

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; and declar-
10 ing an effective date."

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

12 PART I

13 FRAUDULENT AND OTHER PROHIBITED PRACTICES

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

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

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

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

25 Sec. 102. ADVISORY ACTIVITIES.

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

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

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

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

9 (1) that the investment adviser shall not be compensated
10 on the basis of a share of capital gains upon or capital appreci-
11 ation of the funds or any portion of the funds of the client;

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

15 (3) that the investment adviser, if a partnership, shall
16 notify the other party to the contract of any change in the member-
17 ship of the partnership within a reasonable time after the change.

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

1 from the admission to the investment adviser of one or more
2 members who, after admission, will be only a minority of the
3 members and will have only a minority interest in the business.

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

6 (1) the Administrator by rule prohibits custody; or

7 (2) in the absence of rule, the investment adviser
8 fails to notify the Administrator that he has or may have cus-
9 tody.

10 PART II

11 REGISTRATION OF BROKER-DEALERS,

12 AGENTS, AND INVESTMENT ADVISERS

13 Section 201. REGISTRATION REQUIREMENT.

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

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

26 (c) It is unlawful for any person to transact business in
27 this state as an investment adviser unless (1) he is so regis-
28 tered under this Act, (2) he is registered as a broker-dealer
29 without the imposition of a condition under section 204 (b) (5),

1 or (3) his only clients in this state are investment companies
2 as defined in the Investment Company Act of 1940 or insurance
3 companies.

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

11 Sec. 202. REGISTRATION PROCEDURE.

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

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

16 (b) Every applicant for initial or renewal registration
17 shall pay a filing fee of \$50.00 in the case of a broker-dealer,
18 \$25.00 in the case of an agent, and \$25.00 in the case of an
19 investment adviser. When application is denied or withdrawn,
20 the Administrator shall retain \$10.00 of the fee.

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

25 (d) The Administrator may by rule require a minimum capital
26 for registered broker-dealers and investment advisers, except that
27 no requirement of minimum capital shall be made if a bond guaran-
28 teed by a corporate surety qualified to do business in Alaska is
29 provided pursuant to Sec. 202 (e).

1 (a) 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

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missing.

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 Commissioner of Commerce is appointed, at
17 which time the Commissioner of Commerce or his designee shall
18 assume the 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 sale 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 other
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

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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 prom-
2 ises to pay a fixed sum of money either in a lump sum or periodi-
3 cally for life or for some other specified period. "Security" does
4 not include a certificate of membership or share in any cooperative
5 corporation.

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

8 Sec. 302. EXEMPTIONS.

9 (a) Agents of issuers with respect to the following securities
10 are exempted from sections 301 (b) and 303:

11 (1) any security (including a revenue obligation)
12 issued or guaranteed by the United States, any state, any political
13 subdivision of a state, or any agency or corporate or other
14 instrumentality of one or more of the foregoing; or any certificate
15 of deposit for any of the foregoing;

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

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

27 (4) any commercial paper which arises out of a current
28 transaction or the proceeds of which have been or are to be
29 used for current transactions, and which evidences an obligation

1 to pay cash within nine months of the date of issuance, exclusive
2 of days of grace, or any renewal of such paper which is likewise
3 limited, or any guarantee of such paper or of any such renewal;

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

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

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

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

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

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

1 (5) any transaction pursuant to an offer directed by the
2 offeror to not more than ten persons (other than those designated
3 in paragraph (8)) in this state during any period of twelve con-
4 secutive months, whether or not the offeror or any of the offerees
5 is then present in this state, if (A) the seller reasonably believes
6 that all the buyers in this state (other than those designated in
7 paragraph (8)) are purchasing for investment, and (B) no commission
8 or other remuneration is paid or given directly or indirectly for
9 soliciting any prospective buyer in this state (other than those
10 designated in paragraph (8)); but the Administrator may by rule or
11 order, as to any security or transaction or any type of security or
12 transaction, withdraw or further condition this exemption, or
13 increase or decrease the number of offerees permitted, or waive the
14 conditions 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 until that agency is succeeded by a department
12 of commerce or the appropriate division thereof.

