

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

February 18, 2016

1:31 p.m.

**MEMBERS PRESENT**

Senator Cathy Giessel, Vice Chair  
Senator Gary Stevens  
Senator Johnny Ellis  
Senator Kevin Meyer

**MEMBERS ABSENT**

Senator Mia Costello, Chair

**COMMITTEE CALENDAR**

SENATE BILL NO. 18

"An Act exempting a health care sharing ministry from regulation as an insurer."

- MOVED SB 18 OUT OF COMMITTEE

SENATE BILL NO. 158

"An Act relating to real estate broker licensure; relating to the real estate commission; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 141

"An Act relating to possession of an electronic smoking device, e-liquid or e-liquid product, vapor product, or alternative tobacco product by a minor and to selling or giving an electronic smoking device, e-liquid or e-liquid product, vapor product, or alternative tobacco product to a minor."

- HEARD & HELD

SENATE BILL NO. 108

"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

SENATE BILL NO. 136

"An Act requiring electronic submission of a tax return or report with the Department of Revenue; repealing the tax reduction for local levies for the commercial vessel passenger excise tax; amending the definition of 'voyage'; and providing for an effective date."

- REMOVED FROM AGENDA

SENATE BILL NO. 134

"An Act relating to the taxation of income of individuals; repealing tax credits applied against the tax on individuals under the Alaska Net Income Tax Act; and providing for an effective date."

- REMOVED FROM AGENDA

#### PREVIOUS COMMITTEE ACTION

BILL: SB 18

SHORT TITLE: HEALTH CARE SHARE MINISTRY NOT INSURANCE

SPONSOR(S): SENATOR(S) COGHILL

01/21/15	(S)	PREFILE RELEASED 1/16/15
01/21/15	(S)	READ THE FIRST TIME - REFERRALS
01/21/15	(S)	HSS, L&C
02/18/15	(S)	HSS AT 1:30 PM BUTROVICH 205
02/18/15	(S)	Heard & Held
02/18/15	(S)	MINUTE (HSS)
03/11/15	(S)	HSS AT 1:30 PM BUTROVICH 205
03/11/15	(S)	Moved SB 18 Out of Committee
03/11/15	(S)	MINUTE (HSS)
03/13/15	(S)	HSS RPT 4DP 1NR
03/13/15	(S)	DP: STEDMAN, GIESSEL, KELLY, STOLTZE
03/13/15	(S)	NR: ELLIS
04/02/15	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

04/02/15 (S) Heard & Held  
04/02/15 (S) MINUTE (L&C)  
02/18/16 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 158

SHORT TITLE: REAL ESTATE BROKER LICENSURE REQS

SPONSOR(s): LABOR & COMMERCE

01/25/16 (S) READ THE FIRST TIME - REFERRALS  
01/25/16 (S) L&C  
02/04/16 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
02/04/16 (S) Scheduled but Not Heard  
02/18/16 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 141

SHORT TITLE: E-CIGS: SALE TO AND POSSESSION BY MINOR

SPONSOR(s): STEVENS

01/19/16 (S) READ THE FIRST TIME - REFERRALS  
01/19/16 (S) L&C, JUD  
02/04/16 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
02/04/16 (S) Heard & Held  
02/04/16 (S) MINUTE (L&C)  
02/18/16 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 108

SHORT TITLE: AK SECURITIES ACT; PENALTIES; CRT. RULES

SPONSOR(s): RULES BY REQUEST OF THE GOVERNOR

04/13/15 (S) READ THE FIRST TIME - REFERRALS  
04/13/15 (S) L&C, JUD, FIN  
02/09/16 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
02/09/16 (S) Scheduled but Not Heard  
02/11/16 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
02/11/16 (S) Heard & Held  
02/11/16 (S) MINUTE (L&C)  
02/18/16 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

JORDAN SHILLING, Staff  
Senator John Coghill  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions related to SB 108 on behalf of the sponsor.

LORI WING-HEIER, Director  
Division of Insurance  
Department of Commerce, Community and Economic Development  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to SB 108.

WESTON EILER, Staff  
Senate Labor and Commerce Committee and Senator Mia Costello  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Introduced SB 158.

