

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 4, 2016
1:09 p.m.

MEMBERS PRESENT

Representative Gabrielle LeDoux, Chair
Representative Bob Lynn
Representative Charisse Millett
Representative Matt Claman
Representative Jonathan Kreiss-Tomkins

MEMBERS ABSENT

Representative Wes Keller, Vice Chair
Representative Kurt Olson (alternate)

COMMITTEE CALENDAR

HOUSE JOINT RESOLUTION NO. 29

Requesting the United States Congress to call a convention of the states to propose an amendment to the Constitution of the United States to set a limit on the number of terms that a person may be elected as a member of the United States House of Representatives and as a member of the United States Senate; and urging the legislatures of the other 49 states to request the United States Congress to call a convention of the states.

- MOVED HJR 29 OUT OF COMMITTEE

HOUSE BILL NO. 194

"An Act repealing and reenacting the Alaska Securities Act, including provisions relating to exempt securities and transactions; relating to registration of securities, firms, and agents that offer or sell securities and investment advice; relating to administrative, civil, and criminal enforcement provisions, including restitution and civil penalties for violations; allowing certain civil penalties to be used for an investor training fund; establishing increased civil penalties for harming older Alaskans; retaining provisions concerning corporations organized under the Alaska Native Claims Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 317

"An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate Procedure; and providing for an effective date."

- MOVED CSHB 317(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 205

"An Act relating to conditions of release; relating to community work service; relating to credit toward a sentence of imprisonment for certain persons under electronic monitoring; relating to the restoration under certain circumstances of an administratively revoked driver's license, privilege to drive, or privilege to obtain a license; allowing a reduction of penalties for offenders successfully completing court-ordered treatment programs for persons convicted of driving under the influence; relating to termination of a revocation of a driver's license; relating to restoration of a driver's license; relating to credits toward a sentence of imprisonment, to good time deductions, and to providing for earned good time deductions for prisoners; relating to early termination of probation and reduction of probation for good conduct; relating to the rights of crime victims; relating to the disqualification of persons convicted of certain felony drug offenses from participation in the food stamp and temporary assistance programs; relating to probation; relating to mitigating factors; relating to treatment programs for prisoners; relating to the duties of the commissioner of corrections; amending Rule 32, Alaska Rules of Criminal Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HJR 29

SHORT TITLE: CALL FED. CONSTITUTIONAL CONV: TERM LIMITS

SPONSOR(S): REPRESENTATIVE(S) KELLER

01/27/16	(H)	READ THE FIRST TIME - REFERRALS
01/27/16	(H)	JUD
03/25/16	(H)	JUD AT 1:00 PM GRUENBERG 120
03/25/16	(H)	-- MEETING CANCELED --
04/01/16	(H)	JUD AT 1:00 PM GRUENBERG 120
04/01/16	(H)	Heard & Held

04/01/16 (H) MINUTE (JUD)
04/04/16 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 194

SHORT TITLE: AK SECURITIES ACT; PENALTIES; CRT. RULES
SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

04/13/15 (H) READ THE FIRST TIME - REFERRALS
04/13/15 (H) L&C, JUD, FIN
02/01/16 (H) L&C AT 3:15 PM BARNES 124
02/01/16 (H) Heard & Held
02/01/16 (H) MINUTE (L&C)
02/08/16 (H) L&C AT 3:15 PM BARNES 124
02/08/16 (H) -- MEETING CANCELED --
02/10/16 (H) L&C AT 3:15 PM BARNES 124
02/10/16 (H) <Bill Hearing Canceled>
02/12/16 (H) L&C AT 3:15 PM BARNES 124
02/12/16 (H) <Bill Hearing Canceled>
02/13/16 (H) L&C AT 10:00 AM BARNES 124
02/13/16 (H) <Bill Hearing Canceled>
03/14/16 (H) L&C AT 3:15 PM BARNES 124
03/14/16 (H) Heard & Held
03/14/16 (H) MINUTE (L&C)
03/23/16 (H) L&C AT 3:15 PM BARNES 124
03/23/16 (H) Moved CSHB 194(L&C) Out of Committee
03/23/16 (H) MINUTE (L&C)
03/24/16 (H) L&C RPT CS (L&C) NT 1DP 5NR 1AM
03/24/16 (H) DP: OLSON
03/24/16 (H) NR: TILTON, HUGHES, KITO, JOSEPHSON,
LEDOUX
03/24/16 (H) AM: COLVER
04/04/16 (H) JUD AT 1:00 PM GRUENBERG 120

BILL: HB 317

SHORT TITLE: FORFEITURE: NO CIVIL IN REM; ONLY CRIMINAL
SPONSOR(s): WILSON

02/17/16 (H) READ THE FIRST TIME - REFERRALS
02/17/16 (H) JUD, FIN
03/30/16 (H) JUD AT 1:00 PM GRUENBERG 120
03/30/16 (H) Heard & Held
03/30/16 (H) MINUTE (JUD)
03/31/16 (H) JUD AT 1:00 PM GRUENBERG 120
03/31/16 (H) -- Will be Continued from 3/30/16 --
04/04/16 (H) JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

KEVIN ANSELM, Director
Division of Banking and Securities
Department of Commerce, Community, and Economic Development
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 194, discussed the Alaska Securities Act and the bill.

RENEE WARDLAW, Assistant Attorney General
Commercial and Fair Business Section
Civil Division
Department of Law
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 194, answered questions.

KRISTY NAYLOR, Chief of Enforcement and Securities
Division of Banking and Securities
Department of Commerce, Community, and Economic Development
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 194, answered questions.

JULIUS BRECHT, Of Counsel
Law Offices of Bankston, Gronning and O'Hara
Anchorage, Alaska
POSITION STATEMENT: During the hearing of HB 194, offered testimony and answered questions.

