

**ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE**

March 14, 2016

3:21 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

Representative Mike Chenault (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 214

"An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Alaska Workers' Compensation Board; relating to superior court jurisdiction over appeals from Alaska Workers' Compensation Board decisions and orders; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 508(g), 601(b), 602, and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

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. 313

"An Act relating to the public construction contracts, including the application of prevailing wage rates."

- SCHEDULED BUT NOT HEARD

PREVIOUS COMMITTEE ACTION

BILL: HB 214

SHORT TITLE: REPEAL WORKERS' COMP APPEALS COMMISSION

SPONSOR(S): REPRESENTATIVE(S) OLSON

01/19/16	(H)	PREFILE RELEASED 1/8/16
01/19/16	(H)	READ THE FIRST TIME - REFERRALS
01/19/16	(H)	L&C, JUD
03/14/16	(H)	L&C AT 3:15 PM BARNES 124

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

WITNESS REGISTER

LAURA STIDOLPH, Staff
Representative Kurt Olson
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: On behalf of Representative Olson, Chair of the House Labor and Commerce Standing Committee, sponsor, introduced HB 214.

HEIDI DRYGAS, Commissioner
Department of Labor & Workforce Development
Juneau, Alaska

POSITION STATEMENT: Stated that the Department of Labor & Workforce Development is in support of HB 214, and answered questions.

ANDREW HEMENWAY, Chair
Workers' Compensation Appeals Commission
Division of Workers' Compensation
Department of Labor & Workforce Development
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 214.

NANCY MEADE, General Counsel
Office of the Administrative Director
Alaska Court System
Anchorage, Alaska

POSITION STATEMENT: Answered questions during the hearing on HB 214.

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

POSITION STATEMENT: Summarized the changes from current law proposed in HB 194.

ACTION NARRATIVE

[3:21:12 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:21 p.m. Representatives Olson, Colver, Tilton, Kito, Josephson, Hughes, and LeDoux were present at the call to order.

HB 214-REPEAL WORKERS' COMP APPEALS COMMISSION

[3:21:41 PM](#)

CHAIR OLSON announced that the first order of business would be HOUSE BILL NO. 214, "An Act repealing the Workers' Compensation Appeals Commission; relating to decisions and orders of the Alaska Workers' Compensation Board; relating to superior court

jurisdiction over appeals from Alaska Workers' Compensation Board decisions and orders; repealing Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure, and amending Rules 202(a), 204(a) - (c), 210(e), 508(g), 601(b), 602, and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

[3:21:52 PM](#)

LAURA STIDOLPH, Staff to Representative Olson, informed the committee HB 214 would repeal the Worker's Compensation Appeals Commission. The commission was established in 2005 to expedite the worker's compensation appeals process; however, during the past decade the commission has had a 50 percent decision reversal rate, and the bill has been requested by the commissioner of the Department of Labor & Workforce Development (DLWD). She asked for the adoption of proposed Version E which was provided in the committee packet.

[3:23:06 PM](#)

REPRESENTATIVE HUGHES moved to adopt the proposed committee substitute (CS) for HB 214, Version 29-LS0854\E, Wallace, 2/24/16, as the working document.

CHAIR OLSON objected for the purpose of discussion.

[3:23:29 PM](#)

HEIDI DRYGAS, Commissioner, Department of Labor & Workforce Development, said DLWD is in support of repealing the Workers' Compensation Appeals Commission and returning the appeals process to the courts. The commission was created to provide expertise in Workers' Compensation cases, but since its inception, nearly 50 percent of its decisions appealed to the Alaska Supreme Court have been reversed. The commission serves as an appellant court, but is comprised of lay commissioners and although they are dedicated, they do not have the necessary legal training. She has learned that the commissioners contribute little to the legal analysis required, thus the chairman must resolve legal issues and write the commission's decisions; therefore, the decisions are not the work of a panel with legal expertise and experience in Workers' Compensation, which was the intent of the legislation. The bill would have minimal impact on the public, and subsequent appeals would be referred to the superior court as prior to 2005. The increase in cases to the court system is estimated at 20-30 cases

statewide per year, which would be absorbed into the court system.

REPRESENTATIVE HUGHES inquired as to the impetus for the creation of the commission.

