

**ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE**

April 7, 2017

2:08 p.m.

MEMBERS PRESENT

Representative Matt Claman, Chair
Representative Jonathan Kreiss-Tomkins
Representative Gabrielle LeDoux
Representative David Eastman
Representative Chuck Kopp
Representative Lora Reinbold

MEMBERS ABSENT

Representative Zach Fansler, Vice Chair
Representative Charisse Millett (alternate)
Representative Louise Stutes (alternate)

COMMITTEE CALENDAR

HOUSE BILL NO. 170

"An Act relating to securities, registration, exempt securities, exempt transactions, broker-dealers, agents, investment advice, investment advisers, investment adviser representatives, federal covered securities, federal covered investment advisers, viatical settlement interests, small intrastate security offerings, Canadian broker-dealers, and Canadian agents; relating to administrative, civil, and criminal enforcement provisions, including restitution and civil penalties for violations; relating to an investor training fund; establishing increased civil penalties for harming older persons and vulnerable adults; relating to corporations organized under the Alaska Native Claims Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure, and Rule 602, Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 170

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

SPONSOR(S): LABOR & COMMERCE

03/10/17	(H)	READ THE FIRST TIME - REFERRALS
03/10/17	(H)	L&C, JUD
03/24/17	(H)	L&C AT 3:15 PM BARNES 124
03/24/17	(H)	Heard & Held
03/24/17	(H)	MINUTE(L&C)
03/27/17	(H)	L&C AT 3:15 PM BARNES 124
03/27/17	(H)	Moved HB 170 Out of Committee
03/27/17	(H)	MINUTE(L&C)
03/29/17	(H)	L&C RPT 6DP 1NR
03/29/17	(H)	DP: SULLIVAN-LEONARD, STUTES, WOOL, JOSEPHSON, BIRCH, KITO
03/29/17	(H)	NR: KNOPP
04/07/17	(H)	JUD AT 1:00 PM GRUENBERG 120

WITNESS REGISTER

KEVIN ANSELM, Director
 Division of Banking and Securities
 Department of Commerce, Community & Economic Development (DCCED)
 Juneau, Alaska

POSITION STATEMENT: During the hearing of HB 170, presented the legislation on behalf of the House Labor & Commerce Committee, chaired by Representative Kito.

RENEE WARDLAW, Assistant Attorney General
 Commercial and Fair Business Section
 Department of Law (DOL)
 Anchorage, Alaska

POSITION STATEMENT: During the hearing of HB 170, answered questions.

ACTION NARRATIVE

[2:08:17 PM](#)

CHAIR MATT CLAMAN called the House Judiciary Standing Committee meeting to order at 2:08 p.m. Representatives Claman, LeDoux, Kreiss-Tomkins, and Kopp were present at the call to order. Representatives Eastman and Reinbold arrived as the meeting was in progress.

HB 170-AK SECURITIES ACT; PENALTIES; CRT. RULES

[2:09:05 PM](#)

CHAIR CLAMAN announced that the only order of business would be HOUSE BILL NO. 170, "An Act relating to securities,

registration, exempt securities, exempt transactions, broker-dealers, agents, investment advice, investment advisers, investment adviser representatives, federal covered securities, federal covered investment advisers, viatical settlement interests, small intrastate security offerings, Canadian broker-dealers, and Canadian agents; relating to administrative, civil, and criminal enforcement provisions, including restitution and civil penalties for violations; relating to an investor training fund; establishing increased civil penalties for harming older persons and vulnerable adults; relating to corporations organized under the Alaska Native Claims Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure, and Rule 602, Alaska Rules of Appellate Procedure; and providing for an effective date."

[2:09:53 PM](#)

KEVIN ANSELM, Director, Division of Banking and Securities, Department of Commerce, Community & Economic Development (DCCED), referred to the need to update the Alaska Securities Act and offered a PowerPoint presentation titled, "Alaska Securities Act, HB 170." Ms. Anselm turned to slides 2-3, and explained that the Securities Act provides the legal framework for [technical difficulties] securities in Alaska, for Alaskans, registration of firms and sales persons, registration or filing of securities, and enforcement. The Securities Act also regulates the Alaska Native Claims Settlement Act (ANCSA) corporations and shareholder proxy related provisions. Securities, she offered, is the largest of the division's 12 programs and includes registering and monitoring over 95,000 salespersons, such as stock brokers, investment advisors, and approximately 1,000 firms, and all of those out-of-state individuals. She referred to [Sec. 45.56.900(32), page 103, lines 9-31, and page 104, lines 1-8] and noted that the definition of security was not changed, and it includes investments such as stocks, bonds, limited partnerships, investments in common enterprises, investment contracts, and viaticals. Basically, she explained, a security involves the investment of money or other consideration in a common enterprise with the reasonable expectation of profit, primarily from the entrepreneurial or management efforts of others.