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

24 Sec. 307. INVESTIGATIONS AND SUBPOENAS.

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

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

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

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

23 (d) No person is excused from attending and testifying or
24 from producing any document or record before the Administrator,
25 or in obedience to the subpoena of the Administrator or any officer
26 designated by him, or in any proceeding instituted by the Adminis-
27 trator, on the ground that the testimony or evidence (documentary
28 or otherwise) required of him may tend to incriminate him or
29 subject him to a penalty or forfeiture; but no individual may be

1 prosecuted or subjected to any penalty or forfeiture for or on
2 account of any transaction, matter, or thing concerning which he
3 is compelled, after claiming his privilege against self-incrimina-
4 tion, to testify or produce evidence (documentary or otherwise),
5 except that the individual testifying is not exempt from prosecu-
6 tion and punishment for perjury or contempt committed in testifying.

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

18 Sec. 309. CRIMINAL PENALTIES.

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

29 (b) The Administrator may refer such evidence as is available

1 concerning violations of this Act or of any rule or order here-
2 under to the attorney general who may, with or without such a refer-
3 ence, institute the appropriate criminal proceedings under this Act.

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

7 Sec. 310. CIVIL LIABILITIES.

8 (a) Any person who

9 (1) offers or sells a security in violation of section
10 201 (a) or 305 (b), or of any rule or order under section 303
11 which requires the filing of sales literature before it is used.

12 (2) offers or sells a security by means of any untrue
13 statement of a material fact or omits to state a material fact, the
14 omission of which makes any statement misleading, is liable to the
15 person buying the security from him, who may sue either at law or
16 in equity to recover the consideration paid for the security, to-
17 gether with interest at six percent per year from the date of pay-
18 ment, costs, and reasonable attorneys' fees, less the amount of
19 any income received on the security, upon the tender of the
20 security, or for damages if he no longer owns the security. Damages
21 are the amount that would be recoverable upon a tender less the
22 value of the security when the buyer disposed of it and interest at
23 six percent per year from the date of disposition.

24 (b) Every person who directly or indirectly controls a sel-
25 ler liable under subsection (a), every partner, officer, or dir-
26 ector of such a seller, every person occupying a similar status
27 or performing similar functions, every employee of such a seller
28 who materially aids in the sale, and every broker-dealer or agent
29 who materially aids in the sale are also liable jointly and sev-

1 erally with and to the same extent as the seller, unless the
2 non-seller who is so liable sustains the burden of proof that he
3 did not know, and in exercise of reasonable care could not have
4 known, of the existence of the facts by reason of which the liabil-
5 ity is alleged to exist. There is contribution as in cases of
6 contract among the several persons so liable.

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

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

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

21 (f) No person who has made or engaged in the performance of any
22 contract in violation of any provision of this Act or any rule or or-
23 der hereunder, or who has acquired any purported right under any such
24 contract with knowledge of the facts by reason of which its making or
25 performance was in violation, may base any suit on the contract.

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

29 (h) The rights and remedies provided by this Act are in

1 addition to any other rights or remedies that may exist at law or
2 in equity, but this Act does not create any cause of action not
3 specified in this section or section 202 (e).

4 Sec. 311. JUDICIAL REVIEW OF ORDERS.

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

28 (b) The commencement of proceedings under subsection (a)
29 does not, unless specifically ordered by the court, operate as

1 a stay of the Administrator's order.

2 (c) All rules, regulations, orders and reviews issued or
3 authorized under this Act shall be accomplished in conformity with
4 the Administrative Procedures Act of 1959.

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

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

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

26 (c) The Administrator may by rule or order prescribe (1)
27 the form and content of financial statements required under this
28 Act, (2) the circumstances under which consolidated financial
29 statements shall be filed, and (3) whether any required financial

1 statements shall be certified by independent or certified public
2 accountants. All financial statements shall be prepared in accor-
3 dance with generally accepted accounting practices.