JANEY HOVENDEN, Director  
Division of Corporations, Business, and Professional Licensing  
Department of Commerce, Community and Economic Development  
Juneau, Alaska

**POSITION STATEMENT:** Answered questions related to SB 158.

NANCY BLASHLEY DAVIS, Chair  
Real Estate Commission  
Sitka, Alaska

**POSITION STATEMENT:** Testified in support of SB 158.

ERROL CHAMPION, Chair  
Legislative Issues Committee  
Alaska Association of Realtors  
Juneau, Alaska

**POSITION STATEMENT:** Provided supporting information for SB 158.

TIM LAMPKIN, Staff  
Senator Gary Stevens  
Alaska State Legislature

**POSITION STATEMENT:** Presented information related to SB 141 on behalf of the sponsor.

DR JAY BUTLER, Chief Medical Doctor  
Department of Health and Social Services  
Anchorage, Alaska,

**POSITION STATEMENT:** Answered questions related to SB 141.

JOE DARNELL Manager  
Underage Tobacco Enforcement  
Department of Health and Social Services (DHSS)  
Anchorage, Alaska

**POSITION STATEMENT:** Answered questions related to SB 141.

ANGELA CARROLL, Chapter Leader

SmokeFree Alternative Trade Association  
Wasilla, Alaska

**POSITION STATEMENT:** Stated support for SB 141.

EMILY NENON, Alaska Government Relations Director  
American Cancer Society/Cancer Action Network  
Anchorage, Alaska,

**POSITION STATEMENT:** Testified in support of SB 141.

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

**POSITION STATEMENT:** Provided a sectional analysis of SB 108.

#### **ACTION NARRATIVE**

[1:31:01 PM](#)

**VICE CHAIR CATHY GIESSEL** called the Senate Labor and Commerce Standing Committee meeting to order at 1:31 p.m. Present at the call to order were Senators Ellis, Stevens, and Vice Chair Giessel. Senator Meyer arrived soon thereafter.

#### **SB 18-HEALTH CARE SHARE MINISTRY NOT INSURANCE**

[1:31:45 PM](#)

**VICE CHAIR GIESSEL** announced the consideration of SB 18. She noted that the bill was first heard 4/2/15 and public testimony was closed.

[1:32:19 PM](#)

**JORDAN SHILLING**, Staff, Senator John Coghill, summarized that SB 18 defines health care sharing ministries and exempts them from insurance statutes. They are currently not regulated because the Division of Insurance does not view them as insurance.

**VICE CHAIR GIESSEL** questioned the need for the legislation.

**MR. SHILLING** replied it is to prevent the regulation of something that is not regarded as insurance. It is a faith-based community of individuals who have agreed to share medical costs. He noted that the Affordable Healthcare Act provides a specific exemption from the individual mandate for existing health care sharing ministries.

[1:33:52 PM](#)

SENATOR STEVENS asked what services are provided.

MR. SHILLING said the medical costs they would cover are the same that insurance would normally cover. He noted the packets contain a summary of what constitutes a health care sharing ministry.

VICE CHAIR GIESSEL welcomed Senator Meyer to the committee.

She highlighted the distinguishing characteristic is that health care sharing ministries aren't actually insurance so there is no guarantee the medical costs will be covered.

MR. SHILLING agreed; the participants know up-front that this is not insurance and there is no guarantee of payment.

VICE CHAIR GIESSEL added that there is a pooling of resources to share expenses as opposed to guaranteeing coverage.

MR. SHILLING agreed.

SENATOR ELLIS asked if there is any disclosure or notice to participants that there is no guarantee of coverage.

[1:35:51 PM](#)

MR. SHILLING explained that the disclosure is on the application.

SENATOR ELLIS asked what the decision-making process is to determine what services are covered.

MR. SHILLING explained that when a member needs health care, a letter is sent to all the members in the pool outlining the specific need and the suggested contribution. Members then voluntarily send in their contribution. He didn't know which procedures are excluded under each health care sharing ministry.

VICE CHAIR GIESSEL asked Ms. Wing-Heier if the division supports the legislation.

LORI WING-HEIER, Director, Division of Insurance, Department of Commerce, Community and Economic Development (DCCED), explained that health care sharing ministries that were in existence before 1999 were a carve-out of the Affordable Care Act (ACA). They must be a 501(c)(3), members must share common ethical or religious beliefs, they cannot discriminate based on the state or resident's employment, and a member cannot lose their

membership if they develop a medical condition. The organization is subject to an annual audit by an independent certified public accountant (CPA). Last year, health care sharing ministries had a nationwide membership of about 375,000 and this year membership has grown to about 550,000.