[2:12:29 PM](#)

MS. ANSELM turned to slide 4, and advised that HB 170 updates the Securities Act by adopting many of the most recent model act provisions while retaining Alaska's centric provisions. The

bill proposes to lift the Securities Act out of the Native Claims Settlement Act (ANCSA) provisions and making that change would highlight the differences between the programs, and allow ANCSA constituents a clear view of the applicable law. Also, she explained, the bill's provisions are included to protect older and vulnerable Alaskans from financial exploitation, and give investment professionals immunity from administrative and civil liability if they report possible exploitations. She noted the division has been working with the industry on those provisions and she would later discuss a possible amendment.

MS. ANSELM pointed out that, currently there is no provision in the law regarding restitution, and the civil penalty is capped at \$25,000 per violation. The bill asks the legislature to designate some of those civil penalties funds toward consumer protection and education. Currently, she said, there is no requirement for continuing education of industry professionals, whereas most other industries require continuing education.

[2:14:09 PM](#)

MS. ANSELM turned to slide 5, and related that ANCSA provisions remain unchanged in AS 45.55, including the enforcement and administration of those related securities laws. The ANCSA regional corporations do not oppose this change as noted by a letter included within the committee packets. [3/27/17 letter directed to The Honorable Sam Kito, from Kim Reitmeir, ANCSA Regional Association.]

[2:14:35 PM](#)

MS. ANSELM turned to slide 6, pointed to the top four highlights in HB 170, and advised as follows: the bill eliminates filing for all exemptions from registration, except crowdfunding, to make it easier for Alaskan businesses to use the exemptions allowed under the law; it updates entity and law references; it includes "bad actor" qualifiers who will not be allowed to register securities in Alaska, such as people convicted of a crime, including fraud, dishonesty, or inappropriately taking someone's money; and it improves enforcement and investor protection, as well as education provisions.

[2:15:19 PM](#)

MS. ANSELM turned to slide 7, and explained that the slide is a general outline of the Securities Act, of which is 111 pages and there is not quite as much substance as it may appear. Article

1 begins at page 15 because there are a number of provisions to modify due to the change in the statute numbering. She then read the entire outline, and explained that Article 4, broker-dealers, agents, investment advisers, investment adviser representatives, and federal covered investment advisors, basically all of the people regulated who must be either licensed or registered with the state, are now covered under Article 4.

[2:17:01 PM](#)

MS. ANSELM, in response to Representative Reinbold's request for an explanation of Article 4, explained that it is the licensing or registration provision that basically advises what someone must do in the State of Alaska in order to be a stock broker, investment advisor, or registered as a brokerage house.

[2:18:14 PM](#)

MS. ANSELM turned to slides 8-10, and advised that the slides cover administrative enforcement, civil enforcement, and criminal enforcement changes. As to slide 8, she advised that, administratively, outside of court unless there is an appeal, the changes include extending the time to request a hearing. She explained that the division can issue various types of orders currently, and there is a 15 days period wherein a person can request a hearing if they do not agree with the order, or if it was not a consent order. Also, civil penalties are increased from the current standard of \$2,500 per [occurrence] or \$25,000 per [violation], to a maximum of \$100,000 per violation, she advised.

[2:18:55 PM](#)

REPRESENTATIVE REINBOLD asked how many [orders] the division [files] each year, the types of penalties, and why it changed to \$100,000 per violation.

MS. ANSELM responded that in FY 2016, the division issued 36 filed orders across the division, and it had 17 securities related orders, which is its typical number of assessments. She explained that the \$25,000 or the \$100,000 penalty is at the top of the range, and the division tries to match the penalty to the activity. For instance, there are occasions where no civil penalties are issued, such that someone didn't register for some reason and it wasn't to avoid the law. Oftentimes, she said, the division will write a letter of warning, or issue a consent

order advising the person not to do whatever they did again, and there is no penalty.