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

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

12 (f) Every hearing in an administrative proceeding shall be
13 public unless the Administrator in his discretion grants a request
14 joined in by all the respondents that the hearing be conducted
15 privately.

16 Sec. 313. ADMINISTRATIVE FILES AND OPINIONS.

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

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

24 (c) The information contained in or filed with any appli-
25 cation or report may be made available to the public under such
26 rules as the Administrator prescribes.

27 (d) Upon request and at such reasonable charges as he pre-
28 scribes, the Administrator shall furnish to any person photo-
29 static or other copies (certified under his seal of office if

1 requested) of any entry in the register or any document which is
2 a matter of public record. In any proceeding or prosecution
3 under this Act, any copy so certified is prima facie evidence of
4 the contents of the entry or documents certified.

5 (e) The Administrator in his discretion may honor requests
6 from interested person for interpretative opinions.

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

8 (a) Sections 101, 201 (a), 305, and 310 apply to persons
9 who sell or offer to sell when (1) an offer to sell is made in
10 this state, or (2) an offer to buy is made and accepted in this
11 state.

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

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

21 (d) For the purpose of this section, an offer to buy or
22 to sell is accepted in this state when acceptance (1) is commu-
23 nicated to the offeror in this state and (2) has not previously
24 been communicated to the offeror, orally or in writing, outside
25 this state; and acceptance is communicated to the offeror in this
26 state, whether or not either party is then present in this state,
27 when the offeree directs it to the offeror in this state reason-
28 ably believing the offeror to be in this state and it is re-
29 ceived at the place to which it is directed (or at any post

1 office in this state in the case of a mailed acceptance).

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

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

14 (g) Every applicant for registration under this Act and
15 every issuer which proposes to offer a security in this state
16 through any person acting on an agency basis in the common-law
17 sense shall file with the Administrator, in such form as he by
18 rule prescribes, an irrevocable consent appointing the Adminis-
19 trator or his successor in office to be his attorney to receive
20 service of any lawful process in any non-criminal suit, action,
21 or proceeding against him or his successor executor or administra-
22 tor which arises under this Act or any rule or order hereunder
23 after the consent has been filed, with the same force and vali-
24 dity as if served personally on the person filing the consent. A
25 person who has filed such a consent in connection with a previous
26 registration need not file another. Service may be made by leav-
27 ing a copy of the process in the office of the Administrator, but
28 it is not effective unless (1) the plaintiff, who may be the
29 Administrator in a suit, action, or proceeding instituted by him,

1 forthwith sends notice of the service and a copy of the process
2 by registered mail to the defendant or respondent at his last
3 address on file with the Administrator, and (2) the plaintiff's
4 affidavit of compliance with this subsection is filed in the case
5 on or before the return day of the process, if any, or within
6 such further time as the court allows.

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

29 (i) When process is served under this section, the court,

1 or the Administrator in a proceeding before him, shall order
2 such continuance as may be necessary to afford the defendant or
3 respondent reasonable opportunity to defend.

4 Sec. 315. SHORT TITLE. This Act may be cited as the Alaska
5 Securities Act of 1959.

6 Sec. 316. EFFECTIVE DATE. This Act shall be in full
7 force and effect from and after the date of its passage and
8 approval or upon its becoming law without such approval.
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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; and declar-
10 ing an effective date."

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

12 PART I

13 FRAUDULENT AND OTHER PROHIBITED PRACTICES

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

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

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

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

25 Sec. 102. ADVISORY ACTIVITIES.

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

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

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

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

9 (1) that the investment adviser shall not be compensated
10 on the basis of a share of capital gains upon or capital appreci-
11 ation of the funds or any portion of the funds of the client;

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

15 (3) that the investment adviser, if a partnership, shall
16 notify the other party to the contract of any change in the member-
17 ship of the partnership within a reasonable time after the change.

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

1 from the admission to the investment adviser of one or more
2 members who, after admission, will be only a minority of the
3 members and will have only a minority interest in the business.