MS. WING-HEIER said the only potential concern, which is based on social media, is that people are looking to health care sharing ministries instead of looking at the ACA. If there were complaints or the division thought a ministry was soliciting members outside their religious belief or ethics, the attorney general would have the authority to look at the ministry under trade practices provisions.

[1:39:53 PM](#)

SENATOR STEVENS asked how many of these ministries are in Alaska and their names.

MS. WING-HEIER replied there were just under 4,000 members in Alaska last year and the main ministries in Alaska and nationwide are Medi-Share and Samaritan Ministries.

SENATOR MEYER asked where the bulk of the ministries are located

MS. WING-HEIER answered they're operating in all 50 states.

[1:41:56 PM](#)

SENATOR STEVENS moved to report SB 18, labeled 29-LS0107\H, from committee with individual recommendations and attached fiscal note(s).

VICE CHAIR GIESSEL announced that without objection, SB 18 is reported from the Senate Labor and Commerce Standing Committee.

[1:42:23 PM](#)

At ease

**SB 158-REAL ESTATE BROKER LICENSURE REQS**

[1:44:07 PM](#)

VICE CHAIR GIESSEL announced the consideration of SB 158. She noted that this is the first hearing.

WESTON EILER, Staff, Senate Labor and Commerce Committee and Senator Mia Costello, stated that SB 158 was brought to the committee by the real estate industry in Alaska. He introduced the legislation paraphrasing the following sponsor statement:

Senate Bill 158 raises the application requirements for a real estate broker license in Alaska. The bill requires applicants seeking to become a real estate broker to have been a real estate licensee for 48 months rather than 24 months. It also increases the continuing education requirements for a broker license applicant from 15 hours to 30 hours. Senate Bill 158 will improve the standards and training necessary to become a broker and provide the public with better protection when engaging in real estate transactions.

In Alaska, a real estate licensee is tied to a broker and works for the broker or an associate broker in a branch office. The broker is responsible for supervision of the real licensee and even receives the employee's license from the Alaska Real Estate Commission and returns it to the commission if the relationship with the broker is terminated. Real estate brokers are responsible for real estate brokerage trust accounts that include earnest money deposits, security deposits, collected rental money, and other money collected in the trust until the funds are distributed according to the terms of a real estate transaction.

These are major responsibilities that affect the public when involved in a real estate transaction. Added training and experience will help protect the public as brokers become better prepared to perform the duties required of a broker.

This bill is supported by the Alaska Real Estate Commission, Alaska's licensing agency, and the Alaska Association of Realtors.

MR. EILER noted the letters of support in the packet, and referenced a spreadsheet of the education and license requirements in all the states. It shows that the time, education, and experience required in Alaska is much lower than other states. SB 158 will bring Alaska into line with national standards, he said.

SENATOR MEYER asked if this is being done to match other states or to address a problem.

MR. EILER replied the industry requested this because of unfortunate consequences when someone perhaps was operating out of their depth. He added, "It is more being brought forward to just help rectify and ensure merit and qualification for brokers."

SENATOR STEVENS asked how and where a licensee gets the additional education.

MR. EILER offered to provide a list of what is currently available and suggested individuals in the room could provide specifics.

[1:50:29 PM](#)

SENATOR STEVENS said he'd like to be sure this isn't an onerous requirement.

VICE CHAIR GIESSEL asked Ms. Hovenden what problem SB 158 seeks to fix.

[1:51:15 PM](#)

JANEY HOVENDEN, Director, Division of Corporations, Business, and Professional Licensing, Department of Commerce, Community and Economic Development, related that this is something that the industry has been requesting for some time. Doubling the requirement for education and experience will provide more public safety measures that the industry says are needed.

SENATOR STEVENS asked how and where a licensee gets the additional education and who pays for it.

MS. HOVENDEN replied the licensees would be required to pay for the additional education. She offered to follow up with information about how and where the education would be delivered.

SENATOR STEVENS asked if individuals would be required to take a test. If so, who audits the test and where would it be administered?

MS. HOVENDEN said she'd have to check on that.

