

JUDICIARY COMMITTEE  
A M E N D M E N T S     T O  
SENATE BILL NO. 24

Amendment #1:

Page 5, line 20, after the word "of" delete the figures "\$100" and insert in lieu thereof the figures "\$50".

Amendment #2:

Page 5, line 21, delete at the beginning of the line the figures "\$50" and insert in lieu thereof the figures "\$25".

Amendment #3:

Page 5, line 21, after the word "and" delete the figures "\$50" and insert in lieu thereof the figures "\$25".

Amendment #4:

Page 12, line 10, delete all of Part III, beginning on said line and continuing to page 28, line 20, and insert in lieu thereof the following:

PART III

REGISTRATION OF SECURITIES

Sec. 301. REGISTRATION REQUIREMENT. It is unlawful for any person to offer or sell any security in this state unless (1) it is registered under this Act or (2) the security or transaction is exempted under Section 402.

Sec. 302. GENERAL REGISTRATION OF SECURITIES AND SIGNING OF REGISTRATION STATEMENT.

(a) Any security may be registered with the Administrator, whether or not it is also eligible for registration by coordination under section 306, under the terms and conditions hereinafter provided, by filing a registration statement in triplicate, at least one of which shall be signed by each issuer, its principal executive officer or officers, its principal financial officer, its comptroller or principal accounting officer, and the majority of its board of directors or persons performing similar functions (or, if there is no board of directors or persons performing similar functions, by the majority of the persons or board having the power of management of the issuer), and in case the issuer is a foreign or territorial person by its duly authorized representative in the United States. Signatures of all such persons when written on the said registration statements shall be presumed to have been so written by authority of the person whose signature is so affixed and the burden of proof, in the event such authority shall be denied, shall be upon the party denying the same. The affixing of any signature without

the authority of the purported signer shall constitute a violation of this Act. A registration statement shall be deemed effective only as to the securities specified therein as proposed to be offered.

(b) The filing with the Administrator of a registration statement, or of an amendment to a registration statement, shall be deemed to have taken place upon the receipt thereof, but the filing of a registration statement shall not be deemed to have taken place unless it is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under section 307(b).

(c) The information contained in or filed with any registration statement (including a statement filed under section 305) shall be made available to the public under such regulations as the Administrator may prescribe, and copies thereof, photostatic or otherwise, shall be furnished to every applicant at such reasonable charge as the Administrator may prescribe.

Sec. 303. INFORMATION REQUIRED IN GENERAL REGISTRATION STATEMENT. The general registration statement shall, in addition to the information specified in section 307(c) and the consent to service required by section 414(g), contain the information, and be accompanied by the documents, specified in the schedule set forth in section 304 of this Act; except that the Administrator may by rules or regulations provide that any such information or document need not be included in respect of any class of issuers or securities if it finds that the requirement of such information or document is inapplicable to such class and that disclosure fully adequate for the protection of investors is otherwise required to be included within the registration statement. If any accountant, engineer, or appraiser, or any person whose profession gives authority to a statement made by

him, is named as having prepared or certified any part of the registration statement, or is named as having prepared or certified a report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement. If any such person is named as having prepared or certified a report or valuation (other than a public official document or statement) which is used in connection with the registration statement, but is not named as having prepared or certified such report or valuation for use in connection with the registration statement, the written consent of such person shall be filed with the registration statement unless the Administrator dispenses with such filing as impracticable or as involving undue hardship on the person filing the registration statement. Any such registration statement shall contain such other information and be accompanied by such other documents, as the Administrator may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of investors.

Sec. 304. SCHEDULE OF INFORMATION REQUIRED IN REGISTRATION STATEMENT.

- (1) The name under which the issuer is doing or intends to do business;
- (2) the name of the state or other sovereign power under which the issuer is organized;
- (3) the location of the issuer's principal business office, and if the issuer is a foreign or territorial person, the name and address of its agent in the United States authorized to receive notice;
- (4) the names and addresses of the directors or persons performing similar functions, and the chief executive, financial and accounting officers, chosen or to be chosen if the issuer be a corporation, association, trust, or other entity; of all

partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual; and of the promoters in the case of a business to be formed, or formed within two years prior to the filing of the registration statement;

(5) the names and addresses of the underwriters;

(6) the names and addresses of all persons, if any, owning of record or beneficially, if known, more than 10 per centum of any class of stock of the issuer, or more than 10 per centum in the aggregate of the outstanding stock of the issuer as of a date within twenty days prior to the filing of the registration statement;

(7) the amount of securities of the issuer held by any person specified in paragraphs (4) - (6) of this schedule, as of a date within twenty days prior to the filing of the registration statement, and, if possible, as of one year prior thereto, and the amount of the securities, for which the registration statement is filed, to which such persons have indicated their intention to subscribe;

(8) the general character of the business actually transacted or to be transacted by the issuer;

(9) a statement of the capitalization of the issuer, including the authorized and outstanding amounts of its capital stock and the proportion thereof paid up, the number and classes of shares in which such capital stock is divided, par value thereof, or if it has no par value, the stated or assigned value thereof, a description of the respective voting rights, preferences, conversion and exchange rights, rights to dividends, profits, or capital of each class with respect to each other class, including the retirement and liquidation rights or values thereof;

(10) a statement of the securities, if any, covered by

options outstanding or to be created in connection with the security to be offered, together with the names and addresses of all persons, if any, to be allotted more than 10 per centum in the aggregate of such options;

(11) the amount of capital stock of each class issued or included in the shares of stock to be offered;

(12) the amount of the funded debt outstanding and to be created by the security to be offered, with a brief description of the date, maturity, and character of such debt, rate of interest, character of amortization provisions, and the security, if any, therefor. If substitution of any security is permissible, a summarized statement of the conditions under which such substitution is permitted. If substitution is permissible without notice, a specific statement to that effect;

(13) the specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be offered is to supply funds, and if the funds are to be raised in part from other sources, the amounts thereof and the sources thereof, shall be stated;

(14) the remuneration, paid or estimated to be paid, by the issuer or its predecessor, directly or indirectly, during the past year and ensuing year to (a) the directors or persons performing similar functions, and (b) its officers and other persons, naming them wherever such remuneration exceeded \$15,000 during any such year;

(15) the estimated net proceeds to be derived from the security to be offered;

(16) the price at which it is proposed that the security shall be offered to the public or the method by which such price is computed and any variation therefrom at which any portion of such security is proposed to be offered to any persons or

classes of persons, other than the underwriters, naming them or specifying the class. A variation in price may be proposed prior to the date of the public offering of the security, but the Administrator shall immediately be notified of such variation;

(17) all commissions or discounts paid or to be paid, directly or indirectly, by the issuer to the underwriters in respect of the sale of the security to be offered. Commissions shall include all cash, securities, contracts, or anything else of value, paid, to be set aside, disposed of, or understandings with or for the benefit of any other persons in which any underwriter is interested, made, in connection with the sale of such security. A commission paid or to be paid in connection with the sale of such security by a person in which the issuer has an interest or which is controlled or directed by, or under common control with, the issuer shall be deemed to have been paid by the issuer. Where any such commission is paid the amount of such commission paid to each underwriter shall be stated;

(18) the amount or estimated amounts, itemized in reasonable detail, of expenses, other than commissions specified in paragraph (17) of this schedule, incurred or borne by or for the account of the issuer in connection with the sale of the security to be offered or properly chargeable thereto, including legal, engineering, certification, authentication, and other charges;

(19) the net proceeds derived from any security sold by the issuer during the two years preceding the filing of the registration statement, the price at which such security was offered to the public, and the names of the principal underwriters of such security;

(20) any amount paid within two years preceding the filing of the registration statement or intended to be paid to any promoter and the consideration for any such payment;

(21) the names and addresses of the vendors and the purchase price of any property, or good will, acquired or to be acquired, not in the ordinary course of business, which is to be defrayed in whole or in part from the proceeds of the security to be offered, the amount of any commission payable to any person in connection with such acquisition, and the name or names of such person or persons, together with any expense incurred or to be incurred in connection with such acquisition, including the cost of borrowing money to finance such acquisition;