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

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

10 PART II

11 REGISTRATION OF BROKER-DEALERS,
12 AGENTS, AND INVESTMENT ADVISERS

13 Section 201. REGISTRATION REQUIREMENTS

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

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

26 (c) It is unlawful for any person to transact business in
27 this state as an investment adviser unless (1) he is so regis-
28 tered under this Act, (2) he is registered as a broker-dealer
29 without the imposition of a condition under section 204 (b) (5),

1 or (3) his only clients in this state are investment companies
2 as defined in the Investment Company Act of 1940 or insurance
3 companies.

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

11 Sec. 202. REGISTRATION PROCEDURE.

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

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

16 (b) Every applicant for initial or renewal registration
17 shall pay a filing fee of \$50.00 in the case of a broker-dealer,
18 \$25.00 in the case of an agent, and \$25.00 in the case of an
19 investment adviser. When application is denied or withdrawn,
20 the Administrator shall retain \$10.00 of the fee.

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

25 (d) The Administrator may by rule require a minimum capital
26 for registered broker-dealers and investment advisers, except that
27 no requirement of minimum capital shall be made if a bond guaran-
28 teed by a corporate surety qualified to do business in Alaska is
29 provided pursuant to Sec. 202 (e).

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 findings
10 of fact and conclusions of law. Whenever not in conflict herewith,
11 the Administrative Procedures Act will apply to all procedures.

12 PART III

13 GENERAL PROVISIONS

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

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

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

27 (c) "Broker-dealer" means any person engaged in the business
28 of effecting transactions in securities for the account of others
29 or for his own account. "Broker-dealer" does not include (1) an

1 agent, (2) an issuer, (3) a bank, savings institution, or trust
2 company, or (4) a person who has no place of business in this state
3 if (A) he effects transactions in this state exclusively with or
4 through (i) the issuers of the securities involved in the transac-
5 tions (ii) other broker-dealers, or (iii) banks, savings institu-
6 tions, trust companies, insurance companies, investment companies
7 as defined in the Investment Company Act of 1940, pension or profit-
8 sharing trusts, or other financial institutions or institutional
9 buyers, whether acting for themselves or as trustees, or (B) during
10 any period of twelve consecutive months he does not direct more than
11 fifteen offers to sell or buy into this state in any manner to per-
12 sons other than those specified in clause (A) whether or not the
13 offeror or any of the 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 principal,
17 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 the
2 dividend other than the surrender of a right to a cash or property
3 dividend when each stockholder may elect to take the dividend in
4 cash or property or in stock; (C) any act incident to a class vote
5 by stockholders, pursuant to the certificate of incorporation or the
6 applicable corporation statute, on a merger, consolidation, reclassi-
7 fication of securities, or sale of corporate assets in consideration
8 of the issuance of securities of another corporation; or (D) any act
9 incident to a judicially approved reorganization in which a security
10 is issued in exchange for one or more outstanding securities, claims,
11 or property interests, or partly in such exchange and partly for cash;

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

16 (k) "Security" means any note; stock; treasury stock; bond;
17 debenture; evidence of indebtedness; certificate of interest or par-
18 ticipation in any profit-sharing agreement; collateral-trust certif-
19 icate; preorganization certificate or subscription; transferable
20 share; investment contract; voting-trust certificate; certificate of
21 deposit for a security; certificate of interest or participation in
22 an oil, gas, or mining title or lease or in payments out of produc-
23 tion under such a title or lease; or, in general, any interest or
24 instrument commonly known as a "security", or any certificate of
25 interest or participation in, temporary or interim certificate for
26 receipt for, guarantee of, or warrant or right to subscribe to or
27 purchase, any of the foregoing. "Security" does not include any
28 insurance or endowment policy or annuity contract under which an
29 insurance company promises to pay a fixed sum of money either in a

1 lump sum or periodically for life or for some other specified period.
2 "Security" does not include a certificate of membership or share in
3 any cooperative corporation.

