

HOUSE BILL NO. 303

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-EIGHTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES COSTELLO, Holmes

Introduced: 2/12/14

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing an exemption for the sale and offering of certain securities."**

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

3 * **Section 1.** AS 45.55.030(a) is amended to read:

4 (a) **Except as provided in AS 45.55.175, a** [A] person may not transact
5 business in this state as a broker-dealer or agent unless the person is registered under
6 this chapter.

7 * **Sec. 2.** AS 45.55 is amended by adding a new section to article 4 to read:

8 **Sec. 45.55.175. Exemption for certain security sales and offerings.** (a) If a
9 transaction for the sale or offering of a security satisfies the requirements of this
10 section, the transaction is exempt from AS 45.55.070 and 45.55.075, and the issuer of
11 the security being sold or offered is exempt from AS 45.55.030 - 45.55.060 for the
12 purpose of that sale or offering.

13 (b) In addition to the other requirements of this section, the issuer of a security
14 being offered or sold under this section shall satisfy the requirements of the federal
15 exemption for intrastate offerings under 15 U.S.C. 77c(a)(11) (Securities Act of 1933)

1 and 17 C.F.R. 230.147.

2 (c) The issuer of a security being offered or sold under this section shall be a
3 resident of this state, shall be doing business in the state, and shall make the sale or
4 offering of a security to an offeree or purchaser who is a resident of the state at the
5 time of the sale or offering. The issuer may make the sale or offering on an Internet
6 website. In this subsection, "doing business" has the meaning given in 17 C.F.R.
7 230.147(c).

8 (d) The aggregate purchase price of securities sold by an issuer to one
9 purchaser under this section during the 12-month period preceding the date of the sale
10 may not exceed

11 (1) the greater of \$2,000 or five percent of the purchaser's annual
12 income or net worth if the purchaser's income or net worth is less than \$100,000; or

13 (2) 10 percent of the annual income or net worth of the purchaser up to
14 \$100,000, if the purchaser's annual income or net worth is \$100,000 or more.

15 (e) The aggregate purchase price of all securities sold by an issuer under this
16 section during any 12-month period may not exceed \$1,000,000.

17 (f) Under this section, a security may be sold only to a person who signs the
18 following statement at the time of sale: "I acknowledge that I am investing in a high-
19 risk, speculative business venture, that I may lose all of my investment, and that I can
20 afford the loss of my investment."

21 (g) The issuer of a security under this section shall establish an escrow
22 account to hold the proceeds of sales under this section until the minimum target
23 dollar amount for the security offering is met. The issuer shall file the escrow
24 agreement with the administrator. The contents of the escrow agreement must include
25 a statement that the proceeds of the sale under this section will not be released from
26 the escrow account until the minimum target dollar amount for the security offering is
27 met.

28 (h) The administrator may inspect and review an Internet website that is
29 offering a security for sale under this section. Upon launching the Internet website, the
30 issuer shall provide the administrator with

31 (1) notice of the existence of the Internet website; and

1 (2) the address of the Internet website.

2 (i) The issuer of a security under this section shall implement basic
3 precautionary measures to avoid targeting and sales to persons who are not residents
4 of this state, including displaying a prominent statement that the offering is limited to
5 the residents of this state and using passwords for persons whose residency has been
6 verified.

7 (j) The issuer of a security under this section shall provide without charge, or
8 make otherwise publicly accessible, information describing the business plan, the
9 financial condition, and the managerial condition of the issuer, including unaudited
10 financial statements prepared in accordance with generally accepted accounting
11 principles, to each

12 (1) offeree before a sale of a security under this section; and

13 (2) shareholder within 45 days after the end of each fiscal quarter
14 while the securities are outstanding.

15 (k) In this section,

16 (1) "resident," as applied to an issuer, means an issuer who is a
17 resident under 17 C.F.R. 230.147(c);

18 (2) "resident," as applied to a person who is an offeree or a purchaser
19 means a person who is a resident under 17 C.F.R. 230.147(d).

20 * **Sec. 3.** AS 45.55.900(b) is amended to read:

21 (b) The following transactions are exempted from AS 45.55.070 and
22 45.55.075:

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

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

30 (3) a transaction by an executor, administrator, sheriff, marshal,
31 receiver, trustee in bankruptcy, guardian, or conservator;

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

6 (5) sales by an issuer

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

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

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

18 (iii) offers are made without public solicitation or
19 advertisement; and

20 (iv) the issuer files with the administrator a notice
21 specifying the issuer, the security to be sold, and the terms of the offer
22 at least two days before any sales are made;

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

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

28 (ii) before a sale, each prospective buyer is furnished
29 information that is sufficient to make an informed investment decision,
30 which information shall be furnished to the administrator upon request;
31 in this sub-subparagraph, "information that is sufficient to make an

1 informed investment decision" includes a business plan, an income and
2 expense statement, a balance sheet, a statement of risks, and a
3 disclosure of any significant negative factors that may affect the
4 outcome of the investment;

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

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

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

16 (vi) offers are made without public solicitation or
17 advertisement; and

18 (vii) the issuer files with the administrator a notice
19 specifying the issuer, the security to be sold, and the terms of the offer
20 at least two days before any sales are made;

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

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

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

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

31 (iii) a legend is placed on the certificate or other

1 document evidencing ownership of the security, stating that the security
2 is not registered under this chapter and cannot be resold without
3 registration under this chapter or exemption from it;