ROBERT BANKS, Attorney
Law Offices of Samuels, Yoelin, Kantor
Portland, Oregon
POSITION STATEMENT: During the hearing of HB 194, offered testimony and answered questions.

JULIETTE SHEPARD, Technology Lead Development Coordinator
Fairbanks Economic Development Corporation (FEDC)
Fairbanks, Alaska
POSITION STATEMENT: During the hearing of HB 194, offered testimony.

BARBARA BARNES, Staff
Representative Tammie Wilson
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: During the hearing of HB 317, explained changes within Version H.

JOHN SKIDMORE, Director
Legal Services Section
Criminal Division
Department of Law (DOL)
Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 317, offered testimony and answered questions.

ACTION NARRATIVE

[1:09:07 PM](#)

CHAIR GABRIELLE LEDOUX called the House Judiciary Standing Committee meeting to order at 1:09 p.m. Representatives Millett, Lynn, Claman, and LeDoux were present at the call to order. Representatives Foster and Kreiss-Tomkins arrived as the meeting was in progress.

HJR 29-CALL FED. CONSTITUTIONAL CONV: TERM LIMITS

[1:10:01 PM](#)

CHAIR LEDOUX announced that the first order of business would be HOUSE JOINT RESOLUTION NO. 29, Requesting the United States Congress to call a convention of the states to propose an amendment to the Constitution of the United States to set a limit on the number of terms that a person may be elected as a member of the United States House of Representatives and as a member of the United States Senate; and urging the legislatures of the other 49 states to request the United States Congress to call a convention of the states.

CHAIR LEDOUX advised that public testimony is closed, and asked the committee members whether they had comments regarding the resolution.

[1:10:32 PM](#)

REPRESENTATIVE MILLET moved to report HJR 29, labeled 29-LS1322\A out of committee with individual recommendations and the accompanying fiscal notes. There being no objection HB 29 passed out of the House Judiciary Standing Committee.

[1:11:08 PM](#)

The committee took an at-ease from 1:11 p.m. to 1:13 p.m.

HB 194-AK SECURITIES ACT; PENALTIES; CRT. RULES

1:13:26 PM

CHAIR LEDOUX announced that the next order of business would be HOUSE BILL NO. 194, "An Act repealing and reenacting the Alaska Securities Act, including provisions relating to exempt securities and transactions; relating to registration of securities, firms, and agents that offer or sell securities and investment advice; relating to administrative, civil, and criminal enforcement provisions, including restitution and civil penalties for violations; allowing certain civil penalties to be used for an investor training fund; establishing increased civil penalties for harming older Alaskans; retaining provisions concerning corporations organized under the Alaska Native Claims Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure; and providing for an effective date."

1:13:53 PM

KEVIN ANSELM, Director, Division of Banking and Securities, Department of Commerce, Community, and Economic Development (DCCED), advised that HB 194 is a complete rewrite of the Alaska Securities Act based on the model act. She pointed out that contained within each member packet is a white paper dated 4/5/16, a change summary, a sectional analysis, and a cross-walk between the current and proposed laws. As a brief overview, she provided that the Alaska Securities Act as proposed separates the security statutes from the Alaska Native Claims Settlement Act (ANCSA) statutes, to reduce confusion and improve understanding of both Acts, and the securities statutes are being moved into AS 45.56. The bill also recognizes and incorporates current securities industry terms and standards. It synthesizes with other states' laws to make it easier for businesses, entrepreneurs, and investors to understand their rights, responsibilities, and opportunities in Alaska. She offered that Chair LeDoux added an amendment to clarify disclosure requirements in this section. It opens equity crowdfunding opportunities to Alaskans, it deters investment scams using Alaska entities or harming Alaskans by increasing civil penalties, and providing some of the resources from those penalties for investors, consumers, and entrepreneur education as long as that is what the legislature would like to do. Finally, she said, it enhances penalties against those who would harm older Alaskans.

[1:15:54 PM](#)

MS. ANSELM paraphrased the sectional analysis as follows [original punctuation provided]:

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.

MS. ANSELM pointed out that the cross-walk outline gives a point-by-point analysis, including the legal backgrounds of each item. She continued as follows:

SECTIONS 15 - 24 (pp. 11-24) 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. 14) Proposed new Chapter AS 45.56

Article 1. General Provisions (pp. 14-15)

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 specifically exempt from registration.

Article 2. Exemptions from Registration of Securities (pp. 15-29)

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

Alaskans to invest up to \$5,000 per person, per offering, in an Alaskan business. Businesses can raise up to \$1 million per offering and requires a notice filing with the state and certain investor disclosures and protections.

[1:18:22 PM](#)

MS. ANSELM commented that the following is new, based upon the Dodd-Frank Act, it prohibits persons who have been subject to regulatory action or participated in certain crimes from using exemptions from the registration requirement. Therefore, they do not get to do the shortcuts and have to do full blown registration that has all of the information regarding their past transgressions.

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.

[1:19:10 PM](#)

MS. ANSELM explained that the Act is organized by sections so it is easier for people to locate what they are looking for, whether a practitioner, an issuer of securities, or a consumer.