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

6 Sec. 302. EXEMPTIONS.

7 (a) Agents of issuers with respect to the following securities
8 are excepted from sections 301 (b) and 303:

9 (1) any security (including a revenue obligation) issued
10 or guaranteed by the United States, any state, any political sub-
11 division of a state, or any agency or corporate or other instrumen-
12 tality of one or more of the foregoing; or any certificate of
13 deposit for any of the foregoing, or any security issued by any
14 non-profit corporation organized and used exclusively for charitable,
15 religious, fraternal or educational purposes;

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

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

28 (4) any commercial paper which arises out of a current
29 transaction or the proceeds of which have been or are to be used

1 for current transactions, and which evidences an obligation to pay
2 cash within nine months of the date of issuance, exclusive of days
3 of grace, or any renewal of such paper which is likewise limited,
4 or any guarantee of such paper or of any such renewal;

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

12 (b) Agents of issuers with respect to the following trans-
13 actions are excepted from sections 301 (b) and 303:

14 (1) any transaction between the issuer or other person
15 on whose behalf the offering is made and an underwriter, or among
16 underwriters;

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

23 (3) any transaction by a receiver or trustee in bank-
24 ruptcy;

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

1 in some fiduciary capacity;

2 (5) any transaction pursuant to an offer directed by the
3 offeror to not more than twenty persons (other than those designated
4 in paragraph (4)) in this state during any period of twelve con-
5 secutive months, whether or not the offeror or any of the offerees
6 is then present in this state, if (A) the seller reasonably believes
7 that all the buyers in this state are purchasing for investment,
8 and (B) no commission or other remuneration is paid or given directly
9 or indirectly for soliciting any prospective buyer in this state;
10 but the Administrator may by rule or order, as to any security
11 or transaction or any type of security or transaction, withdraw
12 or further condition this exemption, or increase or decrease the
13 number of offerees permitted, or waive the conditions in Clauses
14 (A) and (B) with or without the substitution of a limitation on
15 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 until that agency is succeeded by a department
12 of commerce or the appropriate division thereof.

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

24 Sec. 307. INVESTIGATIONS AND SUBPOENAS.

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

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

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

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

23 (d) No person is excused from attending and testifying or
24 from producing any document or record before the Administrator,
25 or in obedience to the subpoena of the Administrator or any officer
26 designated by him, or in any proceeding instituted by the Adminis-
27 trator, on the ground that the testimony or evidence (documentary
28 or otherwise) required of him may tend to incriminate him or
29 subject him to a penalty or forfeiture; but no individual may be

1 prosecuted or subjected to any penalty or forfeiture for or on
2 account of any transaction, matter, or thing concerning which he
3 is compelled, after claiming his privilege against self-incrimina-
4 tion, to testify or produce evidence (documentary or otherwise),
5 except that the individual testifying is not exempt from prosecu-
6 tion and punishment for perjury or contempt committed in testifying.

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

18 Sec. 309 CRIMINAL PENALTIES.

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

29 (b) The Administrator may refer such evidence as is available

1 concerning violations of this Act or of any rule or order here-
2 under to the attorney general who may, with or without such a refer-
3 ence, institute the appropriate criminal proceedings under this Act.

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

7 Sec. 310. CIVIL LIABILITIES.

8 (a) Any person who

9 (1) offers or sells a security in violation of section
10 201 (a) or 305 (b), or of any rule or order under section 303
11 which requires the filing of sales literature before it is used.

12 (2) offers or sells a security by means of any untrue
13 statement of a material fact or omits to state a material fact, the
14 omission of which makes any statement misleading, is liable to the
15 person buying the security from him, who may sue either at law or
16 in equity to recover the consideration paid for the security, to-
17 gether with interest at six percent per year from the date of pay-
18 ment, costs, and reasonable attorneys' fees, less the amount of
19 any income received on the security, upon the tender of the
20 security, or for damages if he no longer owns the security. Damages
21 are the amount that would be recoverable upon a tender less the
22 value of the security when the buyer disposed of it and interest at
23 six percent per year from the date of disposition.