[1:53:23 PM](#)

VICE CHAIR GIESSEL opened public testimony.

[1:53:38 PM](#)

NANCY BLASHLEY DAVIS, Chair, Alaska Real Estate Commission, Sitka, Alaska, testified in support of SB 158. She related that the commission received testimony from 15-20 licensees that two years experience and 15 hours of continuing education does not necessarily prepare someone to become an associate broker or a broker. A broker does things like handling trust accounts and procedure manuals in addition to monitoring the licensees. These things aren't necessarily learned as a licensee.

She confirmed that Alaska is near the bottom of all 50 states in the amount of continuing education it requires, and this will bring Alaska closer to what other states are doing. The bill also increases from two years to four years the time before a licensee can become an associate broker or a broker. The industry feels this will provide better protections for the public.

MS. DAVIS told the committee that the classes are available online; they must be presented to the Real Estate Commission and the topics approved. Individuals must take and pass a test and fulfill the continuing education requirements in order to get the broker or associate broker license. She explained that each real estate business is owned by one broker and can have any number of associate brokers and licensees. She opined that the additional knowledge and experience will save time and cost to the commission because there will be fewer cases to investigate. She noted the bill has no fiscal impact and reported that each licensee must pay for their classes. She discussed the availability of classes highlighting that instructors will travel to a community if there is sufficient interest in the class. Larger communities have more options and accredited classes are also offered at real estate conventions.

She related her personal experience that she had two years experience before she opened her brokerage and didn't initially feel qualified to handle trust accounts. She was fortunate to have a good mentor, but that's not always the case.

[2:00:05 PM](#)

SENATOR STEVENS asked for assurance that these additional requirements don't become onerous for someone living in a rural area.

MS. DAVIS explained that the university can proctor the test in Sitka so travel isn't necessary. She didn't know about smaller communities farther north but assumed the test could be proctored at an education facility in the community.

VICE CHAIR GIESSEL asked if anyone had spoken against the bill.

MS. DAVIS answered she is unaware of any opposition.

[2:02:34 PM](#)

ERROL CHAMPION, Chair, Legislative Issues Committee, Alaska Association of Realtors, Juneau, Alaska, noted that his letter of support was in the packets. Addressing earlier questions, he clarified that the bill does not change the broker test; it just changes the required hours of continuing education from 15 hours to 30 hours and extends the time before a licensee can apply to take the broker test from two years to four years. He provided licensure data as of the end of January: 414 broker licenses were renewed, 361 associate broker licenses were renewed, and there were 1,630 licensees. He shared his experience with documents that weren't absolutely correct but didn't rise to the level where the consumer filed a complaint with the Real Estate Commission. He knows that the number of complaints is growing but that's to be expected when the average licensee does fewer than six transactions per year. This doesn't provide much hands-on experience, particularly with the advent of foreclosures and short sales, he said. The broker has much more responsibility and there should be more training in accounting. The Real Estate Commission agrees this legislation is needed.

[2:06:52 PM](#)

SENATOR MEYER asked the difference between a broker, an associate broker, and a licensee.

MR. CHAMPION explained that everyone is a licensee and any licensee can become an associate broker or broker. The statute provides that there will be only one broker and one broker license in an office, but there can be any number of associate brokers. The training and experience requirements are the same.

SENATOR MEYER asked if a broker can have listings.

MR. CHAMPION confirmed that a broker can represent clients that are either buying or selling. He noted that the statute provides that only the broker can handle the funds.

SENATOR MEYER asked if someone could build homes and be their own broker.

MR. CHAMPION clarified that a contractor is able to sell homes he/she builds without a broker license.

SENATOR MEYER asked if this is all disclosed to the buyer.

MR. CHAMPION answered yes; both parties must sign a consumer pamphlet that they know who a broker or licensee represents.

SENATOR MEYER asked how the commission is divided.

MR. CHAMPION explained that the listing broker decides how to distribute the commission. It's negotiable and is paid broker to broker.

SENATOR STEVENS asked if the broker assumes legal and financial responsibility for every transaction going through the office.

MR. CHAMPION answered yes; statute provides that the broker is responsible for the contents and integrity of every file in every transaction.