(22) full particulars of the nature and extent of the interest, if any, of every director, principal executive officer, and of every stockholder holding more than 10 per centum of any class of stock or more than 10 per centum in the aggregate of the stock of the issuer, in any property acquired, not in the ordinary course of business of the issuer, within two years preceding the filing of the registration statement or proposed to be acquired at such date;

(23) the names and addresses of counsel, if any, who have passed on the legality of the issue;

(24) dates of and parties to, and the general effect concisely stated of every material contract made, not in the ordinary course of business, which contract is to be executed in whole or in part at or after the filing of the registration statement or which contract has been made not more than two years before such filing. Any management contract or contract providing for special bonuses or profit-sharing arrangements,

and every material patent or contract for a material patent right, and every contract by or with a public utility company or an affiliate thereof, providing for the giving or receiving of technical or financial advice or service (if such contract may involve a charge to any party thereto at a rate in excess of \$2,500 per year in cash or securities or anything else of value), shall be deemed a material contract;

(25) a balance sheet as of a date not more than ninety days prior to the date of the filing of the registration statement showing all of the assets of the issuer, the nature and cost thereof, whenever determinable, in such detail and in such form as the Administrator shall prescribe (with intangible items segregated), including any loan in excess of \$20,000, if such loans are permitted by the law of the jurisdiction of the issuer, to any officer, director, stockholder or person directly or indirectly controlling or controlled by the issuer, or person under direct or indirect common control with the issuer. All the liabilities of the issuer in such detail and such form as the Administrator shall prescribe, including surplus of the issuer showing how and from what sources such surplus was created, all as of a date not more than ninety days prior to the filing of the registration statement. If such statement be not certified by an independent public or certified accountant, in addition to the balance sheet required to be submitted under this schedule, a similar detailed balance sheet of the assets and liabilities of the issuer, certified by an independent public or certified accountant, of a date not more than one year prior to the filing of the registration statement, shall be submitted;

(26) a profit and loss statement of the issuer showing

earnings and income, the nature and source thereof, and the expenses and fixed charges in such detail and such form as the Administrator shall prescribe for the latest fiscal year for which such statement is available and for the two preceding fiscal years, year by year, or, if such issuer has been in actual business for less than three years, then for such time as the issuer has been in actual business year by year. If the date of the filing of the registration statement is more than six months after the close of the last fiscal year, a statement from such closing date to the latest practicable date. Such statement shall show what the practice of the issuer has been during the three years or lesser period as to the character of the charges, dividends or other distributions made against its various surplus accounts, and as to depreciation, depletion, and maintenance charges, in such detail and form as the Administrator shall prescribe, and if stock dividends or avails from the sale of rights have been credited to income, they shall be shown separately with a statement of the basis upon which the credit is computed. Such statement shall also differentiate between any recurring and nonrecurring income and between any investment and operating income. Such statement shall be certified by an independent public or certified accountant;

(27) if the proceeds, or any part of the proceeds, of the security to be issued is to be applied directly or indirectly to the purchase of any business, a profit and loss statement of such business certified by an independent public or certified accountant, meeting the requirements of paragraph (26) of this schedule, for the three preceding fiscal years, together with a balance sheet, similarly certified, of such business,

meeting the requirements of paragraph (25) of this schedule of a date not more than ninety days prior to the filing of the registration statement or at the date such business was acquired by the issuer if the business was acquired by the issuer more than ninety days prior to the filing of the registration statement;

(28) a copy of any agreement or agreements (or, if identical agreements are used, the formsthereof) made with any underwriter, including all contracts and agreements referred to in paragraph (17) of this schedule;

(29) a copy of the opinion or opinions of counsel in respect to the legality of the issue, with a translation of such opinion, when necessary, into the English language;

(30) a copy of all material contracts referred to in paragraph (24) of this schedule, but no disclosure shall be required of any portion of any such contract if the Administrator determines that disclosure of such portion would impair the value of the contract and would not be necessary for the protection of the investors;

(31) unless previously filed and registered under the provisions of this Act, and brought up to date, (a) a copy of its articles of incorporation, with all amendments thereof and of its existing bylaws or instruments corresponding thereto, whatever the name if the issuer be a corporation; (b) a copy of all instruments by which the trust is created or declared, if the issuer is a trust; (c) a copy of its articles of partnership or association and all other papers pertaining to its organization, if the issuer is a partnership, unincorporated association; joint-stock company, or any other form of organization; and

(32) a copy of the underlying agreements or indentures affecting any stock, bonds, or debentures offered or to be offered.

In case of certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest or shares in unincorporated investment trusts, equipment trust certificates, interim or other receipts for certificates, and like securities, the Administrator shall establish rules and regulations requiring the submission of information of a like character applicable to such cases, together with such other information as it may deem appropriate and necessary regarding the character, financial or otherwise, of the actual issuer of the securities and/or the person performing the acts and assuming the duties of depositor or manager.

Sec. 305. REGISTRATION BY COORDINATION.

(a) any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 307 (c) and the consent to service of process required by section 414 (g):

(1) three copies of the latest form of prospectus filed under the Securities Act of 1933;

(2) if the Administrator by rule or otherwise requires, a copy of the articles of incorporation and by-laws (or their substantial equivalents) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) if the Administrator requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(4) an undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration may by rule or otherwise waive either or both of the conditions specified in clauses (2) and (3). If the federal registration statement becomes effective before all the conditions in this subsection are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Administrator of the date when the federal registration statement is expected to become effective, the Administrator shall promptly advise the registrant by telephone or telegram, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under section 306; but this advice by the Administrator does not preclude the institution of such a proceeding at any time; and

(d) The registration statement is accompanied by a United States postal money order or a certified bank check or cash for the amount of the fee required under section 307 (b).

Sec. 306. TAKING EFFECT OF REGISTRATION STATEMENTS AND AMENDMENTS THERETO.

(a) Except as hereinafter provided, or as provided in section 305, with regard to registration by coordination, the effective date of a registration statement shall be the twentieth day after the filing thereof or such earlier date as the Administrator may determine, having due regard to the adequacy of the information respecting the issuer theretofore available to the public, to the facility with which the nature of the securities to be registered, their relationship to the capital structure of the issuer and the rights of holders thereof can be understood, and to the public interest and the protection of investors. If any amendment to any such statement is filed prior to the effective date of such statement, the registration statement shall be deemed to have been filed when such amendment was filed; except than an amendment filed with the consent of the Administrator, prior to the effective date of the registration statement, or filed pursuant to an order of the Administrator, shall be treated as a part of the registration statement.

(b) If it appears to the Administrator that a registration statement is on its face incomplete or inaccurate in any material respect, the Administrator may, after notice by personal service or the sending of confirmed telegraphic notice not later than ten days after the filing of the registration statement, and opportunity for hearing (at a time fixed by the Administrator) within ten days after such notice by personal service or the sending of such telegraphic notice, issue an order prior to the effective date of registration refusing to permit such statement to become effective until it has been amended in accordance with such order. When such statement has been amended in accordance with such order the Administrator shall so declare

and the registration shall become effective at the time provided in subsection (a) of this section or upon the date of such declaration, whichever date is the later.

(c) An amendment filed after the effective date of the registration statement, if such amendment, upon its face, appears to the Administrator not to be incomplete or inaccurate in any material respect, shall become effective on such date as the Administrator may determine, having due regard to the public interest and the protection of investors.

(d) If it appears to the Administrator at any time that the registration statement includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Administrator may, after notice by personal service or the sending of confirmed telegraphic notice, and after opportunity for hearing (at a time fixed by the Administrator) within fifteen days after such notice by personal service or the sending of such telegraphic notice, issue a stop order suspending the effectiveness of the registration statement. When such statement has been amended in accordance with such stop order, the Administrator shall so declare and thereupon the stop order shall cease to be effective.

(e) The Administrator is empowered to make an examination in any case in order to determine whether a stop order should issue under subsection (d) of this section. In making such examination the Administrator or any officer or officers designated by it shall have access to and may demand the production of any books and papers of, and may administer oaths and affirmations to and examine, the issuer, underwriter, or any other person, in respect of any matter relevant to the examination, and may, in its discretion, require the production

of a balance sheet exhibiting the assets and liabilities of the issuer, or its income statement, or both, to be certified to by a public or certified accountant approved by the Administrator. If the issuer or underwriter shall fail to cooperate, or shall obstruct or refuse to permit the making of an examination, such conduct shall be proper ground for the issuance of a stop order.