24 (b) Every person who directly or indirectly controls a sel-
25 ler liable under subsection (a), every partner, officer, or dir-
26 ector of such a seller, every person occupying a similar status
27 or performing similar functions, every employee of such a seller
28 who materially aids in the sale, and every broker-dealer or agent
29 who materially aids in the sale are also liable jointly and sev-

1 erally with and to the same extent as the seller, unless the
2 non-seller who is so liable sustains the burden of proof that he
3 did not know, and in exercise of reasonable care could not have
4 known, of the existence of the facts by reason of which the liabil-
5 ity is alleged to exist. There is contribution as in cases of
6 contract among the several persons so liable.

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

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

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

21 (f) No person who has made or engaged in the performance of any
22 contract in violation of any provision of this Act or any rule or or-
23 der hereunder, or who has acquired any purported right under any such
24 contract with knowledge of the facts by reason of which its making or
25 performance was in violation, may base any suit on the contract.

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

29 (h) The rights and remedies provided by this Act are in

1 addition to any other rights or remedies that may exist at law or
2 in equity, but this Act does not create any cause of action not
3 specified in this section or section 202 (e).

4 Sec. 311. JUDICIAL REVIEW OF ORDERS.

5 (a) Any person aggrieved by a final order of the Administrator
6 may obtain a review of the order in the Superior Court by filing
7 in court, within sixty days after the entry of the order, a
8 written petition praying that the order be modified or set aside
9 in whole or in part. A copy of the petition shall be forthwith
10 served upon the Administrator, and thereupon the Administrator
11 shall certify and file in court a copy of the filing and evidence
12 upon which the order was entered. When these have been filed, the
13 court has exclusive jurisdiction to affirm, modify, enforce, or
14 set aside the order, in whole or in part.

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

18 (c) All rules, regulations, orders and reviews issued or
19 authorized under this Act including judicial review and its scope
20 shall be accomplished in conformity with the Administrative
21 Procedures Act of 1959.

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

23 (a) The Administrator may from time to time make, amend,
24 and rescind such rules, forms, and orders as are necessary to
25 carry out the provisions of this Act, including rules and forms
26 governing registration statements, applications, and reports, and
27 defining any terms, whether or not used in this Act, insofar as the
28 definitions are not inconsistent with the provisions of this Act.

29 For the purpose of rules and forms, the Administrator may

1 classify securities, persons, and matters within his jurisdiction,
2 and prescribe different requirements for different classes.

3 (b) No rule, form, or order may be made, amended, or re-
4 scinded unless the Administrator finds that the action is necessary
5 or appropriate in the public interest or for the protection of in-
6 vestors and consistent with the purposes fairly intended by the
7 policy and provisions of this Act. In prescribing rules and forms
8 the Administrator may cooperate with the securities administrators
9 of the other states and the Securities and Exchange Commission
10 with a view to effectuating the policy of this statute to achieve
11 maximum uniformity in the form and content of registration state-
12 ments, application, and reports wherever practicable.

13 (c) The administrator may by rule or order prescribe (1)
14 the form and content of financial statements required under this
15 Act, (2) the circumstances under which consolidated financial
16 statements shall be filed, and (3) whether any required financial
17 statements shall be certified by independent or certified public
18 accountants. All financial statements shall be prepared in accor-
19 dance with generally accepted accounting practices.

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

22 (e) No provision of this Act imposing any liability applies
23 to any act done or omitted in good faith in conformity with any
24 rule, form, or order of the Administrator, notwithstanding that
25 the rule, for, or order may be later amended or rescinded or be
26 determined by judicial or other authority to be invalid for any
27 reason.

28 (f) Every hearing in an administrative proceeding shall be
29 public unless the Administrator in his discretion grants a request

1 joined in by all the respondents that the hearing be conducted
2 privately.

3 Sec. 313. ADMINISTRATIVE FILES AND OPINIONS.

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

6 (b) The administrator shall keep a register of all applica-
7 tions for registration which are or have ever been effective under
8 this Act and all denial, suspension, or revocation orders which
9 have been entered under this Act. The register shall be open for
10 public inspection.

11 (c) The information contained in or filed with any applica-
12 tion or report may be made available to the public under such rules
13 as the Administrator prescribes.

