

**ALASKA STATE LEGISLATURE  
HOUSE JUDICIARY STANDING COMMITTEE**

April 11, 2017

5:35 p.m.

**MEMBERS PRESENT**

Representative Matt Claman, Chair  
Representative Zach Fansler, Vice Chair  
Representative Gabrielle LeDoux  
Representative David Eastman  
Representative Chuck Kopp  
Representative Lora Reinbold

**MEMBERS ABSENT**

Representative Jonathan Kreiss-Tomkins  
Representative Charisse Millett (alternate)  
Representative Louise Stutes (alternate)

**OTHER REPRESENTATIVES PRESENT**

Representative Sam Kito, III

**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 AND 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
04/07/17	(H)	Heard & Held
04/07/17	(H)	MINUTE (JUD)
04/11/17	(H)	JUD AT 5:30 PM GRUENBERG 120

#### WITNESS REGISTER

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

Anchorage, Alaska

**POSITION STATEMENT:** Continued her presentation of HB 170, on behalf of the House Labor and Commerce Standing Committee, chaired by Representative Kito.

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

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

#### ACTION NARRATIVE

[5:35:39 PM](#)

**CHAIR MATT CLAMAN** called the House Judiciary Standing Committee meeting to order at 5:35 p.m. Representatives Claman, Fansler, LeDoux, Eastman, Kopp, and Reinbold were present at the call to order.

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

5:36:49 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." [Before the committee was HB 170, Version 30-LS0333\J.]

5:37:50 PM

CHAIR CLAMAN referred to HB 170, Version J, 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 this chapter may be fined, but may not be imprisoned, if the person did not know of the regulation or order.

CHAIR CLAMAN noted there was much discussion during the last bill hearing in that the section created a misdemeanor crime without a mental state, and was pondering the merits of an amendment to remove that language, and the amendment would read there wasn't a misdemeanor crime without a mental state.

5:38:50 PM

KEVIN ANSELM, Director, Division of Banking and Securities, Department of Commerce, Community, and Economic Development (DCCED), offered her understanding that the committee may decide to delete the language on page 92, lines 16-18, and offered that the division would not oppose the amendment. Although, she said she wondered whether the result would be that there then would

not be a lesser penalty, and prison would be on the table for anyone convicted of violating a regulation or order, as oppose to this exception.

CHAIR CLAMAN offered concerns from the members regarding the whole notion of having some lesser crime without a mental state, and noted his sense that the members were not bothered by having a misdemeanor crime that wasn't a felony in the world of criminal enforcement. There appears to be a great deal of discomfort with having that strict liability, he stated.

MS. ANSELM asked the question that the fact that this language is within the "intentionally section," whether there would be an interpretation that it would still need to be an intentional requirement.

[5:41:08 PM](#)

RENEE WARDLAW, Assistant Attorney General, Commercial and Fair Business Section, Department of Law, said she agreed with Director Anselm in that intentionally is currently the mental state for a felony crime. Currently, it's written that if someone were to violate the statute or an associated regulation, they would be liable for a class C felony. She referred to the discussed language and said she did not see a provision related to a misdemeanor; therefore, her interpretation and review of the law, which she may have misstated during the previous bill hearing, was that currently there actually is no misdemeanor punishment in the law. In the event the committee did proceed with a criminal manner it would only be for a felony, and the Department of Law (DOL) would have to prove that that particular wrongdoer performed the act intentionally, which is a higher mental state.

[5:42:32 PM](#)

REPRESENTATIVE KOPP related that there does not appear to be a misdemeanor offense in this penalty structure.

MS. WARDLAW answered correct.

REPRESENTATIVE KOPP noted that if a person was not guilty of a felony, the person could then only be guilty of a violation. In other words, he related, in the event the crime did not meet the class C felony standard that the person did not know of the regulation or order, the person would be subject to a fine, and it would be prosecuted as a civil offense, noncriminal.

MS. WARDLAW answered correct.