COMMISSIONER DRYGAS explained that the court system was slow [processing appeals] and it was expected that the commission would be faster. However, the commission is not significantly more efficient, and accrues costs of approximately \$400,000. In response to Representative Hughes, she clarified that the cost of the commission is \$439,600 per year.

REPRESENTATIVE LEDOUX asked whether the commission primarily decides in favor of workers or employers.

COMMISSIONER DRYGAS said she did not have that information.

[3:28:14 PM](#)

REPRESENTATIVE LEDOUX recalled that in 2005 the administration thought that the courts were too worker-friendly, and the intent was that the commission would not be as worker-friendly.

COMMISSIONER DRYGAS said her frustration with the process is that an administrative decision is appealed to the Workers' Compensation Board, and then to another administrative agency, which is a "double layer that doesn't make a whole lot of sense ... and the way that the Workers' Compensation Appeals Commission is set up right now, it is, it is essentially dysfunctional."

REPRESENTATIVE KITO asked for the number of appeals submitted from the board to the commission per year. He clarified that his question related to the number of cases that would go to the superior court if the commission was eliminated.

COMMISSIONER DRYGAS said over the course of 10 years, 342 decisions have been appealed to the commission; of those, 219 resulted in decisions, and 97 were appealed to the Alaska Supreme Court.

REPRESENTATIVE KITO surmised that the state would not save \$439,000, because there would be a cost to the court system.

COMMISSIONER DRYGAS deferred to the court system.

REPRESENTATIVE COLVER asked for a description of the process before 2005, and after 2005.

COMMISSIONER DRYGAS stated that a Workers' Compensation hearing officer renders a decision, and either party can appeal to the Workers' Compensation Board, whose members are appointed by the governor and confirmed by the legislature. Before 2005, a decision from the board could be appealed to the superior court, then to the Alaska Supreme Court. Currently, an appeal after a decision by the board goes to the appeals commission, bypassing the superior court, and then to the Alaska Supreme Court.

REPRESENTATIVE LEDOUX, referred to before 2005, and asked whether a decision from the board was for an appeal "as of right to the superior court, or was it discretionary."

3:35:11 PM

ANDREW HEMENWAY, Chair, Workers' Compensation Appeals Commission, Division of Workers' Compensation, Anchorage Office, Department of Labor & Workforce Development, advised that both before 2005 when the superior court heard appeals, and under current law, when appealing to the Workers' Compensation Appeals Commission it is an appeal "as of right," and is not discretionary. He noted that the superior court was required to hear the appeal, as is the Workers' Compensation Appeals Commission. Similarly, he said, the appeal to the Supreme Court was an appeal "as of right." Therefore, he offered, there is no change in terms of the appellant's right to get a hearing.

REPRESENTATIVE LEDOUX questioned whether the appeal courts address findings of fact, or rely upon the rulings of the previous entity.

MR. HEMENWAY said there is no change in that regard; the superior court was required to defer to the factual findings of the board, and the commission is as well.

REPRESENTATIVE LEDOUX understood that the appeals commission - composed of members who are not lawyers - has the responsibility for making legal decisions.

MR. HEMENWAY said correct, although the commission chair is required to be an attorney. He added that the proposed original legislation called for three attorney members on the commission, but the legislature changed the composition of the commission to match that of the board.

[3:38:39 PM](#)

MS. STIDOLPH paraphrased from the following sectional analysis of the proposed committee substitute for HB 214, Version E [original punctuation provided]:

Section 1. Amends AS 23.30.005 by adding new subsection to read: The board, in its administrative capacity, shall make available the decisions and orders of the board and the former Workers' Compensation Appeals Commission. Decisions and orders of the former Workers' Compensation Appeals Commission are final and conclusive unless appealed to the Alaska Supreme Court and shall stand instead of the order of the board from which review was taken. Unless reversed by the Alaska Supreme Court, decisions of the former Workers' Compensation Appeals Commission have the force of legal precedent.

Section 2. AS 23.30.107(b) removes language referencing the Commission.

Section 3. AS.23.30.108(d) removes language referencing the Commission.

Section 4. AS 23.30.108 (e) removes language referencing the Commission.

Section 5. AS 23.30 is amended by adding a new section to read: A decision or order of the board becomes effective when filed in the office of the board under AS 23.30.110 and becomes final when a party files a petition, or a notice of appeal. Final order is not subject to judicial review. A director may intervene. A court shall award a successful party reasonable costs.