[2:13:08 PM](#)

VICE CHAIR GIESSEL asked Director Hovenden if she had a sense of the number of complaints filed with the Real Estate Commission and the commission's liquidity.

MS. HOVENDEN agreed to follow up and send the numbers to Senator Costello's office. Her recollection is that the Real Estate Commission is in good standing.

[2:15:47 PM](#)

SENATOR MEYER asked Mr. Eiler the reason that the term "must" was changed to "shall" on page 1, line 5. He commented that shall seems to be a weaker terms.

WESTON EILER deferred the question until he talked to legislative legal.

[2:16:43 PM](#)

VICE CHAIR GIESSEL held SB 158 in committee with public testimony open.

**SB 141-E-CIGS: SALE TO AND POSSESSION BY MINOR**

[2:16:59 PM](#)

VICE CHAIR GIESSEL announced the consideration of SB 141. She noted this is the second hearing.

[2:17:27 PM](#)

SENATOR GARY STEVENS, Alaska State Legislature, sponsor of SB 141, stated that this is not a tax bill or an attempt to control adult use of e-cigarettes. It is a bill that seeks to control the use of these devices by minors.

[2:17:54 PM](#)

TIM LAMPKIN, Staff, Senator Gary Stevens, Alaska State Legislature, displayed an informational slideshow about the types and uses of e-cigarettes as he summarized that the intent of SB 141 is to protect youths. He informed the committee that smoking e-cigarettes or vaping is the latest fad among youths and an entire subculture exists around the activity. He related that e-cigarette use began in 1963, but didn't take root because tobacco smoking was more fashionable. However, as tobacco consumption has declined, e-cigarettes have resurfaced. The market is exploding and is under regulated. The sponsor's concern is that this will serve as a gateway product that will ultimately result in more youths beginning to smoke.

He noted that a committee substitute is forthcoming that broadens definitions for these products.

[2:19:50 PM](#)

MR. LAMKIN walked through the following sectional analysis for SB 141, version H:

Section 1: AS 11.76.105(a) Adds to existing law that prohibits minors from possessing cigarettes or tobacco, to also prohibit possession of electronic cigarettes and any component thereof.

Section 2: AS 11.76.109(a) Adds to existing law that it is an offense not only to sell, exchange, or give electronic cigarettes, or any related component thereof, to a minor.

Section 3: AS 11.76.109(b) Provides an exception for minors possessing e-cigarettes, given the minor is using an e-cigarette for an approved medical purpose, such as smoking cessation, and is provided by a parent or prescribed by a doctor.

He noted that some will argue that these products do not contain nicotine, but that hasn't been established for certain.

Section 4: AS 11.81.900(b) Makes new definitions regarding E-cigarette components as follows:

(67) Defines "alternative tobacco product" to include a substance containing nicotine, or synthesized to resemble nicotine.

(68) Defines "electronic smoking device" to include its mechanical components and the chemical substances it aerosolizes.

(69) Defines "e-liquid or e-liquid product" as a liquid intended to be aerosolized and inhaled in conjunction with an electronic smoking device.

(70) Defines "vapor product" as a device that, when its components are assembled, is used to simulate smoking.

He reiterated that a committee substitute is forthcoming that broadens definitions for these products.

Section 5: Is the effective date, applying to offenses committed only after the effective date of the bill.

SENATOR MEYER thanked Mr. Lamkin for clarifying that it isn't clear whether or not these products contain nicotine.

MR. LAMKIN related that there are no existing regulations requiring labeling or testing these products so it's not clear what they contain.

SENATOR MEYER commented that regardless of whether they contain nicotine or not, they still contain ingredients that may not be safe for kids under age 19.

MR. LAMKIN agreed adding that the industry is new and moving too quickly to have accurate data. He noted that some will argue that the data set is too small to form conclusions.

SENATOR STEVENS said the jury is still out about whether e-cigarettes will help break a nicotine addiction. He asked Mr. Lamkin to talk about how an underage person can access e-cigarettes to treat an addiction to nicotine.

MR. LAMKIN offered his understanding that the state has a hotline that a youth can call to access cessation products. The bill also provides exceptions for youth to have nicotine products if they're used specifically for a pharmaceutical

purpose to quit smoking. Parents can also provide the product without a prescription. He deferred further comment to Dr. Butler.

VICE CHAIR GIESSEL noted that Spice isn't mentioned, although it is sometimes used in an e-cigarette.