[5:43:27 PM](#)

REPRESENTATIVE KOPP surmised that violating any regulation of this chapter is felony conduct if the crime was committed on purpose. He asked whether an argument could be made that all intentional violations rise to the level of felony prosecution, and noted surprised that the only mental state attached is intentionally, and all violations would be considered a class C felony. He then asked whether there was a place for a misdemeanor or a lesser violation in the bill because now there is a gap between a felony and a traffic ticket.

MS. WARDLAW related that DOL has a host of punishment avenues available, such as an administrative action for someone violating the statute, a civil avenue contained in the enforcement section, AS 45.56.660, and criminal avenues. The intention is that if DOL did have a violator, the administrator, together with advisement from the attorney general's office, would determine [the level of the offense] based upon the facts. Representative Kopp was correct, she offered, that if the criminal avenue was chosen, that violator would have had to act intentionally with regard to their action against investors, or what acts they performed. For example, she said, if they intentionally sold or offered a security to investors which was actually a junk bond or a security with no value, criminal action could be taken. Although, there would be other factors DOL would consider to determine whether an administrative action, civil action, or a criminal action, would be best. Therefore, the intention for the enforcement section was to have all of these avenues available so when the administrator looked at the particular facts of the case, together with advisement from the attorney general's office, they could make their decision accordingly.

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REPRESENTATIVE EASTMAN, with regard to the traffic ticket, commented that "\$100,000, that's one heck of a traffic ticket." He acknowledged that he is murky regarding "knowing violation versus unknowing violation," and pointed to [Sec. 45.56.670, page 92, lines 16-18] subsection (a) and related that if the description was that the felony mentioned here necessitates an intentional violation, then clearly the discussion was not about the felony. In the event this deals with a fine of up to

\$100,000, just the fact that someone made an intentional act but they didn't necessarily know the act was contrary to the section continues in the strict liability category, he related, unless he was missing something.

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MS. ANSELM remarked that she may not have understand Representative Eastman's question correctly, but under criminal enforcement, the mens rea is intentional, except currently, if there is a violation of a regulation or order it is usually a "lesser sort of issue." In essence, she explained, there are two different standards in there, and "one says you can go to jail -- you can go to prison, the other one says, no." As to the civil penalties, the division would like to see it increased up to \$100,000 per violation, but that does not mean that is what the division would use because it is careful in how it accesses civil penalties. The division wants its response to fit the activity and, she opined, that would not change when raising the amount that can be paid for a violation.

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REPRESENTATIVE EASTMAN offered an analogy that he happened to unknowingly trespass on someone's property because no signs were posted. He said he violated because it was his intention to go to that area, except it wasn't a knowing violation. In this type of situation, he asked, what would be the requirement for a degree of negligence, or something else. He said he would hope that it was not simply that the person did not know there was a regulation, the person violates the regulation, and now the person is on the hook for, perhaps, a large penalty.

MS. ANSELM referred to some of the enforcement orders she had discussed during the last bill hearing, and noted pointed out that within some of the orders there are quite egregious activities. For instance, taking money from an ailing and elderly Alaska halibut fisherman through cold calls, the division only went after a civil penalty and nothing criminal. She then referred to the people who arrived in Alaska from Texas and stole \$3.1 million from Alaskans, the division did not propose a criminal penalty. She explained that "it would have to be an egregious sort of situation," and noted that, currently, Alaska has not had many criminal cases, but it also has not had the enforcement tools necessary to deal with enforcement that this Act would give the division. Therefore, she said, she could not offer any good examples.

5:51:11 PM

REPRESENTATIVE EASTMAN asked whether there are any other elements to the offense other than strict liability and a regulation was violated, such as any degree of negligence that would normally be required in order to issue a fine.

MS. WARDLAW referred to Sec. 45.56.670, [page 92, lines 12-18] and advised that the mental state is still "intentionally" and the last line [lines 16-18] merely allow the DOL to have a lighter version of a felony. In the event a person who violated the law did not know about the law or the regulation associated with the law, they could not be imprisoned which, she explained, is why the last line was included. A class C felony means that in the event someone violated the law, and they could either be imprisoned or receive a fine up to \$100,000, except in the event they did not know about the law, they could only be fined up to \$100,000, and not imprisoned. She remarked that the committee was using the word "knowingly," which had some legal meaning, but in this case the language was simply saying that if a person did not know the law, they were not subject to imprisonment, but were subject to a fine.