CHAIR CLAMAN noted that Ms. Anselm had testified in a prior hearing that the current penalty level of \$25,000 was creating an enforcement problem, and he asked her to describe the enforcement problem created with the current penalty levels.

MS. ANSELM referred to a recent case wherein people from Texas came to Alaska and sold Alaskans approximately \$3.1 million worth of bogus oil and gas securities, and the maximum penalty the division could access was \$25,000, with no opportunity for rescission for those Alaskans. In this case, she explained, the division issued an order for the maximum amount possible, the judge agreed and issued his order in March 2016, granting the \$25,000 civil penalty. She related that the division could probably collect on that amount, but the Alaskans cannot collect on anything because there was not a restitution option. Therefore, the maximum penalty for the firm that sold \$3.1 million worth of worthless securities was \$25,000. She remarked that the state have better tools in order to, hopefully, deter any sort of bad deeds, but with HB 170, if there are bad deeds the division will have the tools in its toolbox to effectively enforce the law.

[2:22:15 PM](#)

REPRESENTATIVE REINBOLD asked for a description of the 16 orders and an actual snapshot of the problems.

MS. ANSELM referred to the spreadsheet titled, "Securities Enforcement Comparison: Current 45.55 versus Proposed 45.56," and advised it is an outline of each case the division has taken during the time period 2012 to present.

[2:23:00 PM](#)

REPRESENTATIVE REINBOLD asked whether the division's desire to move to the \$100,000 penalty was due to one particular case and noted she was trying to understand the division's reasoning in quadrupling the penalty.

MS. ANSELM responded that civil penalties have not been adjusted in 40 years, and in order to get the attention of bad actors, the division needs a civil penalty that will deter that sort of activity, and she pointed out that civil penalties go into the state's general fund.

[2:23:55 PM](#)

REPRESENTATIVE REINBOLD referred to slide 7, bullet point 5, "Restitution to a victim can be ordered" and asked how often restitution is ordered.

MS. ANSELM reiterated that the division does not have the ability to order restitution, for instance, a halibut fisherman was "ripped off" by an unregistered New York brokerage firm, and the division was able to return some of his money because one of the involved persons actually had a conscience but, she reiterated, the division cannot order restitution [under current law].

CHAIR CLAMAN clarified that under HB 170 the division will have the authority to order restitution.

MS. ANSELM answered in the affirmative.

[2:24:56 PM](#)

REPRESENTATIVE REINBOLD asked who would have the authority to order the restitution.

MS. ANSELM answered that the division and the courts could order restitution.

[2:25:13 PM](#)

REPRESENTATIVE EASTMAN asked what constitutes a specific violation, because he was surprised there would be an instance wherein someone could defraud many people and receive a single violation penalty of \$25,000, such as the case she previously described.

MS. ANSELM answered that there are multiple violations, and currently the single [occurrence] fine is \$2,500 and the total violation fine is \$25,000.

REPRESENTATIVE EASTMAN commented that it did not appear logical in an instance where someone defrauded people in the millions of dollars, and the division is only asking for a penalty increase to \$100,000 as an effective deterrent.

MS. ANSELM advised that the fine is up \$100,000 per violation, which is not to say the division would impose that amount, but

it needs the range. She referred to the spreadsheet and said that once it is copied, the grid will show what happens under current law, and what the division probably would have done as to the \$3.1 million case.

REPRESENTATIVE EASTMAN noted that the bill gives the division authority to assess penalty fees up to \$100,000 per violation, and asked what checks would be in place regarding an inadvertent technical violation.

MS. ANSELM replied that currently there are internal controls because the division is careful to review what was accessed in the past for similar types of violations, and consider what it does in the future. She pointed out that a person always has the opportunity to request a hearing, which is heard through the Office of Administrative Hearings or through the "circuit court."

[2:28:03 PM](#)

REPRESENTATIVE LEDOUX referred to the current \$2,500 and \$25,000 penalty fines, and surmised that those people have the remedy of going before a civil court, which could allow them to obtain money.

MS. ANSELM responded that those people do have the remedy of civil court with the possibility of receiving a positive judgment.

REPRESENTATIVE LEDOUX noted that the maximum would be \$100,000 per violation, and if this fine was just restitution, not pain and suffering or anything of that nature, why wouldn't the person seek restitution for the actual amount of their loss.