(f) Any notice required under this section shall be sent to or served on the issuer, or, in the case of a foreign or territorial person, to or on its duly authorized representative in the United States named in the registration statement, properly directed in each case of telegraphic notice to the address given in such statement.

Sec. 307. PROVISIONS APPLICABLE TO REGISTRATION GENERALLY AND BY COORDINATION.

(a) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer.

(b) Every person filing a registration statement shall pay a filing fee of 1/10 percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, but the fee shall in no case be less than \$500 or more than \$1,000. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under section 306, the Administrator shall retain \$100 of the fee.

(c) Every registration statement shall specify (1) the amount of securities to be offered in this state; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (3) any

adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

(d) Any document filed under this Act or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

(e) The Administrator may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(f) In the case of a non-issuer distribution, information may not be required under section 303, 305, or 307 (j) unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g) The Administrator may by rule or order require as a condition of general registration or by coordination (1) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The Administrator may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may not reject a depository solely because of location in another state.

(h) The Administrator may by rule or order require as a condition of registration that any security registered generally

or by coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the Administrator or preserved for any period up to three years specified in the rule or order.

(i) Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a non-exempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by any underwriter or broker-dealer who is still offering part of an unsold allotment or subscription taken by him as a participant in the distribution, except during the time a stop order is in effect under section 306. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer transaction (1) so long as the registration statement is effective and (2) between the thirtieth day after the entry of any stop order suspending or revoking the effectiveness of the registration statement under section 306 (if the registration statement did not relate in whole or in part to a non-issuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the Administrator.

(j) So long as a registration statement is effective, the Administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(k) A registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the Administrator so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in subsection (b), with respect to the additional securities proposed to be offered.

Amendment #5.

Page 43, line 27. After the word "section," delete the following: "304(d),".



1 IN THE SENATE BY COMMITTEE ON JUDICIARY  
2 JUDICIARY 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 agents, and investment advisers; making  
10 uniform the law with reference thereto;  
11 and declaring an effective date."

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

13 PART I

14 FRAUDULENT AND OTHER PROHIBITED PRACTICES

15 Section 101. SALES AND PURCHASES. It is unlawful for any  
16 person, in connection with the offer, sale, or purchase of any  
17 security, directly or indirectly

18 (1) to employ any device, scheme, or artifice to de-  
19 fraud,

20 (2) to make any untrue statement of a material fact or  
21 to omit to state a material fact the omission of which would make  
22 any statement made misleading, or

23 (3) to engage in any act, practice, or course of  
24 business which operates or would operate as a fraud or deceit  
25 upon any person.

26 Sec. 102. ADVISORY ACTIVITIES.

27 (a) It is unlawful for any person who receives any consid-  
28 eration from another person primarily for advising the other  
29 person as to the value of securities or their purchase or sale,

1 whether through the issuance of analyses or reports or otherwise,

2 (1) to employ any device, scheme, or artifice to de-  
3 fraud the other person, or

4 (2) to engage in any act, practice, or course of  
5 business which operates or would operate as a fraud or deceit  
6 upon the other person.

7 (b) It is unlawful for any investment adviser to enter  
8 into, extend, or renew any investment advisory contract unless  
9 it provides in writing

10 (1) that the investment adviser shall not be compen-  
11 sated on the basis of a share of capital gains upon or capital  
12 appreciation of the funds or any portion of the funds of the  
13 client;

14 (2) that no assignment of the contract may be made by  
15 the investment adviser without the consent of the other party to  
16 the contract; and

17 (3) that the investment adviser, if a partnership,  
18 shall notify the other party to the contract of any change in  
19 the membership of the partnership within a reasonable time after  
20 the change.

21 Clause (1) does not prohibit an investment advisory contract  
22 which provides for compensation based upon the total value of a  
23 fund averaged over a definite period, or as of definite dates or  
24 taken as of a definite date. "Assignment," as used in clause  
25 (2), includes any direct or indirect transfer or hypothecation  
26 of an investment advisory contract by the assignor or of a con-  
27 trolling block of the assignor's outstanding voting securities by  
28 a security holder of the assignor; but, if the investment adviser  
29 is a partnership, no assignment of an investment advisory contract

1 is considered to result from the death or withdrawal of a  
2 minority of the members of the investment adviser having only a  
3 minority interest in the business of the investment adviser, or  
4 from the admission to the investment adviser of one or more  
5 members who, after admission, will be only a minority of the  
6 members and will have only a minority interest in the business.

7 (c) It is unlawful for any investment adviser to take or  
8 have custody of any securities or funds of any client if

- 9 (1) the Administrator by rule prohibits custody; or  
10 (2) in the absence of rule, the investment adviser  
11 fails to notify the Administrator that he has or may have cus-  
12 tody.

13 PART II

14 REGISTRATION OF BROKER-DEALERS,  
15 AGENTS, AND INVESTMENT ADVISERS

16 Section 201. REGISTRATION REQUIREMENT.

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

20 (b) It is unlawful for any broker-dealer or issuer to  
21 employ an agent unless the agent is registered. The registration  
22 of an agent is not effective during any period when he is not  
23 associated with a particular broker-dealer registered under this  
24 Act or a particular issuer. When an agent begins or terminates  
25 a connection with a broker-dealer or issuer, or begins or ter-  
26 minates those activities which make him an agent, the agent as  
27 well as the broker-dealer or issuer shall promptly notify the  
28 Administrator.

29 (c) It is unlawful for any person to transact business in

1 this state as an investment adviser unless (1) he is so regis-  
2 tered under this Act, (2) he is registered as a broker-dealer  
3 without the imposition of a condition under section 204 (b) (5),  
4 or (3) his only clients in this state are investment companies  
5 as defined in the Investment Company Act of 1940 or insurance  
6 companies.

7 (d) Every registration expires one year from its effective  
8 date unless renewed. The Administrator may by rule or order  
9 prepare an initial schedule for registration renewals so that  
10 subsequent renewals of registrations effective on the effective  
11 date of this Act may be staggered by calendar months. For this  
12 purpose the Administrator may by rule reduce the registration fee  
13 proportionately.

14 Sec. 202. REGISTRATION PROCEDURE.

15 (a) A broker-dealer, agent, or investment adviser may ob-  
16 tain an initial or renewal registration by filing with the Ad-  
17 ministrator an application together with a consent to service of  
18 process pursuant to section 314 (g). The application shall  
19 contain whatever information the Administrator by rule requires  
20 concerning such matters as (1) the applicant's form and place  
21 of organization; (2) the applicant's proposed method of doing  
22 business; (3) the qualifications and business history of the  
23 applicant; in the case of a broker-dealer or investment adviser,  
24 the qualifications and business history of any partner, officer,  
25 or director, any person occupying a similar status or performing  
26 similar functions, or any person directly or indirectly con-  
27 trolling the broker-dealer or investment adviser; and, in the  
28 case of an investment adviser, the qualifications and business  
29 history of any employee; (4) any injunction or administrative order

1 or conviction of a misdemeanor involving a security or any aspect  
2 of the securities business and any conviction of a felony; and  
3 (5) the applicant's financial condition and history. The Ad-  
4 ministratoꝛ may by rule or order require an applicant for  
5 initial registration to publish an announcement of the applica-  
6 tion in one or more specified newspapers published in this state.  
7 If no denial order is in effect and no proceeding is pending  
8 under section 204, registration becomes effective at noon of the  
9 thirtieth day after an application is filed, except that regis-  
10 tration shall become effective upon filing of the application by  
11 any of the persons subject to this Act who were doing business in  
12 Alaska upon the effective date of this Act. The Administrator  
13 may by rule or order specify an earlier effective date, and he  
14 may by order defer the effective date until noon of the thirtieth  
15 day after the filing of any amendment. Registration of a broker-  
16 dealer automatically constitutes registration of any agent who  
17 is a partner, officer, or director, or a person occupying a  
18 similar status or performing similar functions.