5:53:23 PM

REPRESENTATIVE LEDOUX asked why a person must have knowledge of something in order to have committed a crime, usually mens rea means that a person actually intends to do something, not that they know whether its legal or illegal. She then asked whether there [are other laws or regulations] in which an agency adopts a regulation and the agency regulation sets forth an actual criminal act. She pointed out that the legislature decides what are, and are not, crimes. She referred to Sec. 45.56.670(a), [page 92, lines 12-16], which read as follows:

(a) A person who intentionally violates this chapter, a regulation adopted under this chapter, or an order issued under this chapter, except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or 45.56.445, is guilty of a class C felony punishable by imprisonment under AS 12.55.125 or by a fine of not more than \$100,000, or by both.

REPRESENTATIVE LEDOUX stated that the legislature's prerogative is to actually determines what is a crime, and asked whether, other than securities law and this bill, there was any place

where the legislature lets an agency decide what is a criminal act.

[5:55:19 PM](#)

MS. ANSELM responded that she would have to research that issue, and was unaware whether Ms. Wardlaw knew the answer at this moment.

REPRESENTATIVE LEDOUX stressed that she was uncomfortable with the idea of allowing an agency determine what is a crime.

[5:55:53 PM](#)

REPRESENTATIVE REINBOLD inquired as to which agency would make the decision as to whether [an offense] was a felony.

MS. ANSELM responded that the decision would be made by Department of Commerce, Community & Economic Development (DCCED), working with the Department of Law, Attorney General's Office as that is the state's attorney.

REPRESENTATIVE REINBOLD surmised that no court would be involved.

MS. ANSELM answered that, of course, a court would be involved, [a complaint] must be filed with the court, and there must be a trial before someone was [convicted].

REPRESENTATIVE REINBOLD asked whether the division would file the charges, and to explain the process.

MS. ANSELM replied that the charges would be filed by the attorney general's office or the appropriate law enforcement agency.

MS. ANSELM, in response to Representative Reinbold, advised that it is her understanding that the case would proceed as a regular court case.

[5:57:30 PM](#)

REPRESENTATIVE LEDOUX questioned that even though the case proceeds like a regular court case, the department actually created the crime through a regulation, and not by appearing before a legislative committee to advise that "A, B, and C"

should be elements of a crime. She again stressed that she is uncomfortable with [that authority given to an agency].

[5:57:57 PM](#)

CHAIR CLAMAN advised that to the extent the committee passed this bill with this section included, the committee created the crime, the department was not creating the crime in that it would create the regulations that read what a person had to do, and then if they didn't, that becomes a crime. He opined that this does not give the agency the authority to write regulations defining crimes differently than what the legislature was saying in the bill. He commented that he may be wrong.

[5:58:25 PM](#)

REPRESENTATIVE LEDOUX stressed that if the language is nothing other than what is in the bill, then a regulation is unnecessary. Obviously, she expressed, it is giving the department authority to take this chapter and construe it in such a manner that a person could end up with a felony for violating a regulation.

MS. ANSELM answered that she was unsure this language gives the department any more authority to issue regulations than in any other situation. Although, she advised, if someone violates a regulation there are a number of things that can happen to that person. Regulations must arise from laws, and regulations do go through a process by which they are vetted before they are put in place, and she was unsure whether that was different from any other [regulation process].

REPRESENTATIVE LEDOUX said, presumably, the legislature does not let the Department of Public Safety (DPS) come up with its own interpretation of [laws], and through regulation say one thing or another, that authority belongs to the legislature.

MS. ANSELM reminded the committee that a judge would always be involved in any sort of criminal activity.

[6:00:50 PM](#)

CHAIR CLAMAN explained that that was not the issue Representative LeDoux raised, the issue was whether the department can issue a regulation that becomes a crime, as that authority is limited to the legislature. He remarked that the

legislature could make it a crime to violate the regulation, the question was whether the regulation itself created a crime.

REPRESENTATIVE LEDOUX nodded her head in agreement.

MS. ANSELM answered that she did not know whether there were situations where crimes were established through regulation, and deferred to Ms. Wardlaw.

