

1 IN THE SENATE

BY THE COMMITTEE ON LABOR  
AND COMMERCE

2 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 24

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to securities; prohibiting  
7 fraudulent practices in relation thereto;  
8 requiring registration of broker-dealers  
9 and agents, making uniform the laws with  
10 reference thereto; and providing for an  
11 effective date."

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

13 Section 1. DEFINITIONS. When used in this Act, the follow-  
14 ing terms shall, unless the context otherwise indicates, have the  
15 following respective meanings:

16 (1) "Security" shall include any note, stock, treasury stock,  
17 bond, debenture or evidence of indebtedness; certificate of inter-  
18 est or participation or certificate of interest in a profit sharing  
19 agreement; collateral trust certificate, preorganization certificate,  
20 or preorganization subscription; any transferable share, investment  
21 contract, service certificate, burial certificate or burial con-  
22 tract; investment-trust certificates, shares or units, or benefic-  
23 ial interest in or title to property, profits or earnings; and any  
24 other instrument commonly known as a security, including any plan  
25 or scheme wherein townsites, town lots, or acreage, or any other  
26 land division in fee or in leasehold shall be used in connection  
27 with the gift or sale of any security as herein defined.

28 (2) "Person" shall include a natural person, a corporation  
29 created under the laws of this or any other state or political

1 subdivision thereof, a partnership, an association, a joint stock  
2 company, a trust and any unincorporated organization. As used  
3 herein the term "trust" shall include a common law trust, but  
4 shall not include a trust created by will, or by a court, or any  
5 public charitable trust.

6 (3) "Sale" shall include every disposition, or attempt to  
7 dispose, of a security or interest in a security for value. Any  
8 security given or delivered with, or as a bonus on account of,  
9 any purchase of securities or any other thing shall be con-  
10 clusively presumed to constitute a part of the subject of such  
11 purchase, and to have been sold for value. "Sale" shall also  
12 include an exchange, an attempt to sell, an option to purchase, a  
13 solicitation of a sale, a subscription or an offer to sell,  
14 directly or by an agent, or by a circular, letter, advertisement  
15 or otherwise.

16 (4) "Dealer" shall include every person, other than a sales-  
17 man who in this state engages, either for all or part of his time,  
18 directly or through an agent, in the business of selling any  
19 securities issued by another person, or of purchasing or otherwise  
20 acquiring such securities from another for the purpose of re-  
21 selling them, or of offering them for sale to the public, or of  
22 offering, buying, selling or otherwise dealing or trading in  
23 securities as agent or principal for a commission or at a profit,  
24 or who deals in futures or differences in market quotations of  
25 prices or values of any securities, or accepts margins on pur-  
26 chases or sales or pretended purchases or sales of such securi-  
27 ties; provided, that the word "dealer" shall not include a person  
28 having no place of business in this state who sells or offers to  
29 sell securities exclusively to brokers or dealers actually

1 engaged in buying and selling securities as a business, or to a  
2 person not engaged in the regular business of dealing in stocks,  
3 bonds or other securities for himself or for a corporation, if  
4 there is no participation in a commission either by division or  
5 through reduction.

6 (5) "Issuer" shall mean and include every person who pro-  
7 poses to issue, has issued or shall hereafter issue any security  
8 as hereinbefore defined, and any natural person who acts as a pro-  
9 moter for or on behalf of a corporation, trust or unincorporated  
10 association or partnership of any kind.

11 (6) "Salesman" shall include every natural person, other  
12 than a dealer or agent, employed, appointed or authorized by an  
13 issuer, or employed, appointed or authorized by a dealer, to sell  
14 securities in any manner in this state. The partners of a partner-  
15 ship and the executive officers of a corporation or other associa-  
16 tion registered as a dealer shall not be deemed salesmen within  
17 the meaning of this definition.

18 (7) "Agent" shall mean and include every person, other than  
19 a dealer or salesman, who sells or offers for sale any security  
20 as herein defined that is being, has been or may be offered by an  
21 issuer, including the partners of a partnership and the executive  
22 officers of a corporation or other association that shall sell or  
23 offer for sale any security as herein defined.

24 (8) "Commissioner" shall mean the Commissioner of the  
25 Department of Administration or his designated subordinate.

26 Sec. 2. REGISTRATION REQUIREMENT.

27 (a) It is unlawful for any person to transact business in  
28 this state as a broker-dealer or agent unless he is registered  
29 under this Act.