19 (b) Every applicant for initial or renewal registration  
20 shall pay a filing fee of \$50.00 in the case of a broker-dealer,  
21 \$25.00 in the case of an agent, and \$25.00 in the case of an  
22 investment adviser. When application is denied or withdrawn,  
23 the Administrator shall retain \$10.00 of the fee.

24 (c) A registered broker-dealer or investment adviser may  
25 file an application for registration of a successor, whether or  
26 not the successor is then in existence, for the unexpired portion  
27 of the year. There shall be no filing fee.

28 (d) The Administrator may by rule require a minimum capital  
29 for registered broker-dealers and investment advisers.

1 (e) The Administrator may by rule require registered  
2 broker-dealers, agents, and investment advisers to post surety  
3 bonds in amounts up to \$10,000, and may determine their condi-  
4 tions. Any appropriate deposit of cash or securities shall be  
5 accepted in lieu of any bonds so required. No bond may be re-  
6 quired of any registrant whose net capital, which may be defined  
7 by rule, exceeds \$25,000. Every bond shall provide for suit  
8 thereon by any person who has a cause of action under section 310  
9 and, if the Administrator by rule or order requires, by any person  
10 who has a cause of action not arising under this Act. Every bond  
11 shall provide that no suit may be maintained to enforce any  
12 liability on the bond unless brought within two years after the  
13 sale or other act upon which it is based.

14 Sec. 203. POST-REGISTRATION PROVISIONS.

15 (a) Every registered broker-dealer and investment adviser  
16 shall make and keep such accounts, correspondence, memoranda,  
17 papers, books and other records as the Administrator by rule  
18 prescribes. All records so required shall be preserved for three  
19 years unless the Administrator by rule prescribes otherwise for  
20 particular types of records.

21 (b) Every registered broker-dealer and investment adviser  
22 shall file such financial reports as the Administrator by rule  
23 prescribes.

24 (c) If the information contained in any document filed  
25 with the Administrator is or becomes inaccurate or incomplete in  
26 any material respect, the registrant shall promptly file a  
27 correcting amendment unless notification of the correction has  
28 been given under section 201(b).

29 (d) All the records referred to in subsection (a) are

1 subject at any time or from time to time to such reasonable  
2 periodic, special, or other examinations by representatives of  
3 the Administrator, within or without this state, as the Adminis-  
4 trator deems necessary or appropriate in the public interest or  
5 for the protection of investors. For the purpose of avoiding  
6 unnecessary duplication of examinations, the Administrator, in-  
7 sofar as he deems it practicable in administering this subsection,  
8 may cooperate with the securities administrators of other states,  
9 the Securities and Exchange Commission, and any national securi-  
10 ties exchange or national securities association registered under  
11 the Securities Exchange Act of 1934.

12 Sec. 204. DENIAL, REVOCATION, SUSPENSION, CANCELLATION,  
13 AND WITHDRAWAL OF REGISTRATION.

14 (a) The Administrator may by order deny, suspend, or revoke  
15 any registration if he finds (1) that the order is in the public  
16 interest and (2) that the applicant or registrant or, in the case  
17 of a broker-dealer or investment adviser, any partner, officer,  
18 or director, any person occupying a similar status or performing  
19 similar functions, or any person directly or indirectly control-  
20 ling the broker-dealer or investment adviser

21 (A) has filed an application for registration which as  
22 of its effective date, or as of any date after filing in the case  
23 of an order denying effectiveness, was incomplete in any material  
24 respect or contained any statement which was, in light of the  
25 circumstances under which it was made, false or misleading with  
26 respect to any material fact;

27 (B) has willfully violated or willfully failed to com-  
28 ply with any provision of this Act or a predecessor Act or any  
29 rule or order under this Act or a predecessor act;

1 (C) has been convicted, within the past ten years, of  
2 any misdemeanor involving a security or any aspect of the secur-  
3 ities business, or any felony;

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

7 (E) is the subject of an order of the Administrator  
8 denying, suspending, or revoking registration as a broker-dealer,  
9 agent, or investment adviser;

10 (F) is the subject of an order entered within the past  
11 five years by the securities administrator of any other state or  
12 by the Securities and Exchange Commission denying or revoking  
13 registration as a broker-dealer, agent or investment adviser,  
14 or the substantial equivalent of those terms as defined in this  
15 Act, or is the subject of an order of the Securities and Exchange  
16 Commission suspending or expelling him from a national securities  
17 exchange or national securities association registered under the  
18 Securities Exchange Act of 1934, or is the subject of a United  
19 States Post Office fraud order; but (i) the Administrator may not  
20 institute a revocation or suspension proceeding under clause (F)  
21 more than one year from the date of the order relied on, and (ii)  
22 he may not enter an order under clause (F) on the basis of an  
23 order under another state act unless that order was based on facts  
24 which would currently constitute a ground for an order under this  
25 section;

26 (G) has engaged in dishonest or unethical practices in  
27 the securities business;

28 (H) is insolvent, either in the sense that his liabi-  
29 lities exceed his assets or in the sense that he cannot meet his

1 obligations as they mature; but the Administrator may not enter  
2 an order against a broker-dealer or investment adviser under  
3 this clause without a finding of insolvency as to the broker-  
4 dealer or investment adviser; or

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

8 The Administrator may by order deny, suspend, or revoke  
9 any registration if he finds (1) that the order is in the public  
10 interest and (2) that the applicant or registrant

11 (J) has failed reasonably to supervise his agents if  
12 he is a broker-dealer or his employees if he is an investment  
13 adviser; or

14 (K) has failed to pay the proper filing fee; but the  
15 Administrator may enter only a denial order under this clause,  
16 and he shall vacate any such order when the deficiency has been  
17 corrected.

18 The Administrator may not institute a suspension or revoca-  
19 tion proceeding on the basis of a fact or transaction known to  
20 him when registration became effective unless the proceeding is  
21 instituted within the next thirty days.

22 (b) The following provisions govern the application of  
23 section 204 (a) (2) (I):

24 (1) The Administrator may not enter an order against a  
25 broker-dealer on the basis of the lack of qualification of any  
26 person other than (A) the broker-dealer himself if he is an in-  
27 dividual or (B) an agent of the broker-dealer.

28 (2) The Administrator may not enter an order against  
29 an investment adviser on the basis of the lack of qualification

1 of any person other than (A) the investment adviser himself if  
2 he is an individual or (B) any other person who represents the  
3 investment adviser in doing any of the acts which make him an  
4 investment adviser.

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

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

11 (5) The Administrator shall consider that an invest-  
12 ment adviser is not necessarily qualified solely on the basis of  
13 experience as a broker-dealer or agent. When he finds that an  
14 applicant for initial or renewal registration as a broker-dealer  
15 is not qualified as an investment adviser, he may by order con-  
16 dition the applicant's registration as a broker-dealer upon his  
17 not transacting business in this state as an investment adviser.

18 (6) The Administrator may by rule provide for an ex-  
19 amination, which may be written or oral or both, to be taken by  
20 any class of or all applicants, as well as persons who represent  
21 or will represent an investment adviser in doing any of the acts  
22 which make him an investment adviser, provided that examinations  
23 required by this subsection shall not be required of registrants  
24 under this Act who were doing business in Alaska and are resi-  
25 dents of Alaska on the effective date of this Act.

26 (c) The Administrator may by order summarily postpone or  
27 suspend registration pending final determination of any pro-  
28 ceeding under this section. Upon the entry of the order, the  
29 Administrator shall promptly notify the applicant or registrant,

1 as well as the employer or prospective employer if the appli-  
2 cant or registrant is an agent, that it has been entered and of  
3 the reasons therefor and that within fifteen days after the re-  
4 ceipt of a written request the matter will be set down for hear-  
5 ing. If no hearing is requested and none is ordered by the Ad-  
6 ministrator, the order will remain in effect until it is  
7 modified or vacated by the Administrator. If a hearing is re-  
8 quested or ordered, the Administrator, after notice of and oppor-  
9 tunity for hearing, may modify or vacate the order or extend it  
10 until final determination.

11 (d) If the Administrator finds that any registrant or  
12 applicant for registration is no longer in existence or has ceased  
13 to do business as a broker-dealer, agent or investment adviser,  
14 or is subject to an adjudication of mental incompetence or to  
15 the control of a committee, conservator, or guardian, or cannot  
16 be located after reasonable search, the Administrator may by  
17 order cancel the registration or application.