[6:01:46 PM](#)

MS. WARDLAW explained that the language on the first line is model language and it may or may not fit the Alaska State Legislature and its authority. In a practical sense, she offered, she sincerely doubted the division would take a criminal action if someone did not violate a statute outlined under AS 45.56. In the event the committee was uncomfortable with "us taking criminal enforcement against the regulation that was adopted into the chapter, or an order issued under this chapter," it probably would not make a difference in the tool kit of enforcement abilities, she said.

[6:02:45 PM](#)

REPRESENTATIVE REINBOLD noted that Representative LeDoux and she agreed on this issue and she would co-sponsor legislation with Representative LeDoux regarding administrative law. She asked Ms. Anselm, for transparency purposes, to advise the committee which organization encouraged this law to be brought before the body.

MS. ANSELM advised that the original bill had been presented to the legislature a number of times, and generally brought forth through the Division of Banking and Securities through the Department of Commerce, Community & Economic Development (DCCED), and had several times been introduced as a governor's bill.

REPRESENTATIVE REINBOLD advised that that was not her question, and noted their conversation prior to this hearing and the mention of the National Conference of Commissioners on Uniform State Laws (ULC). She said she wanted that organization on record, and asked whether Alaska had state membership or state representation.

MS. ANSELM responded that the National Conference of Commissioners on Uniform State Laws (NCCUSL) provides a number

of uniform state laws, and none of the states belong to this organization. The NCCUSL is considered a learned group of scholars from across the country in various disciplines, it works with everything from probate law to securities law, and several pages of different laws. She explained that the NCCUSL suggests to states that their laws be uniform [with other states], thereby, assisting businesses operating state-to-state, for example.

[6:06:26 PM](#)

REPRESENTATIVE REINBOLD said she is a fan of state sovereignty and federalism, and asked whether any organizations fund "these scholars," or whether any type of lobbying was involved in any manner.

MS. ANSELM answered that she was not aware of any lobbying or funding for NCCUSL.

[6:07:14 PM](#)

CHAIR CLAMAN clarified to Representative Reinbold that the NCCUSL is also called the Commission on Uniform Laws, which is the same commission that brought forward the Revised Uniform Fiduciary Access to Digital Assets Act to this committee. The legislature tends to see uniform laws come forward on a regular basis through that process, and all 50 states are members of the group, he advised.

REPRESENTATIVE REINBOLD asked Chair Claman to bring the answers to her request to the committee.

CHAIR CLAMAN offered that, for example, Commissioner Deborah Behr is one of the designed Alaska commissioners on the Commission on Uniform Laws, and approximately 4-6 retired persons from Alaska are involved in the group.

[6:08:25 PM](#)

REPRESENTATIVE KOPP explained to Representative Reinbold that the Commission on Uniform Laws was established over 50 years ago, and his direct experience with the commission involved: interstate extradition acts for people with felony warrants; how states agree to extradite offenders wanted in other states on felony warrants; an extraditable offense; and whether or not those states will extradite. The Commission on Uniform Law sets uniform laws that apply to child custody cases depending upon

where the child was born, if the custodial parent is from the state making the claim for the child, or if the custodial parents have moved, there are many factors states have worked out together. For example, in situation "A," if these factors apply then this is how "we, as states," will resolve it without fighting, basically. It is a long established commission, he pointed out, there is nothing nefarious or hidden in there, it has been necessary for states to be at peace with one another and resolve a whole list of administrative issues that otherwise would literally be a lawsuit every time. It's the way states interact in commerce, administrative, family, and criminal law, and it is very effective, he described.

[6:09:55 PM](#)

REPRESENTATIVE REINBOLD asked whether Alaska has state representation as commissioners, such as Deborah Behr, because it was said that there was no state membership, and no state representation.

CHAIR CLAMAN stated that rather than vetting the question "what does the uniform law commission do," when Ms. Anselm was not the correct person to answer that question, he could talk with her off record because the committee does not need to spend more time on it today. He advised Representative Reinbold that it would have been a good question to ask when the committee took up the fiduciary asset act, which was a Uniform Law Act.

