

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

February 1, 2016

3:19 p.m.

MEMBERS PRESENT

Representative Kurt Olson, Chair
Representative Shelley Hughes, Vice Chair
Representative Jim Colver
Representative Gabrielle LeDoux
Representative Andy Josephson
Representative Sam Kito

MEMBERS ABSENT

Representative Cathy Tilton
Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

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

PREVIOUS COMMITTEE ACTION

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

WITNESS REGISTER

KEVIN ANSELM, Director
Anchorage Office
Division of Banking and Securities
Department of Commerce, Community & Economic Development
Anchorage, Alaska

POSITION STATEMENT: Provided a PowerPoint presentation entitled, "Updating the Alaska Securities Act HB 194," dated 2/1/16.

ACTION NARRATIVE

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CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:19 p.m. Representatives Olson, Colver, Kito, Josephson, and Hughes were present at the call to order. Representative LeDoux arrived as the meeting was in progress.

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

[Contains discussion of SB 108]

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CHAIR OLSON announced that the only 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."

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KEVIN ANSELM, Director, Anchorage Office, Division of Banking and Securities, Department of Commerce, Community & Economic Development (DCCED), informed the committee HB 194 seeks to update the Alaska Securities Act. She noted that supplemental documents included in the committee packet are: a table of

contents that is a guide to the bill and its substantive changes; a draft of the [Alaska Native Claims Settlement Act of 1972 (ANCSA)] Alaska Native Claims Settlement Act Corporation Proxy Solicitations which is the part of the current securities Act that will remain in AS 45.55; and a securities enforcement comparison that reveals the differences between civil penalties under current law and the proposed legislation. Ms. Anselm directed attention to a PowerPoint presentation entitled, "Updating the Alaska Securities Act HB 194," dated 2/1/16, and explained the reasons to update the securities Act are: recognize and incorporate current industry terms and standards, which has not been done since 1999; synthesize with the laws in other states to assist businesses, entrepreneurs, and investors to understand their rights, responsibilities, and opportunities in Alaska; consider opening equity crowdfunding opportunities to Alaskans; deter investment scams using Alaska entities or harming Alaskans; enhance penalties for those who harm older Alaskans; separate the securities statutes from ANCSA statutes to reduce confusion and improve understanding for both Acts [slide 2]. At this time, the Alaska Securities Act provides the legal framework for offering or selling securities within Alaska or to Alaskans, including requirements for the registration of various types of securities, requires business plan disclosures, and provides for exemption from certain registration requirements. The Act also requires the registration of the sales force that sells securities to Alaskans; and enforcement [slide 3]. The ANCSA provisions remaining in AS 45.55 include references to exempt ANCSA securities transactions currently in AS [45.56.210], and enforcement and administration of this chapter. Ms. Anselm said all other references that are confusing to ANCSA shareholders and to others, are removed [slide 4].

REPRESENTATIVE JOSEPHSON asked for clarification of provisions related to ANCSA.

MS. ANSELM explained that the current Act references stocks, bonds, and other securities that have no relevance to ANCSA issues.

REPRESENTATIVE LEDOUX asked whether the only remaining ANCSA provisions are related to proxies.

MS. ANSELM said no. She directed attention to the aforementioned document found in the committee packet entitled, "Draft - Chapter 45.55 upon effectiveness of HB 194/SB 108," and pointed out that also included are sections related to

misleading filings, reports of corporations, and administration of the chapter. She said, "And so it has been modified to fit only the ANCSA corporations and not all of the other securities pieces."

REPRESENTATIVE LEDOUX asked:

If somebody is subject to the [U.S.] Securities and Exchange Commission, are they still subject to the Alaska securities law or is this special for entities that are not subject to ... the federal [Securities Exchange Act]?

MS. ANSELM advised there are certain federal-covered securities and activities over which the state has no authority; the National Securities Markets Improvement Act of 1996 took some of the registration of securities responsibilities away from the state, although all broker-dealers and salespersons must still be licensed in the state. In fact, there is a dual regulatory system: the U.S. Securities and Exchange Commission (SEC), and a self-regulatory organization, the Financial Industry Regulatory Authority (FINRA). She further explained that SEC oversees investment advisors who handle accounts of \$100 million or more, and "anything under a hundred million dollars is the state's responsibility." Crowdfunding intrastate is state regulated, however, crowdfunding crossing state borders will be under the jurisdiction of SEC when available. Ms. Anselm offered to provide a graph illustrating state, federal, and shared responsibilities. She stated that ANCSA provisions are specific to Alaska and suggested the committee review the draft document that was provided.