MS. ANSELM explained that the \$100,000 maximum is a civil penalty which is different from restitution, and the division would seek restitution [under HB 170].

[2:29:23 PM](#)

REPRESENTATIVE LEDOUX offered that currently the penalty is \$2,500-\$25,000, and HB 170 moves the maximum to \$100,000 per violation, and questioned whether the division would also seek restitution for these folks.

MS. ANSELM answered that the division would seek restitution if it was appropriate, and noted that it may be appropriate in some

cases to simply order restitution because that person should be paid and not the state.

MS. ANSELM, in response to Representative LeDoux, answered that civil penalties are deposited into the state's general fund.

REPRESENTATIVE LEDOUX asked why the division wouldn't have the money go to the [coughing].

MS. ANSELM answered that the money would go to the [injured person], except the division does not have the authority to order restitution currently. Although, she explained, with regard to a consent order, the division does have authority to ask a consenting scammer to return the injured party's money, and she emphasized that it must be on a consent basis as it is not an order.

[2:31:00 PM](#)

REPRESENTATIVE LEDOUX pointed out that she wants to make certain the injured parties are paid before the state is paid.

MS. ANSELM said, "That is absolutely the division's intent."

[2:31:18 PM](#)

REPRESENTATIVE KOPP said that in reading the bill, he guessed the division would follow criminal law such that when there is a criminal fine and a restitution order, the restitution order always has precedent over the criminal fine.

MS. ANSELM opined that is exactly how the bill reads. Unfortunately, she said, if the division does issue a civil penalty and is able to collect on the penalty, the money goes to the state's general fund because the division cannot order payment to an injured party at this time.

REPRESENTATIVE KOPP suggested reviewing the statute and aligning that procedure with criminal law.

CHAIR CLAMAN agreed, and he pointed out that Ms. Anselm was discussing current practice, and once the bill was in place that problem would be void.

MS. ANSELM answered in the affirmative.

[2:32:52 PM](#)

REPRESENTATIVE REINBOLD commented that when this law is in place, it could potentially generate generous revenue for the state coffers, especially if the penalty was up to \$100,000 per violation. She suggested an amendment stipulating the bill's intention that if any money was collected it was strictly restitution for the injured party, and not to generate revenue for the state.

[2:34:06 PM](#)

REPRESENTATIVE KOPP asked whether he was correct in stating that this discussion relates to stock and investment fraud.

MS. ANSELM agreed, and she pointed to the broad definition of "securities" because people do take advantage of others through business and other opportunities.

[2:34:31 PM](#)

REPRESENTATIVE KOPP asked whether this bill is important because this type of fraud happens to vulnerable people who cannot afford to lose the capital, or are otherwise unable to recognize the risk of the investment.

MS. ANSELM answered "Yes and beyond," there are smart people duped because they are presented with fine looking documents, or other evidence. For instance, two individuals convinced an Alaskan he could join them in a business opportunity if he gave them, she opined, \$40,000. These individuals promised him a management position in this new business venture, and they had a credit line of \$10 million from some other source that they could tap, except it all ended up being bogus. She related that the division contacted the individuals to have the money returned, they agreed, and then they skipped town.

REPRESENTATIVE KOPP remarked that the state is "absolutely doing the right thing" in recognizing this increase in fees as these injuries can be in the many millions of dollars in stealing people's life savings and pensions. Alaskan banks are victims of this, he offered, but it is never advertised because it is bad for the clientele, and sometimes the people investing their life savings will pull banks down with them in their bad decisions. He described \$100,000 as a drop in the bucket because it does not even begin to address the problems out there.

[2:37:05 PM](#)

CHAIR CLAMAN noted there is a long body of case law in Alaska, and throughout the country, requiring that any fine be proportional, and a minor error in filing would not result in a \$100,000 fine. The high cost per violation limit points to firms such as the Texas firm who may have sold to just 10 investors, but there are 10 different violations. Thereby, putting the message out that people cannot come to Alaska, dupe investors, and the largest penalty they will face is \$25,000 when duping people for over \$3 million, he said. Those firms need to know that Alaska is prepared to aggressively pursue those not following the rules and taking advantage of people. At the same time, he remarked, fine proportionality offers comfort to firms that they will not receive an unreasonable fine for conduct that does not merit a heavy application.