18 (e) Withdrawal from registration as a broker-dealer, agent,  
19 or investment adviser becomes effective thirty days after re-  
20 ceipt of an application to withdraw or within such shorter period  
21 of time as the Administrator may determine, unless a revocation  
22 or suspension proceeding is pending when the application is filed  
23 or a proceeding to revoke or suspend or to impose conditions  
24 upon the withdrawal is instituted within thirty days after the  
25 application is filed. If a proceeding is pending or instituted,  
26 withdrawal becomes effective at such time and upon such conditions  
27 as the Administrator by order determines. If no proceeding is  
28 pending or instituted and withdrawal automatically becomes effec-  
29 tive, the Administrator may nevertheless institute a revocation

1 or suspension proceeding under section 204 (a) (2) (B) within  
2 one year after withdrawal became effective and enter a revocation  
3 or suspension order as of the last date on which registration  
4 was effective.

5 (f) No order may be entered under any part of this section  
6 except the first sentence of subsection (c) without (1) appro-  
7 priate prior notice to the applicant or registrant (as well as the  
8 employer or prospective employer if the applicant or registrant  
9 is an agent), (2) opportunity for hearing, and (3) written find-  
10 ings of fact and conclusions of law.

### 11 PART III

#### 12 GENERAL PROVISIONS

13 Section 301. DEFINITIONS. When used in this Act, unless  
14 the context otherwise requires:

15 (a) "Administrator" means the Commissioner of Insurance  
16 until such time as the Director of Commerce is appointed, at which  
17 time the Director of Commerce or his designee shall assume the  
18 duties of Administrator.

19 (b) "Agent" means any individual other than a broker-dealer  
20 who represents a broker-dealer or issuer (except as provided in  
21 section 302) in effecting or attempting to effect purchases or  
22 sales of securities. A partner, officer, or director of a broker-  
23 dealer or issuer, or a person occupying a similar status or per-  
24 forming similar functions, is an agent only if he otherwise comes  
25 within this definition.

26 (c) "Broker-dealer" means any person engaged in the business  
27 of effecting transactions in securities for the account of others  
28 or for his own account. "Broker-dealer" does not include (1) an  
29 agent, (2) an issuer, (3) a bank, savings institution, or trust

1 company, or (4) a person who has no place of business in this  
2 state if (A) he effects transactions in this state exclusively  
3 with or through (i) the issuers of the securities involved in  
4 the transactions (ii) other broker-dealers, or (iii) banks,  
5 savings institutions, trust companies, insurance companies, in-  
6 vestment companies as defined in the Investment Company Act of  
7 1940, pension or profit-sharing trusts, or other financial in-  
8 stitutions or institutional buyers, whether acting for themselves  
9 or as trustees, or (B) during any period of twelve consecutive  
10 months he does not direct more than fifteen offers to sell or  
11 buy into this state in any manner to persons other than those  
12 specified in clause (A) whether or not the offeror or any of the  
13 offerees is then present in this state.

14 (d) "Fraud," "deceit," and "defraud" are not limited to  
15 common-law deceit.

16 (e) "Guaranteed" means guaranteed as to payment of princi-  
17 pal, interest, or dividends.

18 (f) "Investment adviser" means any person who, for com-  
19 pensation, engages in the business of advising others, either  
20 directly or through publications or writings, as to the value of  
21 securities or as to the advisability of investing in, purchasing,  
22 or selling securities, or who, for compensation and as a part of  
23 a regular business, issues or promulgates analyses or reports con-  
24 cerning securities. "Investment adviser" does not include (1) a  
25 bank, savings institution, or trust company; (2) a lawyer,  
26 accountant, engineer, or teacher whose performance of these ser-  
27 vices is solely incidental to the practice of his profession;  
28 (3) a broker-dealer whose performance of these services is  
29 solely incidental to the conduct of his business as a broker-

1 dealer and who receives no special compensation for them; (4) a  
2 publisher of any bona fide newspaper, news magazine, or business  
3 or financial publication of general, regular, and paid circula-  
4 tion; (5) a person whose advice, analyses, or reports relate only  
5 to securities exempted by section 302 (a) (1); (6) a person who  
6 has no place of business in this state if (A) his only clients in  
7 this state are other investment advisers, broker-dealers, banks,  
8 savings institutions, trust companies, insurance companies, in-  
9 vestment companies as defined in the Investment Company Act of  
10 1940, pension or profit-sharing trusts, or other financial in-  
11 stitutions or institutional buyers, whether acting for themselves  
12 or as trustees, or (B) during any period of twelve consecutive  
13 months he does not direct business communications into this state  
14 in any manner to more than five clients other than those specified  
15 in clause (A), whether or not he or any of the persons to whom  
16 the communications are directed is then present in this state; or  
17 (7) such other persons not within the intent of this paragraph  
18 as the Administrator may by rule or order designate.

19 (g) "Issuer" means any person who issues or proposes to  
20 issue any security, except that (1) with respect to certificates  
21 of deposit, voting-trust certificates, or collateral-trust certi-  
22 ficates, or with respect to certificates of interest or shares in  
23 an unincorporated investment trust not having a board of directors,  
24 or persons performing similar functions or of the fixed, res-  
25 tricted management, or unit type, the term "issuer" means the  
26 person or persons performing the acts and assuming the duties of  
27 depositor or manager pursuant to the provisions of the trust or  
28 other agreement or instrument under which the security is issued;  
29 and (2) with respect to certificates of interest or participation

1 in oil, gas, or mining titles or leases or in payments out of  
2 production under such titles or leases, there is not considered  
3 to be any "issuer."

4 (h) "Person" means an individual, a corporation, a partner-  
5 ship, an association, a joint-stock company, a trust where the  
6 interests of the beneficiaries are evidenced by a security, an  
7 unincorporated organization, a government, or a political sub-  
8 division of a government.

9 (i) (1) "Sale" or "sell" includes every contract of sale  
10 of, contract to sell, or disposition of, a security or interest in  
11 a security for value.

12 (2) "Offer" or "offer to sell" includes every attempt  
13 or offer to dispose of, or solicitation of an offer to buy, a  
14 security or interest in a security for value.

15 (3) Any security given or delivered with, or as a  
16 bonus on account of, any purchase of securities or any other thing  
17 is considered to constitute part of the subject of the purchase  
18 and to have been offered and sold for value.

19 (4) A purported gift of assessable stock is considered  
20 to involve an offer and sale.

21 (5) Every sale or offer of a warrant or right to pur-  
22 chase or subscribe to another security of the same or another  
23 issuer, as well as every sale or offer of a security which gives  
24 the holder a present or future right or privilege to convert into  
25 another security of the same or another issuer, is considered to  
26 include an offer of the other security.

27 (6) The terms defined in this subsection do not include  
28 (A) any bona fide pledge or loan; (B) any stock dividend, whether  
29 the corporation distributing the dividend is the issuer of the

1 stock or not, if nothing of value is given by stockholders for  
2 the dividend other than the surrender of a right to a cash or  
3 property dividend when each stockholder may elect to take the  
4 dividend in cash or property or in stock; (C) any act incident  
5 to a class vote by stockholders, pursuant to the certificate of  
6 incorporation or the applicable corporation statute, on a merger,  
7 consolidation, reclassification of securities, or sale of cor-  
8 porate assets in consideration of the issuance of securities of  
9 another corporation; or (D) any act incident to a judicially  
10 approved reorganization in which a security is issued in ex-  
11 change for one or more outstanding securities, claims, or property  
12 interests, or partly in such exchange and partly for cash.

13 (j) "Securities Act of 1933," "Securities Exchange Act of  
14 1934," "Public Utility Holding Company Act of 1935," and "Invest-  
15 ment Company Act of 1940" mean the federal statutes of those  
16 names as amended before or after the effective date of this Act.