Section 6. AS 23.30.155(f) removes statutory reference to the powers and duties of the Commission and adds a reference to the board in AS 23.30.126

Section 7. AS 39.50.200(b)(31) is amended to remove language defining the Workers' Compensation Appeals Commission.

Section 8. Repeal Rules 201.1, 401.1, and 501.1, Alaska Rules of Appellate Procedure.

Section 9. Repeals statutes referencing the creation, appointment of members, jurisdiction, powers and duties of the commission, powers and duties of the chair of the commission, administrative review, appeals to the commissions, commission proceedings, appointment of the members through OAH, appointment of the chair.

Section 10. Changes the Alaska Rules of Appellate Procedure by providing that appeals from the Alaska Workers' Compensation Board can be brought in the superior court.

Section 11. The Workers' Comp Appeals Commission continues to function as they presently are until December 1, 2016.

Section 12. Transitional Provisions - for appeals not completed before December 2nd shall be automatically transferred to the superior court. Appeals seeking review of Workers' Comp Board decisions that haven't been filed before May 31, 2016 must be filed in the superior court before June 1, 2016. Before June 1, 2016 a party may file for review by the workers' comp appeals commission, after June 1, 2016 a party files for review in the superior court. Before November 1, 2016 a party may request reconsideration of a Workers' Compensation Appeals Commission decision. After November 1, 2016 a party may file an appeal with the Alaska Supreme Court.

Section 13. Terms out commissioners on February 2, 2017.

Section 14. Conditional effect: this Act takes effect only if secs. 8 and 10 of this Act receive a 2/3 majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

Section 15. Effective date of June 1, 2016.

[3:43:22 PM](#)

REPRESENTATIVE COLVER referred to the chart entitled, "Alaska Workers' Compensation Appeals Commission," provided in the committee packet. He requested a brief abstract describing types of appeal issues, possible trends, medical issues, disability compensation, and decisions or resolutions that would provide a "thumbnail sketch of what's going on." His experience is that worker's compensation cases can be difficult to resolve.

CHAIR OLSON pointed out that the last column on the aforementioned chart indicated 50 percent to 75 percent of the cases going to the Alaska Supreme Court were unchanged.

REPRESENTATIVE LEDOUX asked for clarification of the chart.

[3:46:43 PM](#)

MR. HEMENWAY explained that the Alaska Supreme Court may dismiss a case for several reasons, such as late filing or a settlement. Also, a case can be remanded to the lower court if there are questions, and vacated when laws have changed; these are examples of when the court disposes of a case, but does not make a decision on whether the appeals commission was correct, and the case can make a reappearance. Affirmed, reversed, and affirmed in part/reversed in part are cases in which the court has issued a decision that addresses the merits of the appeals commission's decision.

REPRESENTATIVE JOSEPHSON suggested that the Alaska Supreme Court would hear all of the cases eventually, unless they are affected by the statute of limitations.

MR. HEMENWAY said:

I wouldn't necessarily say that's the case. ... Most of the cases that are dismissed, I'm sure well over half, are dismissed because the parties have settled. ... Sometimes it might be that there's some, some grounds on which the court shouldn't hear it, but a dismissal for reasons other than ... the parties have settled, is, is [a] relatively small number of cases. The cases that are remanded or vacated, they're kind of all over the place

[3:50:50 PM](#)

NANCY MEADE, General Counsel, Office of the Administrative Director, Alaska Court System, advised that she has been working

with the bill sponsor who has incorporated some of her suggestions in the proposed committee substitute. Ms. Meade said the court system is neutral on the bill, and will implement it upon passage. The court system's concerns are related to the wording of the bill, so that the case law and interpretation would easily transfer to the court system. Also, the court system seeks to ensure that the cases are transferred in a form conforming to the rules of the appellate court.

REPRESENTATIVE KITO asked Mr. Hemenway whether the ten pending cases indicated on the chart are recent.

MR. HEMENWAY answered that the number of cases pending are: one from 2011, one from 2013, two from 2014, and six from 2015.

REPRESENTATIVE COLVER asked Ms. Meade to comment on how appeals cases affect the workload of the Alaska Supreme Court.