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MS. ANSELM, returning to the benefits of HB 194, said the bill would improve organization of topics, would be easier to understand, and would eliminate filings for all exemptions from registration, except rescission offers and crowdfunding. In addition, the bill updates entity and law references, and includes bad actor disqualifiers.

REPRESENTATIVE LEDOUX questioned whether bad actors are forbidden forever.

MS. ANSELM was unsure, and said she would provide further information. Finally, the bill improves enforcement and investor education provisions [slides 5 and 6]. She continued

with an overview of HB 194: Articles 1 through 7 [further discussion follows] [slide 7]. Article 1, Sections 2 through 35 cover all of the changes that need to be made to the other laws, and the changes to ANCSA provisions in AS 45.55. Ms. Anselm advised that the first provision in the law is that a person may not offer or sell a security in the state unless it is a federally-covered security, the person is registered under this chapter, or the security or transaction is exempted from registration [slide 8]. She directed attention to the aforementioned document found in the committee packet entitled, "Comparison of SB 108/HB 94 to Existing Alaska Securities Act (AS 45.55)," and described how to use the document to search for information related to HB 194. Article 2 includes the same registration and transactional exemptions as the current Act and adds a crowdfunding exemption, also known as small intrastate securities offerings. Equity, or debt, crowdfunding allows an investor to invest in a business and share in its earnings [slide 9]. Provisions of crowdfunding in Alaska include: issuer must be an Alaska business; purchasers must be Alaska residents; and issuer must have some evidence proving residency [slide 10]. The bill differs from other forms of crowdfunding in that an Alaskan investor can profit from the business.

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REPRESENTATIVE LEDOUX gave an example of a group that was soliciting funds to open a brewery and asked whether that type of activity is subject to Alaska securities laws.

MS. ANSELM responded yes and no. If investors in the brewery did not expect a return, the transaction would not have been subject to the Alaska Security Act; however, up to 25 friends and family could invest after an exemption to the security Act was filed. In further response to Representative LeDoux, she said the friends and family exemption is not being eliminated, but the filing and fees for a friends and family exemption will no longer be required.

MS. ANSELM returned to the topic of crowdfunding, and said no commission can be paid unless the salespeople are licensed in Alaska, notice filings are required under certain time limits and provide pertinent information, and the issuer cannot resell unless the securities are exempt or are registered. Crowdfunded securities are illiquid [page 10].

REPRESENTATIVE LEDOUX asked whether the proposed legislation affects "buying into a business" and she gave an example.

MS. ANSELM stated investors buying into a business could be subject, if there were a general solicitation. In further response to Representative LeDoux, she answered that friends and family can sell their interest only if the security is otherwise exempt or registered. She further clarified that a security is similar to a property title: proper paperwork and a clean title is necessary to allow a business to be transferred or sold.

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REPRESENTATIVE JOSEPHSON recalled there was a previous bill related to securities exemptions.

MS. ANSELM offered to provide information on previous related legislation. She then directed attention to Article 4, which improved licensing provisions, added a new registration exemption for mergers and acquisitions brokers in order to promote business within the state, and added a new exemption also for "snowbirds" with two residences [slide 11].

REPRESENTATIVE LEDOUX stated that one who has a residence in Arizona, and who wanted to purchase stock from Alaska, would have to have a broker licensed in both states.

MS. ANSELM said yes, unless other exemptions apply, or if the other state has reciprocal agreements. In further response to Representative LeDoux, she said the state has jurisdiction over salespersons living in the state, and SEC oversees the firms. For a transaction within a state without reciprocal agreements, she suggested that de minimis exemptions may apply in a certain number of cases.

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REPRESENTATIVE HUGHES inquired as to why reciprocity is required from both of the states involved in order for a former Alaska resident to acquire an exemption.

MS. ANSELM advised that a number of provisions need to apply such as whether both states have jurisdiction in case of wrongdoing, and that there is no problem with the investors' rights. She added that this is a Uniform Securities Act provision and her division would provide more information in this regard.

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CHAIR OLSON requested that Ms. Anselm provide the information to committee staff for distribution.

MS. ANSELM directed attention to Article 6, which permits the division to develop and implement investor education initiatives through collaboration and also to accept grants or donations for that specific purpose. Additionally there is an initiative to establish an investor education fund, using one-third of the money received in civil penalties; however, the legislature can appropriate these funds for investor training, or for other purposes. The final administrative change is that variable annuity transactions will be subject to applicable provisions of the securities Act such as sales practices, although concern about this provision has been expressed by the insurance industry [slide 12]. Regarding enforcement, basic provisions are carried over from the current laws, but the language has been reorganized and expanded, including increasing civil penalties up to \$100,000 per violation - with no maximum limit per case - and treble damages when the victim is over 60 years of age [slide 13].