1 (b) Any person may apply and shall be eligible for regis-  
2 tration as a broker-dealer if such person is a citizen of the  
3 United States, over 21 years of age and has been a resident of  
4 Alaska for at least one year prior to application for registration.

5 (c) It is unlawful for any broker-dealer or issuer to  
6 employ an agent unless the agent is registered. The registration  
7 of an agent is not effective during any period when he is not  
8 associated with a particular broker-dealer registered under this  
9 Act or a particular issuer. When an agent begins or terminates a  
10 connection with a broker-dealer or issuer, or begins or terminates  
11 those activities which make him an agent, the agent as well as the  
12 broker-dealer or issuer shall promptly notify the Commissioner.

13 (d) Every registration expires one year from its effective  
14 date unless renewed. The Commissioner may by rule or order pre-  
15 pare an initial schedule for registration renewals so that subse-  
16 quent renewals of registrations effective on the effective date  
17 of this Act may be staggered by calendar months. For this purpose  
18 the Commissioner may by rule reduce the registration fee propor-  
19 tionately.

20 Sec. 3. REGISTRATION PROCEDURE.

21 (a) A broker-dealer or agent may obtain an initial or re-  
22 newal registration by filing with the Commissioner an application  
23 together with a consent to service of process as hereinafter pro-  
24 vided. The application shall contain whatever information the  
25 Commissioner by rule requires.

26 (b) Every applicant for initial or renewal registration  
27 shall pay a filing fee of \$50.00. When application is denied or  
28 withdrawn, the Commissioner shall retain \$10.00 of the fee.

29 (c) Every applicant for registration under this Act shall

1 file with the Commissioner, in such form as he by rule prescribes,  
2 an irrevocable consent appointing the Commissioner or his suc-  
3 cessor in office to be his attorney to receive service of any  
4 lawful process in any non-criminal suit, action, or proceeding  
5 against him or his successor executor or administrator which  
6 arises under this Act or any rule or order hereunder after the  
7 consent has been filed, with the same force and validity as if  
8 served personally on the person filing the consent. Service may  
9 be made by leaving a copy of the process in the office of the Com-  
10 missioner, but it is not effective unless (1) the plaintiff, who  
11 may be the Commissioner in a suit, action, or proceeding insti-  
12 tuted by him, forthwith sends notice of the service and a copy of  
13 the process by registered mail to the defendant or respondent at  
14 his last address on file with the Commissioner, and (2) the  
15 plaintiff's affidavit of compliance with this subsection is filed  
16 in the case on or before the return day of the process, if any,  
17 or within such further time as the court allows.

18 (d) The Commissioner may by rule require registered broker-  
19 dealers and agents to post surety bonds in amounts up to \$10,000,  
20 and may determine their conditions. Any appropriate deposit of  
21 cash or securities shall be accepted in lieu of any bonds so  
22 required.

23 Sec. 4. DENIAL, REVOCATION, SUSPENSION, CANCELLATION, AND  
24 WITHDRAWAL OF REGISTRATION.

25 (a) The Commissioner may by order deny, suspend, or revoke  
26 any registration if he finds (1) that the order is in the public  
27 interest and (2) that the applicant or registrant or, in the case  
28 of a broker-dealer or any partner, officer, or director, any  
29 person occupying a similar status or performing similar functions,

1 or any person directly or indirectly controlling the broker-  
2 dealer or investment adviser

3 (A) has filed an application for registration which as  
4 of its effective date, or as of any date after filing in the case  
5 of an order denying effectiveness, was incomplete in any material  
6 respect or contained any statement which was, in light of the  
7 circumstances under which it was made, false or misleading with  
8 respect to any material fact;

9 (B) has willfully violated or willfully failed to  
10 comply with any provision of this Act or any rule or order under  
11 this Act;

12 (C) has been convicted, within the past ten years, of  
13 any misdemeanor involving a security or any aspect of the securi-  
14 ties business, or any felony;

15 (D) is permanently or temporarily enjoined by any court  
16 of competent jurisdiction from engaging in or continuing any con-  
17 duct or practice involving any aspect of the securities business;

18 (E) is the subject of an order of the Commissioner  
19 denying, suspending, or revoking registration as a broker-dealer  
20 or agent;

21 (F) is the subject of an order entered within the past  
22 five years by the securities administrator of any other state or  
23 by the Securities and Exchange Commission denying or revoking  
24 registration as a broker-dealer or agent, or is the subject of an  
25 order of the Securities and Exchange Commission suspending or  
26 expelling him from a national securities exchange or national  
27 securities association registered under the Securities Exchange  
28 Act of 1934, or is the subject of a United States Post Office  
29 fraud order; but (1) the Commissioner may not institute a revoca-