Article 3. Registration of Securities and Notice Filing of Federal Covered Securities. (pp. 29-42)

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

Sec. 45.56.305. Securities registration by coordination - registration statement must be on file with the Administrator for 20 days unless reduced by regulation. 10 days is the current

requirement. 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 the imposition of fees for late filings

[1:21:10 PM](#)

MS. ANSELM explained that these federal covered securities are regulated by the Securities Exchange Commission, but there was provision in the federal act that says the entity must also let the state know that it is operating in their state. Currently, she pointed out, the only way the state can affect an issuer failing to file with the state is to issue a Cease and Desist Order. She described this as somewhat draconian in that the Division of Banking and Securities would prefer the entity pay a fee and if the entity has to pay a fee once or twice it won't be late any longer. Ms. Anselm continued:

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 - administrator allowed 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. 42-66) covers the 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 "snowbird 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 - changed 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 mergers and acquisitions 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 or otherwise represents an issuer or public shell company, or is subject to a Securities and Exchange Commission 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 new

"snowbird" exemption that mirrors 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.

[1:26:53 PM](#)

MS. ANSELM explained that similar to many industries across the country there are now national data bases. One is the Central Registration Depository for all of the broker-dealers and their agents, and since the state has over 1200 broker-dealers and over 92,000 sales persons it is helpful to have the national registry since most of those are located out-of-state. She offered that it is easier for them to apply and easier for the state to manage. Ms. Anselm continued:

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

Sec. 45.56.480. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration - in addition to current provisions, allows the administrator to bar registration and includes 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.

[1:28:01 PM](#)

MS. ANSELM explained the first portion of Sec. 45.56.480 by using the example that the discipline is that the entity cannot be licensed in Alaska any longer, or in some cases, ever. Ms. Anselm continued:

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 - same content as AS 45.55.900(c).

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. This provision encourages full disclosure to the administrator.

Article 6. Administration and Judicial Review. (pp. 69-89)

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.

[1:29:46 PM](#)

MS. ANSELM related that there are many scams going on out there and not only does the state need to increase its enforcement activities and make it less profitable for firms to rip off Alaskans, the state also needs to give tools to its investors to understand what is out there and what they need to watch for. Currently, there is nothing budgeted for that purpose. Ms. Anselm continued:

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 cooperation and sharing with governmental units, regulatory organizations for collaborative efforts including regulation, enforcement and

coordination to reduce the burden of raising capital by small business.

Sec. 45.56.625. Securities investor education and training fund - creates a securities and investor education and training fund within the general fund to provide funds for investor education. 33% of the money received from civil penalties may be used for investor education and training if so 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), 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).

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 - knowing violations of the Act and fraud are punishable as class C felonies punishable under AS 12.55.125. Unknowing violations are punishable as class A misdemeanors and fine of not more than \$100,000. Individuals who alter or destroy evidence are guilty of a class C felony and a fine of not more than \$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. 89-100)

Sec. 45.56.710. Reimbursement of expenses incident to examination or investigation - same as AS 45.55.915.

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

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

SECTIONS 26 - 28 (pp. 101-105). Citations are modified to reflect Chapter 45.56 in place of

Chapter 45.55 references; federal law citations are updated.

SECTION 29 (p. 105) - 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. 105) - Amends indirect Court Rules relating to changes in AS 45.56.

SECTION 31 (pp. 105-106) - Allows the department to adopt transition regulations.

SECTION 32 (pp. 106-107) - Amends the law to effect transition and application of AS 45.55 for existing proceedings, existing rights and duties.

SECTION 33 (p. 107) - 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. 107) - Conditional effect of certain provisions upon constitutionally required vote of each house.

SECTION 35 - July 1, 2016 effective date

[1:37:26 PM](#)

MS. ANSELM mentioned that the Division of Banking and Securities is not aware of any opposition to the bill, originally there were concerns from the insurance industry that have been resolved. A fiscal impact is not expected, she noted, and there may be some increased revenue with the enforcement and civil penalties being increased but it cannot predict enforcement actions with any certainty.

CHAIR LEDOUX asked whether the members understood the testimony because if they didn't, Ms. Anselm gives an excellent tutorial. She noted that she heard the bill four times in the House Labor and Commerce Standing Committee and suspected that Ms. Anselm spent four to eight hours in her office just with Chair LeDoux.

MS. ANSELM commented that it was her pleasure.

[1:38:56 PM](#)

REPRESENTATIVE CLAMAN asked Chair LeDoux her current thought as far as plans for the bill.

CHAIR LEDOUX related that the committee certainly isn't going to hold it for a few weeks, and it will move the bill at the pleasure of the committee to give the members an opportunity to review the bill with Ms. Anselm.

[1:39:46 PM](#)

REPRESENTATIVE FOSTER asked what questions came out of the House Labor and Commerce Standing Committee that may be relevant for the House Judiciary Standing Committee.

MS. ANSELM responded that there were a number of questions as to why the state is increasing the civil penalties as much as it is and, she said that primarily \$25,000 does not appear to be much of a deterrent. She then turned to the last page of the white paper "13-1095-S Fortune Oil & Gas," and related that these people recently came from Texas and sold about \$3.1 million worth of worthless securities to Alaskans, and to people outside of Alaska. The largest amount the state can tag that group is \$25,000 which is the cost of doing business if, in fact, they elect to pay it. In this case they elected not to pay and the division is going to court over it because it doesn't want them to get away with those actions. Yes, she commented, there is an opportunity for the claimants, who are out a lot of money, to file against Fortune Oil & Gas and go through the court system which, in this case, they are doing. She commented that the state also has established broker-dealers coming in, such as a New York broker-dealer that ripped off [Mr. Burke], an elderly halibut fisherman in poor health because he answered his phone to a cold call. The fisherman thought he was buying CDs in a Canadian bank and, in fact, he was buying junk bonds and lost approximately \$17,000. Although the division was able to retrieve his loss through an agreement with the broker-dealer, but that broker-dealer could only be fined \$25,000 for his actions. The division is aware that activity was going on and, in fact, it is so bad that that broker-dealer, as it was going out-of-business, apparently sent its cold call list out with the representatives they were dismissing. Interestingly, the division received a telephone call from Mr. Burke advising that another representative of another firm tried to sell him something else, but it is only if the division can get out to people and let them know to call the division that some of it can be stopped.