17 (k) "Security" means any note; stock; treasury stock; bond;  
18 debenture; evidence of indebtedness; certificate of interest or  
19 participation in any profit-sharing agreement; collateral-trust  
20 certificate; preorganization certificate or subscription; trans-  
21 ferable share; investment contract; voting-trust certificate;  
22 certificate of deposit for a security; certificate of interest  
23 or participation in an oil, gas, or mining title or lease or  
24 in payments out of production under such a title or lease; or,  
25 in general, any interest or instrument commonly known as a  
26 "security," or any certificate of interest or participation in,  
27 temporary or interim certificate for, receipt for, guarantee of,  
28 or warrant or right to subscribe to or purchase, any of the  
29 foregoing. "Security" does not include any insurance or endowment

1 policy or annuity contract under which an insurance company  
2 promises to pay a fixed sum of money either in a lump sum or  
3 periodically for life or for some other specified period.

4 (1) "State" means any state, territory, or possession of  
5 the United States, the District of Columbia, and Puerto Rico.

6 Sec. 302. EXEMPTIONS.

7 (a) Agents of issuers with respect to the following se-  
8 curities are exempted from sections 301 (b) and 303:

9 (1) any security (including a revenue obligation)  
10 issued or guaranteed by the United States, any state, any poli-  
11 tical subdivision of a state, or any agency or corporate or other  
12 instrumentality of one or more of the foregoing; or any certi-  
13 ficate of deposit for any of the foregoing;

14 (2) any security issued or guaranteed by Canada, any  
15 Canadian province, any political subdivision of any such province,  
16 any agency or corporate or other instrumentality of one or more of  
17 the foregoing, or any other foreign government with which the  
18 United States currently maintains diplomatic relations, if the  
19 security is recognized as a valid obligation by the issuer or  
20 guarantor;

21 (3) any security issued by and representing an interest  
22 in or a debt of, or guaranteed by, any bank organized under the  
23 laws of the United States, or any bank, savings institution, or  
24 trust company organized and supervised under the laws of any state;

25 (4) any commercial paper which arises out of a current  
26 transaction or the proceeds of which have been or are to be  
27 used for current transactions, and which evidences an obligation  
28 to pay cash within nine months of the date of issuance, exclusive  
29 of days of grace, or any renewal of such paper which is likewise

1 limited, or any guarantee of such paper or of any such renewal;

2 (5) any investment contract issued in connection with  
3 an employee's stock purchase, savings, pension, profit-sharing,  
4 or similar benefit plan if the Administrator is notified in  
5 writing thirty days before the inception of the plan or, with  
6 respect to plans which are in effect on the effective date of this  
7 Act, within sixty days thereafter (or within thirty days before  
8 they are reopened if they are closed on the effective date of  
9 this Act).

10 (b) Agents of issuers with respect to the following trans-  
11 actions are exempted from sections 301 (b) and 303:

12 (1) any transaction between the issuer or other per-  
13 son on whose behalf the offering is made and an underwriter, or  
14 among underwriters;

15 (2) any transaction in a bond or other evidence of  
16 indebtedness secured by a real or chattel mortgage or deed of  
17 trust, or by an agreement for the sale of real estate or chattels,  
18 if the entire mortgage, deed of trust, or agreement, together with  
19 all the bonds or other evidences of indebtedness, secured thereby,  
20 is offered and sold as a unit;

21 (3) any transaction by a receiver or trustee in bank-  
22 ruptcy;

23 (4) any offer or sale to a bank, savings institution,  
24 trust company, insurance company, investment company as defined  
25 in the Investment Company Act of 1940, pension or profit-sharing  
26 trust, or other financial institution or institutional buyer, or  
27 to a broker-dealer, whether the purchaser is acting for itself or  
28 in some fiduciary capacity;

29 (5) any transaction pursuant to an offer directed by

1 the offeror to not more than ten persons (other than those  
2 designated in paragraph (8)) in this state during any period of  
3 twelve consecutive months, whether or not the offeror or any of  
4 the offerees is then present in this state, if (A) the seller  
5 reasonably believes that all the buyers in this state (other  
6 than those designated in paragraph (8)) are purchasing for invest-  
7 ment, and (B) no commission or other remuneration is paid or  
8 given directly or indirectly for soliciting any prospective  
9 buyer in this state (other than those designated in paragraph  
10 8)); but the Administrator may by rule or order, as to any  
11 security or transaction or any type of security or transaction,  
12 withdraw or further condition this exemption, or increase or  
13 decrease the number of offerees permitted, or waive the condi-  
14 tions in Clauses (A) and (B) with or without the substitution  
15 of a limitation or remuneration;

16 (6) any offer or sale of a preorganization certificate  
17 or subscription if (A) no commission or other remuneration is  
18 paid or given directly or indirectly for soliciting any prospec-  
19 tive subscriber, (B) the number of subscribers does not exceed  
20 ten, and (C) no payment is made by any subscriber;

21 (7) any transaction pursuant to an offer to existing  
22 security holders of the issuer, including persons who at the time  
23 of the transaction are holders of convertible securities, non-  
24 transferable warrants, or transferable warrants exercisable within  
25 not more than ninety days of their issuance, if (A) no commission  
26 or other remuneration (other than a standby commission) is paid  
27 or given directly or indirectly for soliciting any security holder  
28 in this state, or (B) the issuer first files a notice specifying  
29 the terms of the offer and the Administrator does not by order

1 disallow the exemption within the next five full business days;

2 (8) any offer (but not a sale) of a security for which  
3 registration statements have been filed under both this Act and  
4 the Securities Act of 1933 if no stop order or refusal order  
5 is in effect and no public proceeding or examination looking  
6 toward such an order is pending under either act;

7 (9) any transaction effected with existing employees,  
8 partners, or directors of the issuer if no commission or other  
9 remuneration is paid or given directly or indirectly for solici-  
10 ting any person in this state.

11 (c) In any proceeding under this Act, the burden of proving  
12 an exception from a definition is upon the person claiming it.

13 Sec. 303. FILING OF SALES AND ADVERTISING LITERATURE.

14 The Administrator may by rule or order require any registered  
15 broker-dealer or agent to file any prospectus, pamphlet, circular,  
16 form letter, advertisement, or other sales literature addressed  
17 or intended for distribution to prospective investors, except  
18 with respect to the securities and transactions specified in  
19 section 302.

20 Sec. 304. MISLEADING FILINGS. It is unlawful for any person  
21 to make or cause to be made, in any document filed with the Ad-  
22 ministrator or in any proceeding under this Act, any statement  
23 which is, at the time and in the light of the circumstances  
24 under which it is made, false or misleading in any material respect.

25 Sec. 305. UNLAWFUL REPRESENTATIONS CONCERNING REGISTRATION  
26 OR EXEMPTION.

27 (a) Neither (1) the fact that an application for registra-  
28 tion has been filed nor (2) the fact that a person is effectively  
29 registered constitutes a finding by the Administrator that any

1 document filed under this Act is true, complete, and not mis-  
2 leading. Neither any such fact nor the fact that an exception  
3 is available means that the Administrator has passed in any way  
4 upon the merits or qualifications of, or recommended or given  
5 approval to, any person, security, or transaction.

6 (b) It is unlawful to make, or cause to be made, to any  
7 prospective purchaser, customer, or client any representation  
8 inconsistent with subsection (a).

9 Sec. 306. ADMINISTRATION OF ACT.

10 (a) This Act shall be administered by the Office of the  
11 Insurance Commission.

12 (b) It is unlawful for the Administrator or any of his  
13 officers or employees to use for personal benefit any informa-  
14 tion which is filed with or obtained by the Administrator and  
15 which is not made public. No provision of this Act authorizes  
16 the Administrator or any of his officers or employees to dis-  
17 close any such information except among themselves or when  
18 necessary or appropriate in a proceeding or investigation under  
19 this Act. No provision of this Act either creates or derogates  
20 from any privilege which exists at common law or otherwise when  
21 documentary or other evidence is sought under a subpoena directed  
22 to the Administrator or any of his officers or employees.

23 Sec. 307. INVESTIGATIONS AND SUBPOENAS.

24 (a) The Administrator in his discretion (1) may make such  
25 public or private investigations within or outside of this state  
26 as he deems necessary to determine whether any person has violated  
27 or is about to violate any provision of this Act or any rule or  
28 order hereunder, or to aid in the enforcement of this Act or in  
29 the prescribing of rules and forms hereunder, (2) may require or

1 permit any person to file a statement in writing, under oath  
2 or otherwise as the Administrator determines, as to all the  
3 facts and circumstances concerning the matter to be investigated,  
4 and (3) may publish information concerning any violation of this  
5 Act or any rule or order hereunder.