[2:39:03 PM](#)

MS. ANSELM continued the presentation and referred to changes in the in administrative enforcement area, slide 7, and explained that under HB 170, the division can bar a "bad actor" from operating in the state. The division can also deny exemptions from registration for securities, it can tell an entity they have not done such good things in the past, it wants to see the paperwork first, and makes the entity go through a registration process. Under this bill, if a civil penalty was assessed with no request for a court hearing, and the person decided they didn't want to pay the civil penalty, the division could go to court and ask that the civil penalty be enforced. Also, she said, in the event a person already has an administrative order against them and then repeats the same offense, the division can ask the court to hold them in contempt.

[2:40:38 PM](#)

CHAIR CLAMAN surmised that she had been discussing remedies without going to court because they are administrative actions authorized to the department.

MS. ANSELM agreed.

[2:40:45 PM](#)

MS. ANSELM referred to the spreadsheet titled, Securities Enforcement Comparison: Current 45.55 versus Proposed 45.56" and asked that the spreadsheet be copied for the members, noting the

copied spreadsheets would not be in color, which may be difficult.

[2:41:24 PM](#)

MS. ANSELM pointed to the top of the spreadsheet depicting the date of the case, case name, description, enforcement action by division, fine/penalty, whether a vulnerable adult was involved, the potential fine or penalty under HB 170, and the potential for the Investor Education Fund. She explained that the bill proposes up to 33 percent of collected civil penalties be deposited into a line item the legislature would have control over for the Investor Education Fund. In the event the legislature determined the money should not be used [in a certain year] and there was a budget deficit, for example, that money might be used for the deficit.

CHAIR CLAMAN noted his understanding of the spreadsheet in that after moving through the type of enforcement action, columns five and six are the current scenario, and columns seven and eight are how it would change under the proposed law.

[2:42:54 PM](#)

MS. ANSELM agreed, and she advised that the blue columns are ANCSA related, and the green columns are national settlements negotiated generally with all 50 states. She turned to page 5 of the spreadsheet, pointed to "12/3/15, LPL Financial, LLC and 11/6/15, Citigroup Global Markets, Inc." and explained that Alaska participated with a number of states in putting all of the actions together so there was only one action, and the [parties] settled with the states.

[2:43:49 PM](#)

[Due to the black and white copies of the spreadsheet, a discussion ensued explaining how to determine the white, blue, and green columns on each page.]

[2:46:37 PM](#)

MS. ANSELM referred to the bottom of page 10, 5th column from the left, "Fine/Penalty" and offered that the division accessed 2012 to present day at \$1,487,239.29, and that the actual collected fines were far lower. She referred to the column titled "Potential fine/penalty under proposed law" and offered that the maximum amount would be \$9,901,239.29, with 33 percent

of that amount going to the Investor Education Fund, totaling \$3,301,023.18.

2:47:24 PM

MS. ANSELM referred to page 1, second column down, and advised that the "2/8/17, Codawn Consulting Corporation" matter is currently in litigation. She explained the reason the number is greater with Codawn Consulting Corporation was that the division was able to access \$25,000 to each participant in that scam. She moved down one column to "11/28/16, Michael Scow," and explained that Mr. Scow defaulted on a couple of promissory notes which is why his fine was \$25,000. She then moved to the bottom column regarding "6/10/16, SOSDisasterplan.com" and advised it is currently in litigation.

2:48:41 PM

MS. ANSELM, in response to Representative Reinbold, explained that she skipped over the ANCSA cases as those would not be involved in the new Securities Act because they are separate and nothing will change for the ANCSA cases.

REPRESENTATIVE REINBOLD asked why nothing would change for the ANCSA cases.

MS. ANSELM explained that the Alaska Native Claims Settlement Act (ANCSA) provisions relate solely to proxy solicitations, which is different from the fraud and types of issues being discussed for regular security violations. The ANCSA was established through the federal government, and put into the Securities Act because there was a connection with proxy solicitation in that, initially, they were given inalienable stock. Therefore, she explained, there are regulations in the Securities Act that instructs the ANCSA corporations, as well as people who are shareholders who want to run for the board of directors, on certain required disclosures. She noted that the types of civil penalties being discussed for true securities related violations do not fit with the ANCSA provisions. It is important to list the securities provisions out of what is now called the ANCSA provisions so they are not treated disparately, and offered, that is one of the problems the division has experienced because anything done with the securities law affects the ANCSA corporations, their shareholders, and how proxy solicitations are handled. Nationally, she remarked, securities proxy solicitations are covered through the U.S. Securities and Exchange Commission (SEC), which is a federal

overlay. The only reason the division has anything like that at all is due to the ANCSA corporations, and the fact that with their securities ownership and the things that go with it, including the proxy solicitations, "there was no one else to deal with it" so the federal government said to put it in Alaska, she explained.