1 tion or suspension proceeding under clause (F) more than one year  
2 from the date of the order relied on, and (ii) he may not enter an  
3 order under clause (F) on the basis of an order under another  
4 state Act unless that order was based on facts which would  
5 currently constitute a ground for an order under this section;

6 (G) has engaged in dishonest or unethical practices in  
7 the securities business;

8 (H) is insolvent, either in the sense that his lia-  
9 bilities exceed his assets or in the sense that he cannot meet his  
10 obligations as they mature; but the Commissioner may not enter an  
11 order against a broker-dealer under this clause without a finding  
12 of insolvency as to the broker-dealer; or

13 (I) is not qualified on the basis of such factors as  
14 training, experience, and knowledge of the securities business,  
15 except as otherwise provided in subsection (b).

16 The Commissioner may by order deny, suspend, or revoke any  
17 registration if he finds (1) that the order is in the public  
18 interest and (2) that the applicant or registrant

19 (J) has failed reasonably to supervise his agents if he  
20 is a broker-dealer; or

21 (K) has failed to pay the proper filing fee; but the  
22 Commissioner may enter only a denial order under this clause, and  
23 he shall vacate any such order when the deficiency has been cor-  
24 rected.

25 The Commissioner may not institute a suspension or revoca-  
26 tion proceeding on the basis of a fact or transaction known to him  
27 when registration became effective unless the proceeding is insti-  
28 tuted within the next thirty days.

29 (b) The following provisions govern the application of

1 Section 4 (a)(2)(I):

2 (1) The Commissioner may not enter an order against a  
3 broker-dealer on the basis of the lack of qualification of any  
4 person other than (A) the broker-dealer himself if he is an  
5 individual or (B) an agent of the broker-dealer.

6 (2) The Commissioner may not enter an order solely on  
7 the basis of lack of experience if the applicant or registrant is  
8 qualified by training or knowledge or both.

9 (3) The Commissioner shall consider that an agent who  
10 will work under the supervision of a registered broker-dealer need  
11 not have the same qualifications as a broker-dealer.

12 (4) The Commissioner may by rule provide for an examina-  
13 tion, which may be written or oral or both, to be taken by any  
14 applicant.

15 (c) The Commissioner may by order summarily postpone or  
16 suspend registration pending final determination of any proceeding  
17 under this section. Upon the entry of the order, the Commissioner  
18 shall promptly notify the applicant or registrant, as well as the  
19 employer or prospective employer if the applicant or registrant is  
20 an agent, that it has been entered and of the reasons therefor and  
21 that within fifteen days after the receipt of a written request  
22 the matter will be set down for hearing. If no hearing is re-  
23 quested and none is ordered by the Commissioner, the order will  
24 remain in effect until it is modified or vacated by the Commis-  
25 sioner. If a hearing is requested or ordered, the Commissioner,  
26 after notice of and opportunity for hearing, may modify or vacate  
27 the order or extend it until final determination.

28 (d) If the Commissioner finds that any registrant or appli-  
29 cant for registration is no longer in existence or has ceased to

1 do business as a broker-dealer or agent, or is subject to an  
2 adjudication of mental incompetence or to the control of a com-  
3 mittee, conservator, or guardian, or cannot be located after  
4 reasonable search, the Commissioner may by order cancel the  
5 registration or application.

6 (e) Withdrawal from registration as a broker-dealer or  
7 agent becomes effective thirty days after receipt of an applica-  
8 tion to withdraw or within such shorter period of time as the  
9 Commissioner may determine, unless a revocation or suspension pro-  
10 ceeding is pending when the application is filed or a proceeding  
11 to revoke or suspend or to impose conditions upon the withdrawal  
12 is instituted within thirty days after the application is filed.  
13 If a proceeding is pending or instituted, withdrawal becomes  
14 effective at such time and upon such conditions as the Commis-  
15 sioner by order determines. If no proceeding is pending or insti-  
16 tuted and withdrawal automatically becomes effective, the Commis-  
17 sioner may nevertheless institute a revocation or suspension pro-  
18 ceeding under Section 4 (a) (2) (B) within one year after with-  
19 drawal became effective and enter a revocation or suspension  
20 order as of the last date on which registration was effective.