[1:42:30 PM](#)

MS. ANSELM related that most of the questions have revolved around the high enforcement penalties. She offered that the division does negotiate a lot of the securities issues that it finds. Some are inadvertent, some people didn't pay enough attention to what they were doing in the securities laws and made some mistakes. The division will usually consent those out with a lower penalty and she doesn't expect that to change because the division is not out for blood. Although, the

division it is out to get people that do not belong in the industry in the State of Alaska out of Alaska.

[1:42:59 PM](#)

CHAIR LEDOUX asked whether this increased the criminal penalties, the felony threshold change or anything of that nature.

MS. ANSELM deferred to the Department of Law.

[1:43:41 PM](#)

RENEE WARDLAW, Assistant Attorney General, Commercial and Fair Business Section, answered that the changes to the criminal penalties actually clarified some of what the penalties would actually do. She offered that her section does not do much criminal work currently but in the event it did want to take criminal enforcement, the changes to this bill clarify that notion. She noted that she had confirmed that with the Department of Law's Legislation and Regulations Section and it is quite comfortable in moving forward in that regard.

CHAIR LEDOUX referred to the word "clarify," and related she is trying to put it into the context of the criminal law reform bill, HB 205. She explained that that bill changes felony threshold levels with the smart justice idea, and reiterated she would like to know how this might gel with HB 205.

MS. WARDLAW responded that it did not, in fact, increase any sort of misdemeanor penalties to go to felonies. She opined that HB 205 does not, in any manner, conflict with the changes proposed in HB 194.

[1:45:47 PM](#)

REPRESENTATIVE KREISS-TOMKINS noted Ms. Anselm had mentioned that some of this is motivated from work originating with Uniform Act. He asked whether she could highlight where this legislation diverts from Uniform Act recommendations, and what are the Alaska specific provisions.

MS. ANSELM responded that most of the Alaska's centric provisions are related to the types of registration exemptions, there are certain things for minerals, oil & gas, and some of the fishing cooperatives. She said she will highlight them within the cross-walk contained within the packets.

CHAIR LEDOUX clarified that Ms. Anselm will highlight the provisions in this bill that differ from the Uniform bill for this committee.

MS. ANSELM agreed.

[1:47:08 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to AS 45.56.655, Civil Enforcement, and asked the motivation for treble damages for an older person. He further asked whether there had been any thought of expanding that class for particularly vulnerable citizens to disabled or mentally disabled people.

MS. ANSELM said yes, there is been a national push to do exactly that. The division has not proposed amendments in that regard but would be pleased with any amendment offered. She noted she could provide the national model to the committee because it was released less than one month ago.

REPRESENTATIVE CLAMAN referred to the Uniform Act and asked how many other states have adopted the Uniform Act at this point.

MS. ANSELM deferred to Kristy Naylor, Division of Banking and Securities.

[1:49:01 PM](#)

KRISTY NAYLOR, Chief of Enforcement and Securities, Division of Banking and Securities, Department of Commerce, Community, and Economic Development (DCCED), advised that 26 states have adopted the 2002 Uniform Act, and opined that it recently went to 27 states when the State of Wyoming adopted it within the last month.

REPRESENTATIVE CLAMAN referred to the issue of protections for the elderly and disabled and asked whether it is something that has now been approved by the Uniform Law Commission or something that is coming from a different group.

MS. ANSELM responded that it is coming from the North American Securities Administrators Association, an association with a number of other organizations. No, she said, it has not gone through the model act process yet.

REPRESENTATIVE CLAMAN asked whether she knew whether the Uniform Law Commission is actually looking at it, or whether it is too early for them to get involved.

MS. ANSELM replied that she does not know.

CHAIR LEDOUX asked whether she would be able to find out.

MS. ANSELM responded that she does not know the answer but will check.

1:50:30 PM

REPRESENTATIVE MILLETT asked whether this fraud is becoming more prevalent in the state because money is being put toward education. She further asked whether the division is expecting a larger reporting of people being fleeced.

MS. ANSELM responded yes, Alaska's per capita income is high; therefore, Alaskans are automatic targets for a number of the scammers. She pointed out that it is not only increasing in Alaska, it is increasing everywhere and the aging population is generally the population that has a few dollars and is concerned about having those dollars last throughout a longer lifetime. Unfortunately, people retire or get close to retirement and are afraid they will not have enough money to live the long life they now expect to live and take chances, which is where education comes in. People do not want to appear uninformed and do not always want to question people as to their [fraudulent] motives or what the security really is, so the division wants to give people tools to be able to respond, ask the right questions, and have the resources. The division offers education on its website, it offers investor education programs in coordination with AARP with other divisions, the Securities Exchange Commission came to Alaska and offered outreach, and the division has been performing outreach as it can. She advised that the division would like to dedicate more resources to those programs and it only makes sense to use some of the monies that come from ill-gotten gains to give back to the community.

1:52:32 PM

REPRESENTATIVE MILLETT asked the annual average collection of fees.

MS. ANSELM pointed to a document in the record and on the division's website, which may not have been printed out for the

members' packets, and described it as a multi-colored document that represents all of the securities actions that have been taken from 2012 - present. She explained that a number of these were done by consent and she is not including those in the fines collected. The fines imposed not on a consent basis are \$525,000, the potential i.e., not on a consent basis. Although, going to the new maximum would be over \$7 million, and all of these are the kinds of cases discussed with Fortune Oil & Gas and Global. She offered that as part of potential restitution out of that would be \$3.4 million. Substantial money could be collected from these large firms that don't want to pay attention to the correct manner of doing business, she said.