[2:51:03 PM](#)

REPRESENTATIVE REINBOLD asked Ms. Anselm to explain the protection provisions in this bill that "were not in the bill before, you know, for ANCSA, but are now."

MS. ANSELM reiterated that the division has proposed no changes to the ANCSA provisions as it is simply lifting out everything securities related, not ANCSA related, and put into a whole new chapter of statute, which is AS 45.56, currently being discussed.

[2:51:51 PM](#)

REPRESENTATIVE REINBOLD said she wondered why something having to do with the bill was held up due to ANCSA.

MS. ANSELM responded that when the division proposed changes to the Securities Act, the ANCSA corporations and shareholders offered concern that it would affect something inadvertently, or intentionally, having to do with its holding of their ANCSA shares. For instance, she said, all ...

[2:52:36 PM](#)

CHAIR CLAMAN interrupted and asked whether it had to do with proxy solicitations, or another issue.

MS. ANSELM answered "Yes, with regard to proxy solicitations" but also violations, which is why the division wants to make it clear that it is not changing anything relating to the ANCSA.

[2:52:59 PM](#)

REPRESENTATIVE REINBOLD suggested uploading the spreadsheet for the public, and noted that the ANCSA corporations or penalties tend to be approximately \$1,000-\$1,550, but the others tend to be \$100,000, \$125,000, and \$75,000, and asked why it was \$1,500 or \$1,000 for many, and others are upwards of \$25,000 to \$125,000.

MS. ANSELM said that most of the ANCSA related penalties are small because that is what is appropriate for a shareholder issue within the State of Alaska, "that it's an informational thing, it's not taking other people's money, generally." Typically, the division's orders explain why the civil penalty is what it is and commented that the truth of the matter is that if it is a filing issue, the division does not take an action with a civil penalty attached unless it is a repeat offense with the ANCSA corporations. She referred to other cases depicted on the spreadsheet, and advised that many of the more recent cases have been taken by default wherein the offender would not talk to the division so it moved on a default order. She referred to page 3, 5th column down, "12/10/2013, Daniel Digiaco," and explained that this case involved crowdfunding, and posting on the internet which was just beginning to take place. Mr. Digiaco lived in the State of Maryland and posted an opportunity for investors in Alaska on Craig's List, the division then advised him not to post, he asked why, the division explained, and he continued to post. The division then issued a Cease and Desist Order and when Mr. Digiaco agreed to take everything down and not post again, the division did not access a civil penalty.

[2:55:56 PM](#)

CHAIR CLAMAN noted that he hadn't had a meaningful opportunity to review it and rather than taking time reviewing page-by-page and case-by-case on the fly, the spreadsheet would be set aside for questions during the next hearing on the bill. He asked Ms. Anselm to continue through to the end of the presentation.

[2:56:36 PM](#)

REPRESENTATIVE EASTMAN noted that the cases he briefly reviewed appeared, for the most part, to be violations on the part of Americans, and asked how the division would deal with a Canadian violator.

CHAIR CLAMAN interjected that the question relates to the spreadsheet, and he asked Ms. Anselm to get back to the committee in writing or during the next hearing, but the committee would not go down that path at this time. He asked that Ms. Anselm forward the electronic scanned color copy to his office and it would be uploaded online, and given to the committee members.

MS. ANSELM agreed.

[2:57:59 PM](#)

MS. ANSELM turned to slide 9, Civil Enforcement Changes. She advised that HB 170 clarifies as follows: the actions the administrator can pursue in civil court, including asset freezes and receivership; treble monetary penalties in cases involving older or vulnerable adults; allows rescission, disgorgement and restitution orders as well as pre or post-judgment interest; provides that salespersons who violate the Act are liable to their clients; both sellers and buyers of securities can be liable for their actions, as a buyer would be liable when not truthful; and the Statute of Limitations is typically three years, or two years from discovery of the fraud. The interest rate is set by statute, AS 09.30.070, and the minimum rate is [coughing] percent, but it can be set through looking at the "12 Federal Reserve district discount rate plus 3 percent." Attorney's fees are also recoverable by a plaintiff where allowed, it does not have a prevailing party provision, she explained.