MS. MEADE responded that an average of 33 cases per year could be absorbed by the superior court. Further, 10-15 cases could be handled by the Alaska Supreme Court in the course of its normal business, without adverse effects. In further response to Representative Colver, she explained that in 2005, there was a perceived lack of consistency in workers' compensation decisions from the superior court. In order to set precedent, a case would have to go to the Alaska Supreme Court because its decisions bound the superior court and the board. One basis for the change was the concept that moving to an expert commission within DLWD would establish that its decisions would bind the department, but the number of cases that were appealed after 2005 did not change. Therefore, the workload of the Alaska Supreme Court would be not affected, but the workload of the superior court judges would increase with difficult and complex cases.

[3:59:05 PM](#)

REPRESENTATIVE HUGHES questioned whether the number of cases can be seasonal.

MS. MEADE said no. The bill phases-in the cases coming to the court from the commission during a certain period of time.

REPRESENTATIVE HUGHES observed that the number of cases before the Alaska Supreme Court rose beginning in 2011, and questioned why the ratio of appeals also increased beginning in 2010 and 2011.

MS. MEADE said she was unsure why more cases were appealed.

COMMISSIONER DRYGAS deferred to Mr. Hemenway.

MR. HEMENWAY noted that from 2005 to 2010, a higher number of cases were appealed and decisions published; after 2010, there was a decrease in the number of decisions published.

REPRESENTATIVE HUGHES restated her question.

MR. HEMENWAY observed that there was a new commission chair appointed in 2010.

[4:04:23 PM](#)

CHAIR OLSON opened public testimony on HB 214. After ascertaining that no one wished to testify, Chair Olson announced that public testimony would remain open.

[HB 214 was held over.]

[4:04:54 PM](#)

The committee took an at ease from 4:04 p.m. to 4:07 p.m.

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

[4:07:16 PM](#)

CHAIR OLSON 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."

[4:07:53 PM](#)

REPRESENTATIVE HUGHES moved to adopt the proposed committee substitute (CS) for HB 194, labeled 29-GH1060\E, Bannister, 3/11/16 as the working document. There being no objection, Version E was before the committee.

[4:08:12 PM](#)

KEVIN ANSELM, Director, Division of Banking and Securities, Anchorage Office, Department of Commerce, Community & Economic Development, said she would discuss the changes to HB 194.

[4:09:54 PM](#)

The committee took an at ease from 4:09 p.m. to 4:10 p.m.

[4:10:49 PM](#)

MS. ANSELM paraphrased from the following brief sectional analysis for the proposed CS for HB 194, Version E [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.

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. Sec. 45.56.230. Disqualifier - prohibits persons who have been subject to regulatory action or participated in certain crimes from using the available 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, although the appeal rights and hearing information is moved to Article 6.

Article 3. Registration of Securities and Notice Filing of Federal Covered Securities. (pp. 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 filers disclose pending litigation that materially affects the issuer or litigation that is known to be contemplated by governmental authorities.

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 - allows imposition of late fees.

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 consolidated from other sections.

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)

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.

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 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 matches 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 agents in Sec. 45.56.430.

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

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

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

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

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

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

Sec. 45.56.475. Post registration requirements - allows establishing 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 actions taken by other regulators. Civil penalty for registrants is increased from \$2,500-\$10,000 per violation to up to \$100,000 per violation.

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

Sec. 45.56.505. General fraud - same as current AS 45.55.010. Sec. 45.56.510. Prohibited conduct in providing investment advice - allows administrator to define prohibited conduct by regulation.

Sec. 45.56.520. Misleading filings - same as current AS 45.55.160.

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

Sec. 45.56.540. Evidentiary burden - 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 - allows the administrator to develop and implement investor education initiatives and accept grants or donations for investor education.

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

Sec. 45.56.615. Public records; confidentiality - clarifies and specifies record confidentiality.

Sec. 45.56.620. Uniformity and cooperation with other agencies - expands opportunity for 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 in 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.

[4:30:59 PM](#)

REPRESENTATIVE JOSEPHSON returned attention to proposed Section 45.56.625 and asked whether licensees could pay for their education and training, instead of the state, as do members of the Alaska Bar Association.

MS. ANSELM said those who violate the Alaska Securities Act should pay for investor education through one-third of the civil penalties they are assessed, and that is the source of the funds.