6 (b) For the purpose of any investigation or proceeding un-  
7 der this Act, the Administrator or any officer designated by him  
8 may administer oaths and affirmations, subpoena witnesses, compel  
9 their attendance, take evidence, and require the production of  
10 any books, papers, correspondence, memoranda, agreements, or  
11 other documents or records which the Administrator deems relevant  
12 or material to the inquiry.

13 (c) In case of contumacy by, or refusal to obey a subpoena  
14 issued to any person, the Superior Court, upon application by  
15 the Administrator, may issue to the person an order requiring  
16 him to appear before the Administrator, or the officer designated  
17 by him, there to produce documentary evidence if so ordered or  
18 to give evidence touching the matter under investigation or in  
19 question. Failure to obey the order of the court may be pun-  
20 ished by the court as a contempt of court.

21 (d) No person is excused from attending and testifying or  
22 from producing any document or record before the Administrator,  
23 or in obedience to the subpoena of the Administrator or any of-  
24 ficer designated by him, or in any proceeding instituted by the  
25 Administrator, on the ground that the testimony or evidence  
26 (documentary or otherwise) required of him may tend to incrimin-  
27 ate him or subject him to a penalty or forfeiture; but no indi-  
28 vidual may be prosecuted or subjected to any penalty or for-  
29 feiture for or on account of any transaction, matter, or thing

1 concerning which he is compelled, after claiming his privilege  
2 against self-incrimination, to testify or produce evidence (docu-  
3 mentary or otherwise), except that the individual testifying is  
4 not exempt from prosecution and punishment for perjury or con-  
5 tempt committed in testifying.

6       Sec. 308. INJUNCTIONS. Whenever it appears to the Admin-  
7 istrator that any person has engaged or is about to engage in any  
8 act or practice constituting a violation of any provision of this  
9 Act or any rule or order hereunder, he may in his discretion  
10 bring an action in the Superior Court to enjoin the acts or prac-  
11 tices and to enforce compliance with this Act or any rule or  
12 order hereunder. Upon a proper showing a permanent or temporary  
13 injunction, restraining order, or writ of mandamus shall be  
14 granted and a receiver or conservator may be appointed for the  
15 defendant or the defendant's assets. The court may not require  
16 the Administrator to post a bond.

17       Sec. 309. CRIMINAL PENALTIES.

18       (a) Any person who willfully violates any provision of this  
19 Act except section 304, or who willfully violates any rule or  
20 order under this Act, or who willfully violates section 304 know-  
21 ing the statement made to be false or misleading in any material  
22 respect, shall upon conviction be fined not more than \$5,000 or  
23 imprisoned not more than three years, or both; but no person may  
24 be imprisoned for the violation of any rule or order if he proves  
25 that he had no knowledge of the rule or order. No indictment or  
26 information may be returned under this Act more than five years  
27 after the alleged violation.

28       (b) The Administrator may refer such evidence as is available  
29 concerning violations of this Act or of any rule or order here-  
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1 under to the attorney general who may, with or without such a refer-  
2 ence, institute the appropriate criminal proceedings under this Act.

3 (c) Nothing in this Act limits the power of the state to  
4 punish any person for any conduct which constitutes a crime by  
5 statute or at common law.

6 Sec. 310. CIVIL LIABILITIES.

7 (a) Any person who

8 (1) offers or sells a security in violation of section  
9 201(a) or 305(b), or of any rule or order under section 403  
10 which requires the affirmative approval of sales literature before  
11 it is used, or of any condition imposed under section 304(d),  
12 305(g) or 305(h), or

13 (2) offers or sells a security by means of any untrue  
14 statement of a material fact or any omission to state a material  
15 fact necessary in order to make the statements made, in the light  
16 of the circumstances under which they are made, not misleading  
17 (the buyer not knowing of the untruth or omission), and who does  
18 not sustain the burden of proof that he did not know, and in the  
19 exercise of reasonable care could not have known, of the untruth  
20 or omission, is liable to the person buying the security from him,  
21 who may sue either at law or in equity to recover the considera-  
22 tion paid for the security, together with interest at six per-  
23 cent per year from the date of payment, costs, and reasonable  
24 attorneys' fees, less the amount of any income received on the  
25 security, upon the tender of the security, or for damages if he  
26 no longer owns the security. Damages are the amount that would be  
27 recoverable upon a tender less the value of the security when  
28 the buyer disposed of it and interest at six percent per year  
29 from the date of disposition.

1 (b) Every person who directly or indirectly controls a sel-  
2 ler liable under subsection (a), every partner, officer, or dir-  
3 ector of such a seller, every person occupying a similar status  
4 or performing similar functions, every employee of such a seller  
5 who materially aids in the sale, and every broker-dealer or agent  
6 who materially aids in the sale are also liable jointly and sev-  
7 erally with and to the same extent as the seller, unless the  
8 non-seller who is so liable sustains the burden of proof that he  
9 did not know, and in exercise of reasonable care could not have  
10 known, of the existence of the facts by reason of which the liabil-  
11 ity is alleged to exist. There is contribution as in cases of  
12 contract among the several persons so liable.

13 (c) Any tender specified in this section may be made at any  
14 time before entry of judgment.

15 (d) Every cause of action under this statute survives the  
16 death of any person who might have been a plaintiff or defendant.

17 (e) No person may sue under this section more than two years  
18 after the contract of sale. No person may sue under this section  
19 (1) if the buyer received a written offer, before suit and at a  
20 time when he owned the security, to refund the consideration paid  
21 together with interest at six percent per year from the date of  
22 payment, less the amount of any income received on the security,  
23 and he failed to accept the offer within thirty days of its re-  
24 ceipt, or (2) if the buyer received such an offer before suit and  
25 at a time when he did not own the security, unless he rejected  
26 the offer in writing within thirty days of its receipt.

27 (f) No person who has made or engaged in the performance of  
28 any contract in violation of any provision of this Act or any  
29 rule or order hereunder, or who has acquired any purported right

1 under any such contract with knowledge of the facts by reason  
2 of which its making or performance was in violation, may base  
3 any suit on the contract.

4 (g) Any condition, stipulation, or provision binding any  
5 person acquiring any security to waive compliance with any pro-  
6 vision of this Act or any rule or order hereunder is void.

7 (h) The rights and remedies provided by this Act are in  
8 addition to any other rights or remedies that may exist at law or  
9 in equity, but this Act does not create any cause of action not  
10 specified in this section or section 202 (e).

11 Sec. 311. JUDICIAL REVIEW OF ORDERS.

12 (a) Any person aggrieved by a final order of the Administra-  
13 tor may obtain a review of the order in the Superior Court by  
14 filing in court, within sixty days after the entry of the order, a  
15 written petition praying that the order be modified or set aside  
16 in whole or in part. A copy of the petition shall be forthwith  
17 served upon the Administrator, and thereupon the Administrator  
18 shall certify and file in court a copy of the filing and evidence  
19 upon which the order was entered. When these have been filed,  
20 the court has exclusive jurisdiction to affirm, modify, enforce,  
21 or set aside the order, in whole or in part. The findings of  
22 the Administrator as to the facts, if supported by competent,  
23 material and substantial evidence, are conclusive. If either  
24 party applies to the court for leave to adduce additional material  
25 evidence, and shows to the satisfaction of the court that there  
26 were reasonable grounds for failure to adduce the evidence in the  
27 hearing before the Administrator, the court may order the addi-  
28 tional evidence to be taken before the Administrator and to be  
29 adduced upon the hearing in such manner and upon such conditions

1 as the court considers proper. The Administrator may modify his  
2 findings and order by reason of the additional evidence and shall  
3 file in court the additional evidence together with any modified  
4 or new findings or order. The judgment of the court is final,  
5 subject to review by the Supreme Court.

6 (b) The commencement of proceedings under subsection (a)  
7 does not, unless specifically ordered by the court, operate as  
8 a stay of the Administrator's order.