[3:00:08 PM](#)

REPRESENTATIVE REINBOLD requested an explanation regarding prevailing attorney fees.

MS. ANSELM explained, for instance, a person sues because they believe they bought a bad security and lost money, if they go to court and whoever sold it to them wins, that party receives attorney fees under the prevailing party provision even though they did not bring the case in the first place.

CHAIR CLAMAN asked whether she was saying that in this particular Act, the bill is actually exempting it from the Rule 82 prevailing party attorney fee provisions by the nature of the Act, or whether it says nothing in the Act that Rule 82 would apply under the civil rules.

MS. ANSELM deferred to Renee Wardlaw, Assistant Attorney General.

[3:01:34 PM](#)

RENEE WARDLAW, Assistant Attorney General, Commercial and Fair Business Section, Department of Law (DOL), answered that the proposed amendment would actually exempt this provision from

Rule 82, that a prevailing party [technical difficulties.] She said, that in fact [technical difficulties] trying to exempt this particular provision from Rule 82 allowing a [technical difficulty] actually be awarded attorney's fees. She offered that the division does not want to discourage investors from bringing lawsuits if they believe they were wronged by a seller of said investment.

[3:02:41 PM](#)

CHAIR CLAMAN interpreted Ms. Wardlaw's garbled testimony and offered that the intent of this bill is to actually exempt these lawsuits from the prevailing party attorney fee provision in Rule 82 because the division did not want a barrier that could potentially harm investors from being able to sue those who took advantage of them, and face the prospect of prevailing party attorney fees.

MS. WARDLAW agreed.

REPRESENTATIVE REINBOLD commented that attorney fees should be posted as well, and then sent on to the state. She advised that "a bill may be coming soon."

CHAIR CLAMAN informed Representative Reinbold that prevailing attorney fees are posted currently, which is Rule 82.

[3:04:21 PM](#)

MS. ANSELM turned to slide 10, Criminal Enforcement, and advised that most of the provisions are similar to current law; however, "willfully" is changed to "knowingly," and noted that "willfully" is not currently defined in Alaska Statute. Generally, she explained, "a class C felony, if someone violates the law without knowledge though, it is a class A misdemeanor" and the person will not receive jail time.

[3:05:32 PM](#)

REPRESENTATIVE KOPP surmised that "willfully" is not a mental state recognized in the law, and he offered concern regarding the statement that the state can apply a criminal penalty without knowledge, removing the mens rea. It would still be a misdemeanor with up to one year in jail and a \$10,000 fine. He asked whether the bill was saying that "without knowledge" would mean a lesser standard than "knowingly," or whether it meant with criminal negligence still applies, or whether a person can

"just flat out" not know they broke the law and still have the criminal sanctions and misdemeanor apply.

MS. ANSELM deferred to Ms. Wardlaw.

CHAIR CLAMAN advised that Representative Kopp question was whether the bill created a strict liability offense without the need for a mental state requirement in the provision about misdemeanors, or whether it was something different.

[3:06:46 PM](#)

MS. WARDLAW responded that it is a strict liability assessment and the mens rea has been removed [technical difficulties] into that offense.

CHAIR CLAMAN, due to the garbled audio, offered that the answer is that the bill creates a strict liability offense without a mens rea requirement.

MS. WARDLAW agreed.

[3:07:24 PM](#)

REPRESENTATIVE KOPP opined that the legislature needs to be watchful of attaching criminal liability without any mens rea to be certain people are not inadvertently convicted criminals without any intent. A violation may be appropriate for strict liability, but if they truly do not have any intent to violate the law, mens rea is always something that should be looked at when criminal liability is attached, he stated.

[3:08:01 PM](#)

REPRESENTATIVE EASTMAN said he has a similar concern and asked what types of situation Ms. Anselm would perceive as strict liability.

MS. ANSELM referred to [HB 170, Sec. 45.56.670(a), page 92, lines 16-18] which read as follows:

(a) a person convicted of violating a regulation or order issued under the chapter may be fined, but may not be imprisoned, if the person did not know of the regulation or order.