REPRESENTATIVE REINBOLD argued that "She said that they brought this bill forth" and Representative Reinbold wanted to know the origin of this bill.

CHAIR CLAMAN responded that the question had been answered, the structure of the bill started from the Commission on Uniform Laws, and Ms. Anselm was clear in that explanation. He reiterated that Ms. Anselm should not be asked to respond to questions regarding the Commission on Uniform Laws because she was not directly involved with the commission.

[6:11:52 PM](#)

REPRESENTATIVE KOPP referred to the language in [Sec. 45.56.670, page 92] lines 13-14, and said that as Representative LeDoux mentioned, the committee could be promulgating regulations by an administrative agency that could end up determining felony conduct. He suggested the committee decide whether it prefers

that language in the chapter because the DOL appeared to have no commitment one way or the other as to deleting the language.

He said that it was his hope that if conduct was a felony, it would be a felony because it was dealing with laws pertaining to the United States Securities and Exchange Commission, and many of those laws are felonies. In the event the committee was actually basing this on the United States Code, which does say whether something is a felony or not, then there could be a good reason for having some leeway in there as long as it was tied to conduct that was already a federal felony. He commented that his comments were directed to Chair Claman as an attorney, and he was unsure whether this was the time to visit that issue.

[6:13:02 PM](#)

CHAIR CLAMAN suggested that because amendments on this bill will be heard tomorrow, the sensible thing would be to ask someone from the Department of Law (DOL), Criminal Division to appear and offer input because this subsection was making everyone uncomfortable, curious, and worried. He noted he did have an amendment drafted with regard to subsection (a) on page 92.

[6:14:14 PM](#)

CHAIR CLAMAN referred to [Sec. 45.56.670], subsection (a), and commented that as he read the subsection, a person charged under this felony provision would be subject to a fine of up to \$100,000, but not imprisonment under the language in the last sentence, "if the person didn't know of the regulation or order." He asked whether he was correctly reading that the fine would be up to \$100,000.

MS. ANSELM answered in the affirmative.

[6:15:12 PM](#)

REPRESENTATIVE LEDOUX opined that somewhere she read that anything with a fine over "X" amount of dollars was a felony, and if less than \$5,000 was a misdemeanor. She commented that "\$100,000, as Representative Eastman said, that is one hell of a traffic fine."

REPRESENTATIVE LEDOUX then pointed out that a person receives certain protections when charged with either a felony or a misdemeanor, foremost is the right to a jury trial. In the event an action was simply a violation, the person then does not

receive their right to a jury trial, and she remarked that it was problematic that someone could be fined up to \$100,000 without the right to a jury trial.

[REPRESENTATIVE KOPP spoke off record and could not be heard.]

REPRESENTATIVE LEDOUX laughingly opined that Representative Kopp was pointing her to the Sixth Amendment.

REPRESENTATIVE REINBOLD opined that Representative LeDoux and she now have agreed on a second issue.

[6:17:06 PM](#)

CHAIR CLAMAN said that to make this even more complicated, he turned to the last sentence in subsection (a), [page 92, lines 16-18] and said the way it reads, this is actually not a misdemeanor provision. He described it as a felony provision and paraphrased, "A person convicted of violating a regulation or order under this chapter ... so, the only conviction can be for the felony." Now, he remarked, there is this conviction for a felony which actually requires that the person intentionally violated the chapter, and explained that intentional violation of a law, under traditional construction in criminal statutes, means knowledge of the circumstances, the thing the person is violating, such as the illegal act of breaking into someone house, for example. The problem is that "now you have this thing you are trying to say, you don't know it's -- you don't know that it's -- you don't know about the regulation or order but that's the very thing you are supposed to know about to make an intentional violation." He pointed out that there is a problem with this sentence because, how can a person be convicted of intentional action if the person didn't know of the regulation or order.

[6:18:47 PM](#)

MS. ANSELM commented that she did not believe many criminal actions would arise from this Act, as there are civil violations and administrative violations. She said she understand why the committee was focusing here, but there are a whole panoply in this law of actions that the division can take, in concert or not, with the attorney general's office. She then deferred to Ms. Wardlaw.