REPRESENTATIVE COLVER asked what is currently being collected in fines.

MS. ANSELM advised that there are two kinds of securities cases: consent orders result when the division negotiates with parties in violation, and civil penalties are assessed; non-consent securities fines imposed from 2012-2015, under the current law, totaled \$525,000. She noted that the maximum penalty for a violation is currently \$25,000; if the limit was removed, the potential fines would total \$7.7 million and \$3.4 million in restitution. In further response to Representative Colver, she confirmed that the revised fines are part of the proposed statute, which would increase the maximum from \$25,000 for total violations, to \$100,000 per violation.

REPRESENTATIVE COLVER observed that the regulation changes and increase in revenue are not reflected in the fiscal note [document not identified].

MS. ANSELM stated that enforcement actions are unknown to the division; in fact, there are times when few actions are taken, thus revenue to the division is indeterminate.

REPRESENTATIVE COLVER suggested that if the fiscal note reflected more revenue the legislature would be more amenable to regulatory reform. The business community seeks less bureaucracy and to increase productivity, and he encouraged the legislature to support the business sector as the state heads for "a bit of bad weather, and anything we can do to keep our corporations healthy is, is something we need to be working on."

4:36:58 PM

MS. ANSELM agreed to further discuss the bill's fiscal note.

REPRESENTATIVE JOSEPHSON surmised that in addition to \$100,000 per violation, through criminal proceedings the division could recapture losses and collect restitution.

MS. ANSELM explained that it is difficult to collect any amount, and she described three pending cases in the court system: Fortune Oil and Gas, a Texas corporation, caused a loss to Alaskan investors of over \$3 million, and orders from the division have been ignored; Global Arena Capital Corporation, a New York firm, cold-called and pitched an investment to an elderly resident who lost \$16,000, and who only recovered \$10,000; two Alaskans formed a firm and collected \$40,000 from a fellow Alaskan for the new company, which subsequently dissolved, and an agreement for rescission was reached, but the investor was never paid.

4:42:45 PM

REPRESENTATIVE LEDOUX asked for an idea of how many "bad actors" have money to pay the state or their victims, and how many are judgement-proof.

MS. ANSELM answered that many are judgement-proof, but there is money behind the three aforementioned perpetrators. In further response to Representative LeDoux, she advised that civil penalties are paid to the general fund and a provision in the bill directs restitution to the investor, and penalties for violations to the state. Ms. Anselm returned to the sectional analysis [original punctuation provided]:

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 for a respondent to make a request for 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 the \$500,000 or both.

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

[4:49:01 PM](#)

REPRESENTATIVE LEDOUX returned attention to proposed Section 45.56.670 [text previously provided] and asked for an example of an unknowing violation.

MS. ANSELM explained that if a person can prove that they were unaware of securities laws, even when they should have been aware, a lesser fine is assessed. She returned to the sectional analysis [original punctuation provided]:

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.

[4:54:06 PM](#)

REPRESENTATIVE LEDOUX returned attention to proposed Section 45.56.305 [text previously provided], and asked whether email was substituted for prompt notice by telegram.

MS. ANSELM said yes.

REPRESENTATIVE LEDOUX directed attention to proposed Section 45.56.310 [text previously provided] and recalled a proposed change that would require disclosure of any litigation, whether or not contemplated by a government authority.

MS. ANSELM agreed to make this change.

REPRESENTATIVE LEDOUX directed attention to proposed Section 45.56.560 [text previously provided], and confirmed that qualified immunity would not be granted if there is reckless disregard of the truth, or a known untruth.

MS. ANSELM said absolutely.

REPRESENTATIVE JOSEPHSON directed attention to proposed Section 45.56.670 [text previously provided], and asked whether there are [Alaska Statutes] Title 11 crimes that could be filed in addition to the class C felony in the proposed statute.

MS. ANSELM deferred to the Department of Law.

REPRESENTATIVE JOSEPHSON surmised that the impetus for the proposed bill was that the pertinent legislation was outdated, and asked whether HB 194 was based on a model.

MS. ANSELM said the bill is a combination of a 2002 model act, modifications from other states, experiences in Alaska, and an increase in investor protection.

[HB 194 was held over.]

[5:00:00 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:00 p.m.