[3:09:15 PM](#)

REPRESENTATIVE KOPP argued that it does not appear to refer to a class A misdemeanor, as it is clearly referring to class C felony conduct with a mental state of intentionally attached on lines 12-16. He referred to lines 16-18, and said if that's the misdemeanor language there, where there is no intent, it doesn't identify it as a misdemeanor and possibly could be construed to actually just be that on (indisc.) of violation.

MS. ANSELM asked whether there was something to look at in that provision.

REPRESENTATIVE KOPP noted that it read "class A misdemeanor" and [technical difficulties] then somewhere in here there has to be a reference back to it setting the ... is it possible it is just a violation and not a class A misdemeanor, he asked.

MS. ANSELM said she would check with the bill drafter.

CHAIR CLAMAN requested that she get back to the committee because it is clearly an area of some complication. He related that under Morrisette v. United States, 342 U.S. 246 (1952), there was a question of knowledge with regard to different offenses, more narrowly tailored to theft offenses, but it gets to the issue of mental states and crimes.

[3:10:56 PM](#)

REPRESENTATIVE EASTMAN asked that after meeting with the bill drafter and it turns out there is strict liability here, to then advise the committee as to why there was the expectation that strict liability would be necessary.

MS. ANSELM agreed.

CHAIR CLAMAN suggested that from the chair's perspective and echoing the sentiments raised by Representative Kopp, perhaps an amendment with the mental state being something less than "knowingly," as he related that he is wary of criminal issues that don't involve the mental state.

[3:11:48 PM](#)

MS. ANSELM turned to slide 11, and noted that last year the division filed 36 final orders, 17 were securities related, and in calendar year 2016, the division issued 27 final orders, and 13 were securities related. She reminded the committee that the

division has 10 other substantive programs it deals with on the financial side.

[3:12:30 PM](#)

MS. ANSELM turned to slide 12, and noted that some of the recent scams in Alaska include, Fortune Oil & Gas, and opined it had not gone past its appeal timeline. SOSDisasterplan.com was an Alaskan business that touted investments on an online disaster preparedness website, and issued approximately \$540,000 in unregistered/worthless shares. The Global Arena Capital Corp is the New York firm she mentioned earlier that solicited Mr. Burke, an ailing retired Alaskan halibut fisherman, and sold him junk bonds.

MS. ANSELM presented oral testimony from Mr. Burke who had since passed, and noted that, ultimately, the case was settled.

[3:13:43 PM](#)

[Mr. Burke's oral testimony, see pages 13-15 of the PowerPoint for written testimony.]

[3:15:28 PM](#)

MS. ANSELM advised that the division was able to get Mr. Burke's money back because it found a salesperson with a conscience and he had parents concerned their son was in trouble.

Mr. Burke was lucky, she described, except he only received his money back, and not all of the pain and issues he dealt with in trying to receive his money. She stressed that the division needs stronger tools to deal with bad actors and that these type of fraudulent activities should make everyone in the state angry. She then described Mr. Burke as a smart man because when he received another call from someone trying to sell him Bio-Tech stock, he called the division, and it was able to help another firm understand their responsibilities in the State of Alaska. Consequently, the division did not allow that firm to operate in the state and it was fined for trying to use that same scam on other people, she advised.

[3:16:35 PM](#)

REPRESENTATIVE REINBOLD asked that in the event other consumers are being taken advantage of in this area, whether they should call the division, or whether she had another recommendation.

MS. ANSELM responded, "Call us," and an investigator will determine who to contact because it is the division's mission to protect consumers regarding financial services, to promote a safe, sound, and healthy financial system, to strongly support communities, and to protect consumers in Alaska. The department wants to take a balance approach by modernizing the law to encourage businesses in Alaska, and protect Alaska's citizens, including letting citizens know that "we're out here and can help them, and that's another part of what we need to do." She described it as one step at a time because the department does not have the financial outreach capabilities necessary, although, the division does bring in more than it expends due to the civil penalty pieces and some of the licensing pieces. Ms. Anselm estimated that the department operates on approximately \$2.5-\$2.6 million, and the division usually brings in approximately \$13 million per year.

[3:18:09 PM](#)

CHAIR CLAMAN listed the four names of people online for questions, and he assumed they would return for the next hearing.

MS. ANSELM offered that was her understanding.

[3:19:08 PM](#)

CHAIR CLAMAN opened public testimony on HB 170. After ascertaining no one wished to testify, closed public testimony.

CHAIR CLAMAN announced that HB 170 would be held over.

[3:21:52 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 3:21 p.m.