21 (f) No order may be entered under any part of this section  
22 except the first sentence of subsection (c) without (1) approp-  
23 riate prior notice to the applicant or registrant (as well as the  
24 employer or prospective employer if the applicant or registrant  
25 is an agent), (2) opportunity for hearing, and (3) written find-  
26 ings of fact and conclusions of law.

27 Sec. 5. SPECIAL INSPECTION OR INVESTIGATION. The Commis-  
28 sioner shall have power either upon his own initiative or upon  
29 complaint, to make or cause to be made any special inspection or

1 investigation that he may deem necessary in connection with the  
2 sale, issuance, disposal, or offering for sale or disposal, of  
3 any securities, to determine whether there is any violation of  
4 this Act or any other law of this state, by any issuer, or agent,  
5 or other person; and the Commissioner shall have the power to  
6 issue subpoenas and process compelling the attendance of any per-  
7 son and the production of any papers or books, for the purpose of  
8 such investigation and examination, and shall have the power to  
9 administer an oath to any person whose testimony may be required  
10 on such examination or investigation, and to ask any court of this  
11 state to enforce such subpoenas and process or to compel such  
12 testimony.

13 Sec. 6. FEES. The Commissioner may charge and collect the  
14 following fees:

15 (a) For any examination, audit or inspection, not to exceed  
16 \$35.00 per day or fraction thereof;

17 (b) For the filing of any report or document required by  
18 the Commissioner or the Act, \$10.00;

19 (c) For copies or certified copies of any document, 50  
20 cents per page, plus \$2.00 for the certification.

21 Sec. 7. PENALTIES.

22 (1) Any person who shall knowingly or wilfully subscribe to  
23 or make or cause to be made any false statement or false entry in  
24 any book of any issuer, or who shall exhibit any false paper with  
25 the intention or for the purpose of deceiving any person author-  
26 ized to examine into the affairs of the issuer, or shall make or  
27 publish any false statement of the financial condition of said  
28 issuer or false statement relating to the contracts, stocks, bonds,  
29 or other securities by it issued or offered for sale, shall be

1 deemed guilty of a crime and shall be punished as hereinafter  
2 provided.

3 (2) Any person who shall, in connection with the sale or  
4 offering for sale of any security, use or employ any device,  
5 scheme or artifice to defraud or obtain money or property by  
6 means of any false pretence, representation or promise, or who  
7 shall wilfully misquote, misrepresent, conceal or suppress any  
8 material fact affecting such security, or who shall engage in any  
9 practice of dealing in or with any security, which practice is  
10 fraudulent or in violation of law, shall be guilty of a crime and  
11 shall be punished as hereinafter provided.

12 Any person or persons who shall violate any of the provisions  
13 of this Act shall be deemed guilty of a crime, and upon conviction  
14 thereof shall be fined in any sum not less than One Hundred Dol-  
15 lars (\$100.00) nor more than Five Thousand Dollars (\$5,000.00), or  
16 may be imprisoned for not more than three years, or may be both  
17 fine and imprisoned.

18 Sec. 8. APPEALS. An appeal may be taken by any interested  
19 person from any final order or decision of the Commissioner to the  
20 Superior Court of the State of Alaska. Such person shall, within  
21 twenty days after he has been notified of such order or decision,  
22 serve upon the Commissioner a written notice of his intention to  
23 appeal, and within ten days thereafter such person shall file a  
24 copy of said notice, together with the evidence of service upon  
25 the Commissioner, with the Clerk of the Superior Court and shall  
26 pay such fee to the Clerk as is required for the filing of an  
27 original suit. The Commissioner shall, within twenty days from the  
28 receipt of the notice of appeal, file with said Clerk a transcript  
29 of the proceedings before him from which such appeal has been

1 taken. The filing of an appeal does not, unless specifically  
2 ordered by the Court, operate as a stay of any order or decision  
3 of the Commissioner. The findings of the Commissioner as to the  
4 facts, if supported by competent, material and substantial  
5 evidence, shall be entitled to great weight. Either party may  
6 apply to the Court for leave to adduce additional material evi-  
7 dence, and the Court may enter such order and judgment as may  
8 seem just, fit and proper. An appeal may be prosecuted from the  
9 Superior Court to the Supreme Court as in other civil cases.

10 Sec. 9. SEVERABILITY. The fact that any section, subsection,  
11 sentence, clause or phrase of this Act is declared invalid for any  
12 reason, shall not affect the remaining portion of this Act.

13 Sec. 10. EFFECTIVE DATE. This Act shall become effective  
14 August 15, 1959.