REPRESENTATIVE LEDOUX asked whether the penalty for a single violation could be \$100,000.

MS. ANSLEM gave an example of a group of Alaskans who lost \$3 million to an oil and gas scam. Currently, the maximum civil penalty that could be charged for all of the civil violations in that case is \$25,000; in further response to Representative LeDoux, she said that HB 194 would possibly allow a \$100,000 penalty for each count in a case, and the maximum would be \$100,000 against one person in one case.

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REPRESENTATIVE JOSEPHSON inquired as to how the bill could educate, or be a deterrent to bad conduct.

MS. ANSELM opined increased penalties are a deterrent because they raise "a cost of doing business" beyond the previous maximum exposure of a \$25,000 penalty, no matter how many millions of dollars were stolen. She returned attention to significant enforcement changes in HB 194 and noted that restitution may be ordered by the division as administrator, and there is a provision that superior court can hold a person who is in violation of a final administrative order in civil

contempt, and subject to a potential \$100,000 fine per violation [slide 14].

REPRESENTATIVE JOSEPHSON observed that currently, one seeks restitution by suit, unaided by the government.

MS. ANSELM explained there is an administrative process wherein if one does not agree with an order from the division, the matter goes to the Office of Administrative Hearings, Department of Administration, and then through the court system.

REPRESENTATIVE LEDOUX inquired as to whether the amount of restitution can be equal to the amount that was lost.

MS. ANSELM said absolutely. She continued the presentation, advising that the following significant changes have been proposed to civil enforcement: injunctions; asset freezes and receivership; additional penalties where the victim is an older Alaskan; order of rescission or disgorgement; restitution; and repayment of prejudgment or post-judgment interest [slide 15]. Ms. Anselm turned to civil liability, advising the bill separates civil liability from rescission - which is when a sale or purchase of a stock or bond was a violation and should be rescinded. Other circumstances include when salespeople in violation are liable to their clients; in these cases, the statute of limitations is generally three years from the date of sale, unless there is fraud.

CHAIR OLSON recalled a federal case in Anchorage and asked how the proposed changes in HB 194 would have affected the penalties assessed in that case.

MS. ANSELM said she would provide that information. She continued, in HB 194, rescission offers are generally the same except for the following: an aggrieved party has 30 days to accept a rescission offer; the offeror must demonstrate the ability to pay; the recession offer must be delivered in a way that ensures receipt; and the offeror must actually pay as promised [slide 17]. Regarding criminal enforcement, significant changes are that "knowing violations" are considered a class C felony, and a violation of securities law is considered a class A misdemeanor in a criminal prosecution.

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CHAIR OLSON asked when the CS for HB 194 would be finalized.

MS. ANSELM expressed her understanding that the division will finalize the CS as soon as possible, and will present no material changes. In further response to Chair Olson, she stated that she will notify the chair of changes on [2/2/16].

REPRESENTATIVE LEDOUX directed attention to the proposed CS for HB 194, labeled 29-GH1060\W, on page 34, [paragraph (12)] which read:

(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects the issuer's business or assets and any litigation, action, or proceeding known to be contemplated by governmental authorities;

REPRESENTATIVE LEDOUX questioned why the foregoing provision is limited to an action contemplated by government authorities, rather than litigation that "is contemplated by anybody ... so, for example, if you've gotten a demand letter from an attorney or a private party"

MS. ANSELM said she was unsure. In further response to Representative LeDoux on her question as to whether the foregoing provision applies to a formal litigation action or proceeding, she suggested changes may be made by regulation, and that she would review Version W.

REPRESENTATIVE JOSEPHSON asked for the source of the ideas for the bill.

MS. ANSELM responded that the division looked at the [Uniform Securities Act (USA)] for ways to provide relief to entrepreneurs and businesses, while still protecting the public. Some ideas came from the North American Securities Administrators Association, such as more protection for seniors. Also, experiences with enforcement and that the division is unable to deter activities in Alaska and by entities based in Alaska. She stated the division sought to maintain Alaska-centric provisions in the current law, and also to incorporate other benefits from the Uniform Securities Act and elsewhere.

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CHAIR OLSON noted HB 194 has a zero fiscal note, and opined the bill is long overdue.

MS. ANSELM said she welcomed inquiries.

[HB 194 was held over.]

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ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:13 p.m.