MR. LAMKIN said it's not specifically mentioned because that's not the focus of the bill, but it theoretically could be substituted.

DR JAY BUTLER, Chief Medical Doctor, Department of Health and Social Services (DHSS), Anchorage, Alaska, stated that there is little known about the long-term effects of e-cigarettes so there's still a lot to learn. Addressing the question of using e-cigarettes as cessation devices, he said he believes the provision for that is linked to FDA approval, so the state programs will rely on that. "As a provider, that's where I would go first. But I have certainly counseled patients who have quit again and again and again to consider non-smoking tobacco products as an alternative," he said. Anecdotally, he is aware of people switching to smokeless or e-cigarettes as a way to stop or at least cut down on smoking.

He acknowledged the concern about not knowing what substance is in the vaping product and said he expects to see marijuana liquids in vaping devices in the near future. He noted that the trials for that product are not using vaporization as a way to administer it. He also noted anecdotally that products labeled automobile air fresheners and used in refillable vape devices actually did contain Spice.

[2:27:58 PM](#)

SENATOR STEVENS asked for confirmation that people under age 18 won't be able to legally possess marijuana even if it's legal in Alaska.

DR. BUTLER agreed and then pointed out that the odor of a THC containing solution isn't necessarily distinctive. Some online products are even touted to be odorless.

SENATOR STEVENS asked for help understanding whether or not e-cigarettes can be a cessation device.

DR. BUTLER said there is anecdotal evidence to that effect, but the fundamental question is what is in the e-cigarette. Products that are FDA approved have a known amount of nicotine and

absorption rate so it's easier to titrate the dose down as needed. He noted that some vaping products have labeled amounts of nicotine, but there is no assurance that the consumer is getting what's on the label. He agreed with earlier testimony that Great Britain approved a product as a cessation device but his understanding is that there is no similar filing with the FDA in the U.S.

SENATOR STEVENS thanked Dr. Butler for his work.

[2:31:23 PM](#)

JOE DARNELL, Manager, Underage Tobacco Enforcement, Department of Health and Social Services (DHSS), Anchorage, Alaska, introduced himself.

SENATOR MEYER asked if the law prohibiting possession or use of tobacco by a minor is being enforced. He also asked what the penalty is and if it's possible to collect from a youth who is age 16 or 17.

MR. DARNELL explained that possession of tobacco by a minor is a \$50 fine, and sometimes the court allows community service or tobacco training in lieu of the fine. He anticipates the same thing happening with the vaping products. School administrators have mentioned problems on school campuses because there is no law addressing vaping products. As a policy, the device may be confiscated but it has to be returned.

SENATOR MEYER asked: 1) how many tobacco violations are written in a year and 2) how it's possible to tell that someone is vaping when they're outside.

MR. DARNELL said his office works with merchants to prevent underage sales so they don't regularly issue citations. He agreed that you couldn't tell if someone was vaping if they're outside, and expressed concern that vaping is bringing back the social norm that smoking is acceptable.

SENATOR MEYER asked if vaping products are allowed in bars.

MR. DARNELL said he believes that vaping is allowed in bars in Anchorage and he knows that Juneau added to its smoke-free ordinance to include vaping. Vaping is also allowed in vape shops.

MR. LAMPKIN added his understanding that it is largely up to the owner of the establishment to set the policy for vaping. He also pointed out that some products are both smokeless and odorless.

2:38:04 PM

ANGELA CARROLL, Chapter Leader, SmokeFree Alternative Trade Association, Wasilla, Alaska, stated support for SB 141, emphasizing that vaping products should not be accessible to individuals younger than the legal smoking age.

2:38:50 PM

EMILY NENON, Alaska Government Relations Director, American Cancer Society/Cancer Action Network (ACS CAN), testified in support of SB 141. She highlighted that vendors of e-cigarettes do not have the same license requirements as vendors that sell tobacco so there isn't a good way to enforce a penalty for selling to youth. She echoed concern about the trend for youth to use electronic-cigarettes and noted that this is reflected in ACS CAN's youth risk behavior survey data for Alaska. It's a trend that should be addressed before it gets worse, she said.

VICE CHAIR GIESSEL asked if there is particulate matter in the e-products.