9 Sec. 312. RULES, FORMS, ORDERS, AND HEARINGS.

10 (a) The Administrator may from time to time make, amend,  
11 and rescind such rules, forms, and orders as are necessary to  
12 carry out the provisions of this Act, including rules and forms  
13 governing registration statements, applications, and reports, and  
14 defining any terms, whether or not used in this Act, insofar as  
15 the definitions are not inconsistent with the provisions of this  
16 Act. For the purpose of rules and forms, the Administrator may  
17 classify securities, persons, and matters within his jurisdiction,  
18 and prescribe different requirements for different classes.

19 (b) No rule, form, or order may be made, amended, or re-  
20 scinded unless the Administrator finds that the action is nec-  
21 essary or appropriate in the public interest or for the protec-  
22 tion of investors and consistent with the purposes fairly in-  
23 tended by the policy and provisions of this Act. In prescribing  
24 rules and forms the Administrator may cooperate with the securi-  
25 ties administrators of the other states and the Securities and  
26 Exchange Commission with a view to effectuating the policy of  
27 this statute to achieve maximum uniformity in the form and con-  
28 tent of registration statements, applications, and reports wher-  
29 ever practicable.

1 (c) The Administrator may by rule or order prescribe (1)  
2 the form and content of financial statements required under this  
3 Act, (2) the circumstances under which consolidated financial  
4 statements shall be filed, and (3) whether any required financial  
5 statements shall be certified by independent or certified public  
6 accountants. All financial statements shall be prepared in accor-  
7 dance with generally accepted accounting practices.

8 (d) All rules and forms of the Administrator shall be pub-  
9 lished.

10 (e) No provision of this Act imposing any liability applies  
11 to any act done or omitted in good faith in conformity with any  
12 rule, form, or order of the Administrator, notwithstanding that  
13 the rule, form, or order may be later amended or rescinded or be  
14 determined by judicial or other authority to be invalid for any  
15 reason.

16 (f) Every hearing in an administrative proceeding shall be  
17 public unless the Administrator in his discretion grants a request  
18 joined in by all the respondents that the hearing be conducted  
19 privately.

20 Sec. 313. ADMINISTRATIVE FILES AND OPINIONS.

21 (a) A document is filed when it is received by the Admin-  
22 istrator.

23 (b) The Administrator shall keep a register of all applica-  
24 tions for registration which are or have ever been effective  
25 under this Act and all denial, suspension, or revocation orders  
26 which have been entered under this Act. The register shall be  
27 open for public inspection.

28 (c) The information contained in or filed with any appli-  
29 cation or report may be made available to the public under such

1 rules as the Administrator prescribes.

2 (d) Upon request and at such reasonable charges as he pre-  
3 scribes, the Administrator shall furnish to any person photo-  
4 static or other copies (certified under his seal of office if  
5 requested) of any entry in the register or any document which is  
6 a matter of public record. In any proceeding or prosecution  
7 under this Act, any copy so certified is prima facie evidence of  
8 the contents of the entry or documents certified.

9 (e) The Administrator in his discretion may honor requests  
10 from interested persons for interpretative opinions.

11 Sec. 314. SCOPE OF THE ACT AND SERVICE OF PROCESS.

12 (a) Sections 101, 201 (a), 305, and 310 apply to persons  
13 who sell or offer to sell when (1) an offer to sell is made in  
14 this state, or (2) an offer to buy is made and accepted in this  
15 state.

16 (b) Sections 101, 201 (a), and 305 apply to persons who buy  
17 or offer to buy when (1) an offer to buy is made in this state,  
18 or (2) an offer to sell is made and made accepted in this state.

19 (c) For the purpose of this section, an offer to sell or  
20 to buy is made in this state, whether or not either party is then  
21 present in this state, when the offer (1) originates from this  
22 state or (2) is directed by the offeror to this state and re-  
23 ceived at the place to which it is directed (or at any post  
24 office in this state in the case of a mailed offer).

25 (d) For the purpose of this section, an offer to buy or  
26 to sell is accepted in this state when acceptance (1) is commu-  
27 nicated to the offeror in this state and (2) has not previously  
28 been communicated to the offeror, orally or in writing, outside  
29 this state; and acceptance is communicated to the offeror in this

1 state, whether or not either party is then present in this state,  
2 when the offeree directs it to the offeror in this state reason-  
3 ably believing the offeror to be in this state and it is re-  
4 ceived at the place to which it is directed (or at any post  
5 office in this state in the case of a mailed acceptance).

6 (e) An offer to sell or to buy is not made in this state  
7 when (1) the publisher circulates or there is circulated on his  
8 behalf in this state any bona fide newspaper or other publication  
9 of general, regular, and paid circulation which is not published  
10 in this state, or which is published in this state but has had  
11 more than two-thirds of its circulation outside this state during  
12 the past twelve months, or (2) a radio or television program  
13 originating outside this state is received in this state.

14 (f) Sections 102 and 201 (c), as well as section 305 so far  
15 as investment advisers are concerned, apply when any act instru-  
16 mental in effecting prohibited conduct is done in this state,  
17 whether or not either party is then present in this state.

18 (g) Every applicant for registration under this Act and  
19 every issuer which proposes to offer a security in this state  
20 through any person acting on an agency basis in the common-law  
21 sense shall file with the Administrator, in such form as he by  
22 rule prescribes, an irrevocable consent appointing the Adminis-  
23 trator or his successor in office to be his attorney to receive  
24 service of any lawful process in any non-criminal suit, action,  
25 or proceeding against him or his successor executor or administra-  
26 tor which arises under this Act or any rule or order hereunder  
27 after the consent has been filed, with the same force and vali-  
28 dity as if served personally on the person filing the consent. A  
29 person who has filed such a consent in connection with a previous

1 registration need not file another. Service may be made by leav-  
2 ing a copy of the process in the office of the Administrator, but  
3 it is not effective unless (1) the plaintiff, who may be the  
4 Administrator in a suit, action, or proceeding instituted by him,  
5 forthwith sends notice of the service and a copy of the process  
6 by registered mail to the defendant or respondent at his last  
7 address on file with the Administrator, and (2) the plaintiff's  
8 affidavit of compliance with this subsection is filed in the case  
9 on or before the return day of the process, if any, or within  
10 such further time as the court allows.

11 (h) When any person, including any nonresident of this  
12 state, engages in conduct prohibited or made actionable by this  
13 Act or any rule or order hereunder, and he has not filed a con-  
14 sent to service of process under subsection (g) and personal  
15 jurisdiction over him cannot otherwise be obtained in this state,  
16 that conduct shall be considered equivalent to his appointment  
17 of the Administrator or his successor in office to be his attor-  
18 ney to receive service of any lawful process in any non-criminal  
19 suit, action, or proceeding against him or his successor executor  
20 or administrator which grows out of that conduct and which is  
21 brought under this Act or any rule or order hereunder, with the  
22 same force and validity as if served on him personally. Service  
23 may be made by leaving a copy of the process in the office of the  
24 Administrator, and it is not effective unless (1) the plaintiff,  
25 who may be the Administrator in a suit, action, or proceeding  
26 instituted by him, forthwith sends notice of the service and a  
27 copy of the process by registered mail to the defendant or re-  
28 spondent at his last known address or takes other steps which  
29 are reasonably calculated to give actual notice, and (2) the

1 plaintiff's affidavit of compliance with this subsection is filed  
2 in the case on or before the return day of the process, if any,  
3 or within such further time as the court allows.

4 (1) When process is served under this section, the court,  
5 or the Administrator in a proceeding before him, shall order  
6 such continuance as may be necessary to afford the defendant or  
7 respondent reasonable opportunity to defend.

8 Sec. 315. STATUTORY POLICY. This Act shall be so con-  
9 strued as to effectuate its general purpose to make uniform the  
10 law of those states which enact it and to coordinate the inter-  
11 pretation and administration of this Act with the related fed-  
12 eral regulation.

13 Sec. 316. SHORT TITLE. This Act may be cited as the Alaska  
14 Securities Act of 1959.

15 Sec. 317. EFFECTIVE DATE. This Act shall be in full  
16 force and effect from and after the date of its passage and  
17 approval or upon its becoming law without such approval.  
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