[1:53:55 PM](#)

REPRESENTATIVE MILLETT surmised that Alaska is falling in line with the other states that have increased their penalties upwards to \$100,000, and asked whether there is a national scale of standard fines.

MS. ANSELM replied that she was unaware there was an actual average she could quote because it does change, and many of the states have different methods of assessing penalties. Alaska is fairly straight forward, she commented, and some states have a more complicated schedule. Although, \$100,000 appears to be a medium sort of fine, she said.

[1:54:43 PM](#)

REPRESENTATIVE MILLETT pointed to her testimony regarding cold calls and asked where people are obtaining the lists of Alaska's seniors and vulnerable adults that may have a bit of disposable income and are trying to secure their future.

MS. ANSELM responded that people can buy the lists or buy lead generators, or people's names get put on lists because they signed up for something, or they went to a seminar, or any of a number of things, and the lists are then refined and sold to other people in the business. She described it as the "seamy side of the securities business" and this has been around since "blind em and rob em," such as Blinder, Robinson & Company. She explained there were a number of firms in the mid-to late 1980s that did a lot of the cold calling and penny stock "pumping and dumping."

[1:56:04 PM](#)

CHAIR LEDOUX expressed concern regarding AS 45.56.665 rescission offers, and stated she was to be certain that simply because a rescission offer was made, and accepted, and the issuer actually did what they promised, that this doesn't wipe out any common law remedies possibly available in order to sue for fraud or misrepresentation or whatever. She asked Mr. Julius Brecht and Mr. Robert Banks the same question.

REPRESENTATIVE CLAMAN asked the definition of a rescission offer.

[1:57:18 PM](#)

MS. ANSELM turned to the cross-walk "Comparison of HB 194 CS N to Existing Alaska Securities Act (AS 45.55)," page 92, Sec. 45.56.665 and advised it outlines the rescission offer statute and discusses rescission offers on the right-hand side of the page. She explained that a rescission offer is basically an offer to undue the wrong that has been done; therefore, if someone buys a security and there was a problem with that security, the rescission offer comes into play when the seller, in this case, of the security says they will give the buyer their money back if the securities are returned plus interest. Basically then, there is no other provision the state can use to go after anything else because the rescission offer takes care of it. She advised that rescission offers come into play not just if there is a security problem with the company, in that most often Alaska has seen rescission offers to correct the title on a corporation. In other words, a corporation should have registered the security with the division or somehow the division does not have a clean title of that security and the entity cannot then sell it later, it is not eligible for merger and acquisition, and no one wants to touch the company until it's been reorganized. With a rescission offer "you can clean that title" which, she reiterated, is what rescission offers are used for in Alaska.

MS. ANSELM turned to the bottom of page 2 of the white paper "Alaska Securities Act CSHB 194/N, House Judiciary Committee, April 4, 2016," pointed to the "12085-S, Troy Stafford and Patrick Williams" and related that Troy Stafford offered rescission to an investor who had invested \$40,000 in one of his projects, and Mr. Stafford agreed to make it right and he would return the \$40,000. Mr. Stafford offered to make the rescission, the rescission offer went through the division because it vets those, and he never paid. That is why the law changed that says not only does the entity have to offer it but

they have to actually pay the person, otherwise everything is off and the person is back to taking whatever civil action. The division, in fact, took an order against Mr. Stafford and his partner regarding them, she said.

[2:00:28 PM](#)

MS. ANSELM returned to the white paper [page 92], and referred to Sec. 45.56.660(m) Civil Liability, which read as follows:

(m) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or AS 45.56.475(e).

MS. ANSELM explained that common law is not specified in this section and commented that that is the primary question Chair LeDoux posed. She noted that the division's practitioners may clarify that further since they are out in the real business and she is on the regulatory side.

[2:01:16 PM](#)

REPRESENTATIVE KREISS-TOMKINS referred to [page 76 of the white paper] Sec. 45.56.625 which read as follows:

The securities investor education and training fund is created as a special fund in the general fund to provide funds for the purpose specified in 45.56.605(d). The legislature may appropriate 33 percent of the money received by this state from civil penalties under this chapter into the fund for securities investor education and training. Nothing in this section exempts money deposited into the fund for the requirements of AS 37.07 (Executive Budget Act) or dedicates money for a specific purpose.

REPRESENTATIVE KREISS-TOMKINS asked whether changing penalties and anticipated increased revenue over present will increase more than 33 percent, thereby, creating a no net loss if money was diverted into investor education.

[2:01:52 PM](#)

MS. ANSELM agreed, and she pointed out that those are the figures she gave earlier, where the difference between the fines

the division issued on non-consent final orders were so dramatically higher that the division does believe it would be higher, such as 66 percent as opposed to the 33 percent. She reiterated that 100 percent goes to the general fund and it is only if the legislature decides to spend some of that for investor education, it would merely be in a separate line and only the legislature would have control over that. The division would come then go the legislature each year and advise that it would like to spend "this much" out of the investor education area with the legislature having control over the entire amount.

[2:03:22 PM](#)

JULIUS BRECHT, Of Counsel, Law Offices of Bankston, Gronning and O'Hara, advised the committee of his legal experience in that he has been of counsel associated with the Law Offices of Bankston, Gronning and O'Hara since the beginning of 2015, prior to that he was senior shareholder for over 30 years in another law firm in Anchorage, past director of the Alaska Division of Banking and Securities, and prior to that was an assistant attorney general with the Alaska Department of Law. He offered that subsequent to leaving the Alaska Division of Banking and Securities at the end of 1980, he has been in private practice in Anchorage concentrating on state and federal securities law, corporate finance, financial institution law, and business law. Within this practice he has represented clients before the Securities and Exchange Commission, the National Association of Securities Dealers, the Nasdaq Stock Markets, and state securities regulators including the Alaska Administrator Securities. In addition, he said he has advised persons on issues relating to securities offerings, broker-dealer investment advisor and agent issues before the Alaska Division of Banking and Securities. He prefaced his comments on HB 194 by stating that these are solely his comments and not the comments of the Law Offices of Bankston, Gronning and O'Hara, he said.