MR. NENON answered yes; ultrafine particles come off the end of the e-cigarette. Given that there are hundreds of these products on the market, it is impossible to say exactly what is in each one, he said. However, ones that have been analyzed have been found to contain neurotoxins, which is found in nicotine.

VICE CHAIR GIESSEL asked if she'd seen data indicating that the particulate matter may exacerbate asthma or other respiratory diseases.

MS. NENON said yes and offered to provide the fact sheets that show evidence of short-term impacts on the respiratory system.

SENATOR STEVENS asked if e-cigarettes have to be purchased through an adult at a shop.

MS. NENON said she appreciates that that is what the legislation would require, but she's heard anecdotally that some youth are getting them online.

SENATOR STEVENS commented that Internet sales is an important issue.

[2:44:11 PM](#)

SENATOR ELLIS related that it was former Representative Kay Brown who introduced legislation to ban cigarette vending machines in all places except where people over age 21 could have access. He recalled that when he first came to the legislature there was a cigarette vending machine on the ground floor of the capitol building and students from the high school would walk up or take the bus to get their nicotine fix. He added, "I was a proud co-sponsor of that legislation and needless to say we've come a long way in our consciousness and commitment to health, especially with young people."

[2:45:42 PM](#)

VICE CHAIR GIESSEL closed public testimony and held SB 141 in committee awaiting a committee substitute (CS).

**SB 108-AK SECURITIES ACT; PENALTIES; CRT. RULES**

[2:46:12 PM](#)

VICE CHAIR GIESSEL announced the consideration of SB 108.

[2:46:45 PM](#)

KEVIN ANSELM, Director, Division of Banking and Securities, Department of Commerce, Community and Economic Development (DCCED), walked through the sectional analysis for SB 108. She advised that in addition to the sectional analysis, she may refer to the Alaska Securities Act, Penalties, Court Rules Table of Contents that provides a guide of the significant changes to the current law, and a side-by-side that compares the present and proposed law section-by-section and gives specific information in comparison to the existing Securities Act.

She clarified that references to the Uniform Securities Act of 2002 (USA) means the recent Uniform Act. The existing Alaska Act is based on the 1956 Uniform Securities Act with a few revisions since it was passed in 1959.

She reminded the committee that the statutory provisions are reordered in SB 108 and will hopefully make it easier for industry and investors to locate information.

SECTIONAL ANALYSIS of SB 108:

**Article 1. General Provisions (pp. 1-2)**

**Sec. 45.56.105. Securities registration requirement** - same as current law (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. 2-17)**

**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** - generally the same as 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 (including crowdfunding).

**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. 17-29)**

Note: 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. Currently, a 10 day 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 interest 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.

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VICE CHAIR GIESSEL requested the definition of "viatical."

MS. ANSELM explained that it relates to a financial transaction in which a company buys life insurance policies from the terminally ill at less than face value. She noted that these became popular during the AIDS epidemic

**Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers. (pp. 29-54)**

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 statute 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 were 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 files a notification with the division. Allows an immediate temporary effective registration with a new firm when no new disciplinary information is 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. 54-56)**

**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.

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SENATOR STEVENS asked if it's difficult for a person to get registered.

MS. ANSELM explained that they register both the securities and the persons who sell them. Some securities are exempt and do not need to be registered. For securities that are registered by qualification, the division works with other states that have the same security offering, offers comments and opines on whether the disclosure is adequate. As far as determining whether it is a good investment or not and whether the investment has merit, the state of Alaska is not a merit state but rather a full disclosure state. An investor has an opportunity to look at the relevant information and determine whether or not an investment is appropriate for them.

SENATOR STEVENS asked how Alaska compares to merit states and how many have that classification.

MS. ANSELM recalled there are nine merit states, including Washington and Oregon.

SENATOR STEVENS assumed it would be expensive for the division to determine merit.

MS. ANSELM confirmed it would require more review of the registration statements. This would require more background checking than is done currently. Full disclosure doesn't require a determination that the investment has merit. The division does not do site visits, but does ask a lot of questions to obtain full disclosure. She added that the test for a merit state is fair, just and equitable.

SENATOR STEVENS expressed concern that Sec 220, Crowdfunding, seems to open an entirely new field and questioned whether the state wanted to get into this.