MS. WARDLAW said, in deference to Sec. 45.56.670, she would defer to her earlier testimony regarding criminal liability for

a violation of a regulation or an order. Based upon the committee's discussion, she offered a potential amendment to delete the language on lines 13-14, and she paraphrased as follows: "a regulation adopted under this chapter, or an order issued under this chapter, ...." thereby, making the language on lines 16-18 null and void. She related, "If, in fact, we only associated criminal liability" with the violation of a section of the chapter - meaning statutory language, then it becomes irrelevant if someone knows about a regulation or an order issued under this chapter.

[6:20:52 PM](#)

REPRESENTATIVE LEDOUX responded to Chair Claman's comment that in order to be guilty of something, the person has to know it was against the law. In that regard, she said, "You couldn't say," that a person from a country which practices cannibalism, and the person didn't realize cannibalism was against the law. She opined that the intent, the mens rea is that the person actually has to know what they are doing, they don't actually have to know that it's against the law. For example, there are countries that practice honor deaths, and a person cannot come to the United States and kill their daughter because she was fooling around, and the defense be that it was perfectly okay in their country and; therefore, expect to be exempt from the law because they don't know the law. She said that isn't mens rea "kind of, not knowledge of the law, but not -- but you knowingly intended to do something, and knowledge actually that it's illegal or not has nothing to do with it."

[6:22:16 PM](#)

CHAIR CLAMAN offered that the distinction raised was between "malum in se offenses versus malum prohibitum offenses." He referred to the situations about killing your child because that's the custom, or cannibalism because that's the custom in another culture, and in the United States, that conduct is wrong in and of itself for malum in se. Whereas, the notion that "knowing misrepresentations" by not putting specific information in a securities disclosures is wrong, not because it's inherently wrong, but because there are laws that say that when a person offers a security disclosure, these are the five things they are supposed to say, for example. In theory, he offered, those are not as inherently known to be improper, which gets into malum prohibitum and gets into the question of knowledge about the fact that that particular conduct was illegal, as opposed to killing the neighbor which is clearly illegal, unless

it's self-defense. A tax return, for example, the person would have to be able to show knowledge of what they are actually supposed to be reporting to be able to show that was enough to be criminal conduct, he explained.

[6:23:55 PM](#)

CHAIR CLAMAN noted that under Title 45, there is intentional language similar to subsection (a), and the chair of the House Labor and Commerce Standing Committee, Representative Kito, will bring a list of the offenses involved that are based on intentional violations and how that works so there is a bigger picture.

CHAIR CLAMAN, in response to Representative Reinbold's note, explained the Latin phrases he had offered, as follows: Malum in se essentially means, "evil in and of itself by the act itself." Malum prohibitum, prohibitum being some variation of prohibited, means, "evil because we decided that it is an issue to a law or regulation that says so." For example, start with the 10 Commandments, Thou shall not kill thy neighbor, except in self-defense, is malum in se; and malum prohibitum would be Thou shalt pay your taxes every year and fill out your tax returns, and truthfully report your income. He explained that in the event a person had a pattern of knowingly not disclosing that information it would be malum prohibitum.

REPRESENTATIVE LEDOUX asked whether those are legal terms because she did not remember those phrases from law school.

CHAIR CLAMAN answered that they are legal terms.

[6:26:53 PM](#)

CHAIR CLAMAN asked whether anyone was interested in a sectional analysis or to gavel out and come back tomorrow for amendments as everyone appeared focused on Sec. 45.56.670(a).

REPRESENTATIVE KOPP noted that the committee did get through the sectional analysis at a high level and he was comfortable moving on to amendments.

REPRESENTATIVE REINBOLD disagreed that the committee went through a sectional analysis at a high level, and then corrected herself as she recalled the previous presentation.

MS. ANSELM answered that she had gone through many of the sections during her PowerPoint presentation, but she did not go through all of the sections.

CHAIR CLAMAN suggested to Representative Reinbold that if she wanted a more detailed analysis of the sections to ask Ms. Anselm to stop by her office.

[HB 170 was held over.]

[6:30:05 PM](#)

#### **ADJOURNMENT**

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 6:30 p.m.