[2:05:30 PM](#)

MR. BRECHT explained that the Alaska Securities Act has served the state and the Alaska investing public well through the years. The current Act is based upon the Uniform Securities Act of 1956, and when Alaska became a state in 1959 it was one of the first states to adopt the model act. Subsequently, a modest amount of case law has been generated with several Alaska Supreme Court opinions along the way. In the meantime, the Uniform Act has undergone several revisions, the most recent

revision published by the National Conference of Commissioners on Uniform State Laws in 2002. As stated earlier, approximately 27 other states have replaced their securities laws with the 2002 Act. The bill before this committee is legislation to repeal and reenact the Alaska Securities Act in the form of the 2002 Uniform Act, and by replacing the Alaska Securities Act with the 2002 Act Alaska will be able to stay in step with those other states who have adopted the model act as well. That is, Alaska is a great place to live in many ways, its beauty, resources, and people; however, its securities market place is rather modest in size and development which means that opportunities to interpret its securities laws are limited. A natural place to look for interpretation of language in the current Alaska Securities Act is to the securities laws of other states also subscribing to the 1956 Model Act. Since more states are repealing and reenacting their securities laws based on the 2002 Model Act, Alaska will soon find itself in a smaller and smaller base to seek out those interpretations. It is therefore a reasonable step to seriously consider the 2002 Model Act. He noted that in considering the Model Act, the real strength of the model is to adopt it with as few changes as possible so that one can look to other jurisdictions in interpreting its terms. One example of this caution to uniformity comes up in the context of Sec. 45.56.660, civil liability, in HB 194. It states that the rights and remedies provided by the Chapter, meaning the Alaska Securities Act, are in addition to any other rights or remedies that may exist. He opined that the clear meaning of this subsection is that it is supplemental to any other rights or remedies that may exist. He suggested that the way to emphasize this point may be through creating a legislative history on the section. He noted that while listening to other testimonies it occurred to him that in times past, the question of whether to use the Alaska Securities Act as a means for proving fraud or using common law fraud would come up from time to time when he was director of the Division of Banking and Securities. He said he could not recall that the concern was whether the Securities Act in some way prevented someone from going in another direction, but rather why would they ever want to go anyplace other than in the Alaska Securities Act because proving fraud under the securities laws is easier, relatively speaking, to proving common law fraud. He then harkened back to his initial statement that he believes the language is supplemental to any other right that the person may be able to seek out under Alaska law, he said.

[2:09:54 PM](#)

CHAIR LEDOUX pointed to Sec. 45.56.665 and surmised that if the rescission offer is made and actually paid, that that precludes an injured party from an action under Sec. 45.56.660, but does not preclude any action they may have under common law.

MR. BRECHT returned to the previous comments regarding rescission and offered that in his practice whenever there was a violation of the Alaska Securities Act, typically in the context of failure to register an offering, that rescission was a way to satisfy that failure to register. Thereby, moving forward by offering the existing investors the opportunity to opt out of the investment and get their money back plus interest. He explained that the intent of that was to get beyond that violation of the Alaska Securities Act moving forward, typically, with doing another offering that would either be registered or pursuant to an exemption. In that context, the rescission was treated as more of a contract between the issuer and the investors that they would waive their rights to any further action against the issuer. He offered that that is one line of thought, another are the provisions of Sec. 45.56.660(m) which on its face says that the provisions of this Act do not prevent one from exercising other rights they might have at law.

[2:12:33 PM](#)

CHAIR LEDOUX pointed to a scenario of someone cold calling a salmon fisherman who advises the caller that he is thinking about buying Microsoft stock. The cold caller then convinces the fisherman to instead buy the junk bond, and a couple of weeks later Microsoft stock went up and the junk bond is worthless. Chair LeDoux pointed out that giving the fisherman the \$10,000 through rescission he put into it does not compensate him for the damages he actually incurred. She explained that if it hadn't been for the fraudulent cold caller's advice, the fisherman would have bought the Microsoft stock and rather than his investment being worth \$10,000, it may have been worth \$20,000. In that scenario it does not appear as though the fisherman necessarily needs to accept the rescission offer to eliminate the liability under Sec. 45.56.660. She said she wanted to be certain that any suit the fisherman has for damages he incurred by not investing in Microsoft stock, that they are not eliminated by this section.

[2:15:03 PM](#)

MR. BRECHT offered that when he has been presented with a rescission situation he would advise the client, in wanting to

get a clean break here, that the investor waive all rights in entering into that rescission.

CHAIR LEDOUX asked why the investor should waive all rights if Mr. Brecht is trying to protect the investor. In the event he was representing the cold caller he would obviously want them to waive all rights, but it wouldn't be in the investor's best interest to waive.

MR. BRECHT explained that he would be representing the issuer, who had advised they had a problem with the division, and they would go through a rescission offer process. Currently, there is a clear statement in the statute where there is an exemption to follow certain steps in the rescission. He offered that in representing the issuer and trying to make the problem go away is to try to get the investors, in return for getting their money back ...

[2:16:52 PM](#)

CHAIR LEDOUX interjected that she does not want to represent the issuer, but rather represent the investor.

MR. BRECHT responded that the investor would not enter into the rescission.

CHAIR LEDOUX opined that she may be missing something that ...