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

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

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

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

9 (7) a transaction under an offer to existing security holders of the
10 issuer, including persons who at the time of the transaction are holders of convertible
11 securities, nontransferable warrants, or transferable warrants exercisable within not
12 more than 90 days of their issuance, if

13 (A) a commission or other remuneration, other than a standby
14 commission, is not paid or given directly or indirectly for soliciting a security
15 holder in this state; or

16 (B) the issuer first files a notice specifying the terms of the
17 offer and the administrator does not by order disallow the exemption within the
18 next five full business days;

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

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

29 (10) a nonissuer transaction effected by or through a registered broker-
30 dealer under an unsolicited order or offer to buy; however, the administrator may by
31 regulation require that the customer acknowledge on a specified form that the sale was

1 unsolicited, and that a signed copy of each form be preserved by the broker-dealer for
2 a specified period;

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

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

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

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

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

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

24 (B) do not constitute the whole or a part of an unsold allotment
25 to or subscription or participation by the broker-dealer as an underwriter of the
26 securities or as a participant in the distribution of the securities by the issuer,
27 by an underwriter, or by a person or group of persons in substantial control of
28 the issuer or of the outstanding securities of the class being distributed; and

29 (C) have been lawfully sold and distributed in this state under
30 this chapter;

31 (16) offers or sales of certificates of interest or participation in oil, gas,

1 or mining rights, titles, or leases, or in payments out of production under such rights,
2 titles, or leases, if the purchasers

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

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

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

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

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

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

25 (D) a nationally recognized securities manual, which may be
26 designated by rule or order of the administrator, or a document filed with the
27 United States Securities and Exchange Commission that is publicly available
28 through the United States Securities and Exchange Commission's electronic
29 data gathering and retrieval system, contains

30 (i) a description of the business and operations of the
31 issuer;

1 (ii) the names of the issuer's officers and directors, if
2 any, or, in the case of an issuer not domiciled in the United States, the
3 corporate equivalents of the issuer's officers and directors in the issuer's
4 country of domicile;

5 (iii) an audited balance sheet of the issuer as of a date
6 within 18 months or, in the case of a reorganization or merger where
7 parties to the reorganization or merger had that audited balance sheet, a
8 pro forma balance sheet; and

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

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

20 (i) is a unit investment trust registered under 15 U.S.C.
21 80a-1 - 80a-64 (Investment Company Act of 1940);

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

24 (iii) has total assets of at least \$2,000,000 based on an
25 audited balance sheet as of a date within 18 months or, in the case of a
26 reorganization or merger where parties to the reorganization or merger
27 had that balance sheet, a pro forma balance sheet;

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

1 (A) sales of securities are made only to persons who are or the
2 issuer reasonably believes are accredited investors as defined in 17 C.F.R.
3 230.501(a), as that regulation exists on or after October 1, 1999;

4 (B) the issuer reasonably believes that all purchasers are
5 purchasing for investment and not with the view to or for sale in connection
6 with a distribution of the security; a resale of a security sold in reliance on this
7 exemption within 12 months of sale is presumed to be with a view to
8 distribution and not for investment, except a resale under a registration
9 statement under AS 45.55.070 - 45.55.120 or to an accredited investor under
10 an exemption available under this chapter;

11 (C) the exemption in this paragraph is not available to an issuer
12 if the issuer, a predecessor of the issuer, an affiliated issuer, a director, an
13 officer, or a general partner of the issuer, a beneficial owner of 10 percent or
14 more of a class of the issuer's equity securities, a promoter of the issuer
15 presently connected with the issuer in any capacity, an underwriter of the
16 securities to be offered, or a partner, a director, or an officer of the underwriter

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

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

24 (iii) is currently subject to a state or federal
25 administrative enforcement order or judgment entered within the last
26 five years finding fraud or deceit in connection with the purchase or
27 sale of a security; or

28 (iv) is currently subject to an order, judgment, or decree
29 of a court of competent jurisdiction entered within the last five years,
30 temporarily, preliminarily, or permanently restraining or enjoining the
31 person from engaging in or continuing to engage in conduct or a

1 practice involving fraud or deceit in connection with the purchase or
2 sale of a security;

3 (D) the nonavailability of the exemption under (C) of this
4 paragraph does not apply if

5 (i) the person subject to the disqualification is licensed
6 or registered to conduct securities related business in the state in which
7 the order, judgment, or decree creating the disqualification was entered
8 against the person;

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

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

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

18 (i) the name, address, and telephone number of the
19 issuer of the security;

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

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

24 (iv) the type, number, and aggregate amount of
25 securities being offered;

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

28 (vi) a statement that sales will be made only to
29 accredited investors;

30 (vii) a statement that money or other consideration is
31 not being solicited or will not be accepted by way of this general

1 announcement; and

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

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

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

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

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

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

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

22 (19) an offer to repay, under AS 45.55.930, the buyer of a security if
23 the offeror first files with the administrator a notice specifying the terms of the offer at
24 least two days before the offer is made;

25 (20) a transaction involving only family members who are related,
26 including related by adoption, within the fourth degree of affinity or consanguinity, or
27 involving only those family members and the corporations, partnerships, limited
28 liability companies, limited partnerships, limited liability partnerships, associations,
29 joint-stock companies, or trusts that are organized, formed, or created by those family
30 members or at the direction of those family members;

31 **(21) a transaction under AS 45.55.175.**