MS. ANSELM said she understands the concern; it's been expressed in other states that have entered the Crowdfunding arena. She said it's helpful that the Crowdfunding will be with Alaska-based businesses so it will be easier to check backgrounds. Depending on the Crowdfunding provisions that pass, there will be an application procedure that requires full information on the backgrounds of each of the control persons. The expectation is that the division will be able to do a good job of discerning that the proper disclosures have been made.

SENATOR STEVENS asked if the division will treat investment opportunities for Crowdfunding differently than for other investment opportunities.

MS. ANSELM said yes; the application process will be different and deposits must be made in a financial institution that is authorized to do business in the state. The banks also do a vetting and the division will coordinate that information. She added that it's relatively easy to check on people who are residents of Alaska.

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Continuation of sectional analysis of SB 108:

**Article 6. Administration and Judicial Review. (pp. 56-78)**

**Sec. 45.56.605. Administration** - allows acceptance of grants or donations for investor education and creates a securities and investor education and training fund with 33% of civil penalties received. Clarifies that variable annuities are subject to both the Insurance law and the Securities Act. (See also Article 7, Section 2)

**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. Jurisdiction** - application of the law to interstate or international transactions.

**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 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 Alaskan" (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 Alaskan" (person over 60 years old).

**Sec. 45.56.660. Civil liability** - outlines instances where the seller is liable to the purchaser and potential remedies (actual damages generally); 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 his or her 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.

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SENATOR MEYER asked if the industry had voice opposition to the proposed changes.

MS. ANSELM said no, but consumers have said they'd like to have stronger penalties. She noted cases pending now where the penalties don't seem to fit the violations. For example, Fortune Oil received about \$4.2 million in fraudulent gains from investors, many from Alaska, and the maximum penalty for that enforcement action was \$25,000.

Continuation of sectional analysis of SB 108:

**Article 7. Miscellaneous and Additional General Provisions. (pp. 78-109)**

**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 references to an agency of the United States is also a reference to a successor agency. Senate Bill 108 Sectional Analysis January 25, 2016 Page 6

**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 Alaskan - a person residing in the state that is age 60 or older (from AS 47.26.290(6))
  - Price amendment
  - Record

- Self-regulatory organization
- Sign

**Sec. 45.56.735. Short title.** This chapter may be cited as the Alaska Securities Act.

**Sections 2 - 35 (pp. 89-109) include the corresponding changes to statutes that refer to former AS 45.55 provisions that have been moved to AS 45.56.**

**SECTION 2 - SECTION 6** - Citations are modified to reflect Chapter 45.56 in place of Chapter 45.55 references and terms are updated.

**SECTION 7- SECTION 8** - Modifies AS 21.96 variable annuity and viatical provisions.

**SECTION 9 - SECTION 15** - Citations are modified to reflect Chapter 45.56 in place of Chapter 45.55 references and terms are updated.

**SECTION 16 - SECTION 25** - Modifies 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 26 - SECTION 28** - Citations are modified to reflect Chapter 45.56 in place of Chapter 45.55 references and correct federal law references.

**SECTION 29** - 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** - Amends indirect Court Rules relating to changes in AS 45.56.

**SECTION 31** - Allows the department to adopt transition regulations to implement the Act.

**SECTION 32** - Amends the law to effect transition and application of AS 45.55 for existing proceedings, existing rights and duties.

**SECTION 33** - Reviser's instruction to rename AS 45.55 to Alaska Native Claims Settlement Act Corporations Proxy Solicitations.

**SECTION 34** - Conditional Effect. Certain of the changes to the Securities Act will only take effect if Court Rule changes in Section 24 is passed by two-thirds majority vote of each the House and Senate.

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VICE CHAIR GIESSEL thanked Ms. Anselm for the overview.

SENATOR STEVENS said he needs to know more about Crowdfunding. He asked, "Why is it in here? Who asked for it? Who needs it? What are the negatives and positives? What are other states doing?"

VICE CHAIR GIESSEL asked Ms. Anselm to forward the answers to those questions to Chair Costello before the next hearing and she will distribute them to members.

MS. ANSELM agreed.

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VICE CHAIR GIESSEL held SB 108 in committee.

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There being no further business to come before the committee, Vice Chair Giessel adjourned the Senate Labor and Commerce Standing Committee meeting at 3:25 p.m.