14 (d) Upon request and at such reasonable charges as he pre-
15 scribes, the Administrator shall furnish to any person photostatic
16 or other copies (certified under his seal of office if requested)
17 of any entry in the register or any document which is a matter of
18 public record. In any proceeding or prosecution under this Act, any
19 copy so certified is prima facie evidence of the contents of the
20 entry or documents certified.

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

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

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

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

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Engrossed as amended in the House

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

7 (d) For the purpose of this section, an offer to buy or
8 to sell is accepted in this state when acceptance (1) is commu-
9 nicated to the offeror in this state and (2) has not previously
10 been communicated to the offeror, orally or in writing, outside
11 this state; and acceptance is communicated to the offeror in this
12 state, whether or not either party is then present in this state,
13 when the offeree directs it to the offeror in this state reason-
14 ably believing the offeror to be in this state and it is re-
15 ceived at the place to which it is directed (or at any post
16 office in this state in the case of a mailed acceptance).

17 (e) An offer to sell or to buy is not made in this state
18 when (1) the publisher circulates or there is circulated on his
19 behalf in this state any bona fide newspaper or other publication
20 of general regular, and paid circulation which is not published
21 in this state, or which is published in this state but has had
22 more than two-thirds of its circulation outside this state during
23 the past twelve months, or (2) a radio or television program
24 originating outside this state is received in this state.

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

29 (g) Every applicant for registration under this Act and

1 every issuer which proposes to offer a security in this state
2 through any person acting on an agency basis in the common-law
3 sense shall file with the Administrator, in such form as he by
4 rule prescribes, an irrevocable consent appointing the Adminis-
5 trator or his successor in office to be his attorney to receive
6 service of any lawful process in any non-criminal suit, action,
7 or proceeding against him or his successor executor or administra-
8 tor which arises under this Act or any rule or order hereunder
9 after the consent has been filed, with the same force and vali-
10 dity as if served personally on the person filing the consent. A
11 person who has filed such a consent in connection with a previous
12 registration need not file another. Service may be made by leav-
13 ing a copy of the process in the office of the Administrator, but
14 it is not effective unless (1) the plaintiff, who may be the
15 Administrator in a suit, action, or proceeding instituted by him,
16 forthwith sends notice of the service and a copy of the process
17 by registered mail to the defendant or respondent at his last
18 address on file with the Administrator, and (2) the plaintiff's
19 affidavit of compliance with this subsection is filed in the case
20 on or before the return day of the process, if any, or within
21 such further time as the court allows.

22 (h) When any person, including any nonresident of this
23 state, engages in conduct prohibited or made actionable by this
24 Act or any rule or order hereunder, and he has not filed a con-
25 sent to service of process under subsection (g) and personal
26 jurisdiction over him cannot otherwise be obtained in this state,
27 that conduct shall be considered equivalent to his appointment
28 of the Administrator or his successor in office to be his attor-
29 ney to receive service of any lawful process in any non-criminal

1 suit, action, or proceeding against him or his successor executor
2 or administrator which grows out of that conduct and which is
3 brought under this Act or any rule or order hereunder, with the
4 same force and validity as if served on him personally. Service
5 may be made by leaving a copy of the process in the office of the
6 Administrator, and it is not effective unless (1) the plaintiff,
7 who may be the Administrator in a suit, action, or proceeding
8 instituted by him, forthwith sends notice of the service and a
9 copy of the process by registered mail to the defendant or re-
10 spondent at his last known address or takes other steps which
11 are reasonably calculated to give actual notice, and (2) the
12 plaintiff's affidavit of compliance with this subsection is filed
13 in the case on or before the return day of the process, if any,
14 or within such further time as the court allows.

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

19 Sec. 315. SHORT TITLE. This Act may be cited as the Alaska
20 Securities Act of 1959.

21 Sec. 316. EFFECTIVE DATE. This Act shall be in full
22 force and effect from and after the date of its passage and
23 approval or upon its becoming law without such approval.
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