MR. BRECHT interjected that there is no requirement that an investor enter into a rescission agreement with the issuer because the investor can simply sue the issuer, if they prefer.

CHAIR LEDOUX advised she would research this issue further.

[2:18:05 PM](#)

ROBERT BANKS, Attorney, Law Offices of Samuels, Yoelin, Kantor, advised he has been a lawyer for 34 years, and during the last 32 years has concentrated in securities litigation and approximately 95 percent of the time represented investors, and then discussed his extensive experience and practice. He put forth that he does not have any personal interest in this proposed legislation and no clients in Alaska, although 15 years ago represented two fishermen in Dutch Harbor that fell victim to a securities scam of over \$1 million.

MR. BANKS, in response to Chair LeDoux's previous question regarding rescission offers, explained that in his experience during the rare times he has seen them, it involves a seller who acknowledges they did something wrong. He related that he could not imagine a situation where if he represented a client and a rescission offer was made by an issuer who would actually pay the money back, that he would not advise them to go ahead and take that offer. He explained that the name of the game once a person has been scammed and he is representing an investor is to try to get the money back. While he appreciates the concern for victims, but in a case where someone sold a junk bond and it was misrepresented, there will not be a rescission offer because those are not the types of people that make rescission offers. Also, with regard to the hypothetical as a practical matter, that it's not so easy to prevail on the second part of the case involving the Microsoft stock because there must be proof the investor was going to purchase on a particular day and sell on a particular day, which is difficult. In that scenario and any other scenario he can imagine, he would advise his clients to take the rescission and be thankful that they got their money back. He opined that most attorneys representing investors would probably say the same thing, he said.

[2:22:36 PM](#)

MR. BANKS pointed to the Uniform Act and agreed that it has been enacted in approximately 25 states, but these acts are drafted by people who are thought to be the best and the brightest in the industry. The drafters do seek input from all of the various viewpoints before they do any drafting, they hold hearings, and have meetings, and he noted that he was contacted to offer his input with the 2002 Act. That Model Act has been endorsed by the American Bar Association, New York Stock Exchange, Investment Council Association of America, North American Securities Administrative Association, and many different factions represented. He pointed out that it is fairly well established and the body of cases are not huge, but it is nice to be able to look to the case law of other states whose judges are interpreting the very same statute that is now before Alaska's courts. Alaska doesn't have many decisions and it is helpful to have some idea about how these laws are going to be interpreted when there is a whole body of law from 25 different states rather than just one. He referred to his written testimony and stated that it is a great idea and he is in favor of it and hopes it passes and becomes law.

[2:24:45 PM](#)

REPRESENTATIVE CLAMAN referred to Chair LeDoux's hypothetical wherein rather than the investor buying Microsoft stock, buys the junk bond and after a short period of time the \$10,000 he would have invested in the Microsoft stock is worth \$20,000, and surmised that from the perspective of Mr. Banks, as an attorney representing investors, would probably advise them to take the rescission offer at \$10,000 due to doubts the additional \$10,000 could be collected. Representative Claman asked whether it is his analysis of this bill that it still allows the common law remedy but in the practical reality would advise his client to take the rescission offer and be done.

[2:25:54 PM](#)

MR. BANKS answered that he would, although if the dollars get really big that would be a different question, but he tries to advise his clients to do the safe course of action most of the time. In the event they can get the money back in the door it is considered a success. He pointed out that it will cost the investor more money to try to go for the other common law damages. Certainly if the issue was that the investor had to either take the rescission or file a lawsuit, he would urge his client to take the rescission offer.

[2:26:39 PM](#)

MR. BRECHT interjected that the rescission offer itself is actually a lengthy process because a written statement and financial statements were required when he represented issuers before the Division of Banking and Securities for the State of Alaska. He related that it is similar to a registration and it typically comes in the context of a client "sheepishly" telling him that they didn't realize there was a securities clause in Alaska and they want to make it right so they can go forward and do another offering. In other words, he explained, the premise is that there is an entity that is not a bad guy, just perhaps inattentive as far as the lay of the laws in Alaska and they want to move forward by making a reasonable offer to the investor to give the money back plus eight percent. In the event the investor accepts then fine, if not the investor remains as an investor in that particular transaction. A bad actor likely will not make the rescission offer in the first place, and will attempt to scam someone else, he said.

[2:28:42 PM](#)

MR. BANKS said he agrees with that statement in that it's not the bad guys making the rescission offers, it is the people who have made a mistake and want to make it right. The bad guys are not willing to spend the amount of money it take to do a rescission offer which can be considerable, he offered.

CHAIR LEDOUX reiterated that she wants to be certain that the very fact that somebody has made a rescission offer, and the investor decides to continue with common law remedies, that the very existence of a rescission offer does not preclude those common law remedies. She opined that the testimony has been that it doesn't, but she was not certain.

[2:30:02 PM](#)

MR. BRECHT responded that it depends upon the terms of the rescission offer because it is a contract wherein the investor waives their rights. From his standpoint in representing an issuer, he would try to get them to waive all rights relating to this particular transaction in return for the investor's money back plus eight percent per annum.

REPRESENTATIVE CLAMAN pointed out that the question is not being answered and he restated the question, if there is a rescission offer on the table and the investor choses to reject that offer, they have all of their common law remedies.

MR. BRECHT agreed.

REPRESENTATIVE CLAMAN surmised that the only reason the investor would lose the common law remedies is if they accepted the offer. Therefore, he said, if the investor chooses to decline the offer, the investor has everything available through common law and Alaska Statutes.

MR. BRECHT agreed, they are not obligated to accept the rescission.

[2:31:30 PM](#)

CHAIR LEDOUX opened public testimony.

