offers or sells a security in violation of section 201 (a) or 305 (b), or of any rule or order under section 303 which requires the filing of sales literature before it is used.

(2) offers or sells a security by means of any untrue statement of a material fact or omits to state a material fact, the omission of which makes any statement misleading, is liable to the person buying the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at six percent per year from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income re-

ceived on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at six percent per year from the date of disposition.

(b) Every person who directly or indirectly controls a seller liable under subsection (a), every partner, officer, or director of such a seller, every person occupying a similar status or performing similar functions, every employee of such a seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the non-seller who is so liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(c) Any tender specified in this section may be made at any time before entry of judgment.

(d) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(e) No person may sue under this section more than two years after the contract of sale. No person may sue under this section (1) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at six percent per year from the date of payment, less the amount of any income received on the security, and he failed to accept the offer within thirty days of its receipt, or (2) if the buyer received such an offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within thirty days of its receipt.

(f) No person who has made or engaged in the performance of any contract in violation of any provision of this Act or any rule or order hereunder, or who has acquired any purported right

under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(g) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this Act or any rule or order hereunder is void.

(h) The rights and remedies provided by this Act are in addition to any other rights or remedies that may exist at law or in equity, but this Act does not create any cause of action not specified in this section or section 202 (e).

Sec. 311. Judicial Review of Orders.

(a) Any person aggrieved by a final order of the Administrator may obtain a review of the order in the Superior Court by filing in court, within sixty days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be forthwith served upon the Administrator, and thereupon the Administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these have been filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part.

(b) The commencement of proceedings under subsection (a) does not, unless specifically ordered by the court, operate as a stay of the Administrator's order.

(c) All rules, regulations, orders and reviews issued or authorized under this Act including judicial review and its scope shall be accomplished in conformity with the Administrative Procedures Act of 1959.

Sec. 312. Rules, Forms, Orders, and Hearings.

(a) The administrator may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of this Act, including rules and forms governing registration statements, applications, and reports, and defining any terms, whether or not used in this Act, insofar

as the definitions are not inconsistent with the provisions of this Act. For the purpose of rules and forms, the Administrator may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

(b) No rule, form, or order may be made, amended, or rescinded unless the Administrator finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this Act. In prescribing rules and forms the Administrator may cooperate with the securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, application, and reports wherever practicable.

(c) The administrator may by rule or order prescribe (1) the form and content of financial statements required under this Act, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting practices.

(d) All rules and forms of the Administrator shall be published.

(e) No provision of this Act imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the Administrator, notwithstanding that the rule, form, or order may be later amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(f) Every hearing in an administrative proceeding shall be public unless the Administrator in his discretion grants a request joined in by all the respondents that the hearing be conducted privately.

Sec. 313. Administrative Files and Opinions.

(a) A document is filed when it is received by the Administrator.

(b) The administrator shall keep a register of all applications for registration which are or have ever been effective under this Act and all denial, suspension, or revocation orders which have been entered under this Act. The register shall be open for public inspection.

(c) The information contained in or filed with any application or report may be made available to the public under such rules as the Administrator prescribes.

(d) Upon request and at such reasonable charges as he prescribes, the Administrator shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this Act, any copy so certified is prima facie evidence of the contents of the entry or documents certified.

(e) The Administrator in his discretion may honor requests from interested persons for interpretative opinions.

Sec. 314. Scope of the Act and Service of Process.

(a) Sections 101, 201 (a), 305, and 310 apply to persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.

(b) Sections 101, 201 (a), and 305 apply to persons who buy or offer to buy when (1) an offer to buy is made in this state, or (2) an offer to sell is made and accepted in this state.

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (1) originates from this state or (2) is directed by the offeror to this state and received at the place to which it is directed (or at any post office in this state in the case of a mailed offer).

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance (1) is communicated to the offeror in this state and (2) has not previously been communicated to the offeror, orally or in writing, outside this state; and accept-

ance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past twelve months, or (2) a radio or television program originating outside this state is received in this state.

(f) Sections 102 and 201 (c), as well as section 305 so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this Act and every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense shall file with the Administrator, in such form as he by rule prescribes, an irrevocable consent appointing the Administrator or his successor in office to be his attorney to receive service of any lawful process in any non-criminal suit, action, or proceeding against him or his successor executor or administrator which arises under this Act or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the Administrator, but it is not effective unless (1) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith

sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the Administrator, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(h) When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this Act or any rule or order hereunder, and he has not filed a consent to service of process under subsection (g) and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the Administrator or his successor in office to be his attorney to receive service of any lawful process in any non-criminal suit, action or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this Act or any rule or order hereunder with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the Administrator, and it is not effective unless (1) the plaintiff, who may be the Administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the Administrator in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

Sec. 315. Short Title. This Act may be cited as the Alaska Securities Act of 1959.

Sec. 316. Effective Date. This Act

shall be in full force and effect from and after the date of its passage and approval or upon its becoming law without such approval.

Approved May 9, 1959

CHAPTER 199

AN ACT

To create the Alaska Public Service Commission; defining its authority and duties; and providing for an effective date.

(C.S.S.B. 54)

Be it enacted by the Legislature of the State of Alaska:

Section 1. **Short Title.** This Act shall be known and may be cited as the "Alaska Public Service Commission Act."

Sec. 2. **Public Service Commission: Membership, Qualifications and Compensation.** There is hereby created within the Department of Commerce the Alaska Public Service Commission, which shall consist of three members to be appointed by the governor and confirmed by the legislature in joint session assembled. The term of office of each such member shall be six years, or until his successor is appointed and qualifies; provided, however, that the governor shall designate which, among his initial appointees, shall serve, respectively, for terms of two years, four years and six years, it being the intent hereof that terms of commissioners be staggered to insure continuity of experience on the commission. Members appointed to the commission shall be qualified by training or experience to discharge their duties as herein provided and the governor, in making his appointments, shall recognize the principle of area representation. No member of the commission, nor any employee or agent thereof, shall have any official or professional relation or connection with, or hold any stock or securities or have any pecuniary interest in any business or agency subject to regulation hereunder; provided, that membership in a cooperative association shall not be considered a "pecuniary interest" within the meaning of this section. The Governor shall designate one member of the commission to serve as chairman. The commission shall be under the general administrative supervision of the Commis-

sioner of Commerce and the latter shall appoint the executive director of the commission, who may be a member of the commission. The Commission shall establish such offices within the state as may be necessary to the proper discharge of its duties. Members of the commission shall be compensated for time spent in the discharge of their duties and for their necessary travel and other expenses as provided by law. Each member of the commission shall take and subscribe to the oath prescribed for principal officers of the state.

Sec. 3. **Definitions.** In this Act:

(1) "Public utility" or "utility" means and embraces every corporation, whether municipal, public, cooperative or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by any court having jurisdiction in the premises, that now or hereafter may own, operate, manage or control any plant or system for the generation, transmission or distribution of electric energy and power, for the furnishing of telephone or telegraph communications, for the transmission or distribution of heat, natural or manufactured gas, oil or other petroleum products, or water, or for the furnishing of community sewer services, and the plant and other facilities utilized for any of the foregoing purposes; provided, this Act shall not apply to the purveyor of water or oil or other petroleum products by tank, wagon or similar conveyance, to any public utility which does a gross annual business of less than \$100,000.00 nor to a municipally-owned and operated water or sewer utility. Application of this Act to electric, telegraphic, and telephonic utilities shall be held in abeyance