[2:31:49 PM](#)

JULIETTE SHEPARD, Technology Lead Development Coordinator, Fairbanks Economic Development Corporation (FEDC), advised that she works with entrepreneurs and startups, and the Fairbanks

Economic Development Corporation (FEDC) is the trustee for (indisc.) loan which is a crowdfunded loan program where lenders make microfinance loans directly to borrowers in the United States by the internet. She offered that FEDC supports HB 194, to modernize Alaska's securities laws for small intra-state crowdfunding investment opportunities that would permit Alaska residents to invest in Alaska businesses. She noted that the FEDC requests that the legislature consider increasing the maximum per person offering and making it closer in alignment with what was proposed in SB 126.

[2:33:09 PM](#)

CHAIR LEDOUX asked Ms. Shepard to point to the page and section she was discussing.

MS. SHEPARD advised that she does not have HB 194 because she is calling in remotely and is away from her office. She said the section she cited is from the letter of support submitted from the North American Securities Administration, outlined in the second half of paragraph five, which identifies the per person offering at \$5,000.

MR. BRECHT advised that it is Sec. 45.56.220, Small intrastate securities offerings, page 26.

[2:35:10 PM](#)

CHAIR LEDOUX asked Ms. Shepard to explain where in the section [pages 26-29] she is discussing.

MS. SHEPARD advised that she was referencing the dollar amount per person be as flexible as possible with a maximum amount closer to the \$7,500 proposed in SB 126, thereby, allowing opportunities for individuals to contribute more fully.

[2:35:39 PM](#)

MS. NAYLOR interjected that Ms. Shepard is referencing page 27, lines 12-14, and the \$5,000 limit.

REPRESENTATIVE CLAMAN asked whether it was the testifier's suggestion that amount on line 12, should be increased from \$5,000 to \$7,500.

MS. SHEPARD offered that it be considered to be increased as previously proposed.

REPRESENTATIVE CLAMAN asked whether the \$5,000 amount is coming from the model act, or from somewhere else.

MS. NAYLOR responded that the model used was from the State of Alabama as there is no model act language from the Uniform Securities Act relating to crowdfunding because crowdfunding is roughly two years old so they modeled their proposal after another state and its simple approach.

[2:37:13 PM](#)

CHAIR LEDOUX asked whether the Division of Banking and Securities has thoughts about amending the bill to read \$7,500 rather than \$5,000.

MS. NAYLOR responded that the Division of Banking and Securities leaves that decision to the discretion of the committee as it does not take a position on the amount.

[2:38:09 PM](#)

CHAIR LEDOUX offered that this is something to think about and the bill will be held over. After ascertaining that no one wished to testify, closed public testimony.

[HB 194 was held over.]

[2:39:17 PM](#)

The committee took an at-ease from 2:39 p.m. to 2:44 p.m.

HB 317-FORFEITURE: NO CIVIL IN REM; ONLY CRIMINAL

[2:44:56 PM](#)

CHAIR LEDOUX announced that the final order of business would be HOUSE BILL NO. 317, "An Act relating to forfeiture to the state; relating to criminal law; amending Rules 3, 4, 11, 12, 16, 32, 32.2, 32.3, 39, 39.1, and 42, Alaska Rules of Criminal Procedure, Rules 501, 801, and 803, Alaska Rules of Evidence, and Rules 202, 209, and 217, Alaska Rules of Appellate Procedure; and providing for an effective date."

[2:45:17 PM](#)

REPRESENTATIVE LYNN moved to adopt HB 317, labeled 29-LS1380\H, Wallace/Martin, 4/4/16, as the working document. There being no objection, Version H was before the committee.

[2:45:43 PM](#)

BARBARA BARNES, Staff, Representative Tammie Wilson, Alaska State Legislature, advised that

Section 1. AS 09.55 is amended by adding a new section to read:

Article 10. Civil in rem Forfeiture

Sec. 09.55.700. In rem civil forfeiture actions abolished. Common law civil in rem forfeiture actions are abolished.

Sec. 2. This Act takes effect July 1, 2016.

MS. BARNES explained that all of the sections have been deleted and the Department of Law is in agreement with this change in that the committee substitute will eliminate any fiscal note.

REPRESENTATIVE KREISS-TOMKINS commented he has never seen such an elegant committee substitute in its simplicity.

[2:47:32 PM](#)

JOHN SKIDMORE, Director, Legal Services Section, Criminal Division, Department of Law (DOL), pointed to his previous testimony and offered that civil in rem forfeiture is not something the criminal division has used and he had approved adjusting the criminal division's fiscal note to zero, and he supports what has been otherwise presented. He commented that DOL is willing and interested in working with Representative Wilson and any other member of the House Judiciary Standing Committee to consolidate and put criminal forfeiture in cases in one location in the Criminal Code, and he appreciates Representative Wilson's willingness to work with DOC over the interim.

[2:49:18 PM](#)

REPRESENTATIVE CLAMAN surmised that within the legislature there is real interest in making criminal forfeiture clearer, simpler, and making the process understandable. He commented that it

sounds like DOL is ready, willing and able to work in that process.

MR. SKIDMORE agreed that the process can be cleaned up, and DOL is committed to working on that process.

[2:50:13 PM](#)

CHAIR LEDOUX opined that this bill is in good form for the end of this session. She pointed out that she still has real problems with the idea that someone's property could be seized prior to a conviction of guilt, but there is next session to consider that.

[2:51:06 PM](#)

REPRESENTATIVE LYNN moved to report CSHB 317, labeled 29-LS1380\H, Wallace/Martin, 4/4/16, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, CSHB 317(JUD) passed from the House Judiciary Standing Committee.

[2:51:48 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:51 p.m.