

Introduced: 4/11/72
Referred: Commerce

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 789 *pm*

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the Alaska Securities Act."

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

8 * Section 1. AS 45.55.010(2) is amended to read:

9 (2) make an untrue statement of a material fact or omit to
10 state a material fact necessary in order to make the statements made,
11 in the light of the circumstances under which they are made, not
12 misleading [THE OMISSION OF WHICH MAKES A STATEMENT MADE MISLEADING]; or

13 * Sec. 2. AS 45.55.040(a) is amended to read:

14 (a) A broker-dealer, agent, or investment adviser may obtain an
15 initial or renewal registration by filing with the administrator an
16 application together with a consent to service of process pursuant to
17 sec. 260(g) of this chapter. The application shall be accompanied by
18 the fingerprints and a photograph of the applicant and shall contain
19 whatever information the administrator by rule requires concerning
20 such matters as (1) the applicant's form and place of organization;
21 (2) the applicant's proposed method of doing business; (3) the
22 qualifications and business history of the applicant; in the case of a
23 broker-dealer or investment adviser, the qualifications and business
24 history of a partner, officer, or director, a person occupying a
25 similar status or performing similar functions, or a person directly
26 or indirectly controlling the broker-dealer or investment adviser; and,
27 in the case of an investment adviser, the qualifications and business
28 history of an employee; (4) an injunction or administrative order or
29 conviction of a misdemeanor involving a security or any aspect of the

1 securities business and any conviction of a felony; and (5) the
2 applicant's financial condition and history.

3 * Sec. 3. AS 45.55.040(c) is repealed and re-enacted to read:

4 (c) Every broker-dealer applicant for initial registration shall
5 pay a registration fee of \$125. Every agent applicant and investment
6 adviser applicant for initial registration shall pay a registration fee
7 of \$50. Every broker-dealer applicant for annual renewal of regis-
8 tration shall pay an annual renewal fee of \$75. Every agent applicant
9 and investment adviser applicant for annual renewal of registration
10 shall pay an annual renewal fee of \$30.

11 * Sec. 4. AS 45.55.040(d) is amended to read:

12 (d) A registered broker-dealer or investment adviser may file
13 an application for registration of a successor, whether or not the
14 successor is then in existence, for the unexpired portion of the year.
15 A broker-dealer may file a request to transfer from a previous broker-
16 dealer an agent's unexpired portion of the registration if the pro-
17 visions of sec. 30(b) of this chapter have been met. There shall be a
18 [NO] filing fee of \$10 for filing applications under this subsection.

19 * Sec. 5. AS 45.55.040(e) is amended to read:

20 (e) The administrator shall by regulation require of registered
21 broker-dealers and investment advisers a minimum capital and a bond
22 guaranteed by a corporate surety qualified to do business in this state
23 [MAY BY RULE REQUIRE A MINIMUM CAPITAL FOR REGISTERED BROKER-DEALERS
24 AND INVESTMENT ADVISERS, EXCEPT THAT NO REQUIREMENT OF MINIMUM CAPITAL
25 SHALL BE MADE IF A BOND GUARANTEED BY A CORPORATE SURETY QUALIFIED TO
26 DO BUSINESS IN THIS STATE IS PROVIDED UNDER (F) OF THIS SECTION].

27 * Sec. 6. AS 45.55.040(f) is amended to read:

28 (f) The administrator shall by regulation [MAY BY RULE] require
29 registered broker-dealers, agents, and investment advisers to post

1 surety bonds in amounts up to \$10,000, and shall by regulation [MAY]
2 determine their conditions. An appropriate deposit of cash or
3 securities shall be accepted in place of a bond so required. [NO BOND
4 MAY BE REQUIRED OF A REGISTRANT WHOSE NET CAPITAL, WHICH MAY BE
5 DEFINED BY RULE, EXCEEDS \$25,000.] Every bond shall provide for suit
6 on it by any person who has a cause of action under sec. 220 of this
7 chapter and, if the administrator by rule or order requires, by any
8 person who has a cause of action not arising under this chapter.
9 Every bond shall provide that no suit may be maintained to enforce a
10 liability on the bond unless brought within three [TWO] years after
11 the sale or other act upon which it is based.

12 * Sec. 7. AS 45.55.090(a) is amended to read:

13 (a) A security for which a registration statement has been filed
14 under the Securities Act of 1933 or any security for which filing
15 has been made under Regulations A, E, and F pursuant to subsection (b)
16 of Sec. 3 of the Securities Act of 1933 in connection with the same
17 offering, may be registered by coordination.

18 * Sec. 8. AS 45.55.110(b) is amended to read:

19 (b) Every person filing a registration statement shall pay a
20 filing fee of \$50 and a registration fee of one-tenth of one per cent
21 of the maximum aggregate offering price at which the registered
22 securities are to be offered in this state, but the registration fee
23 shall in no case be less than \$50 or more than \$1,500 [\$1,000]. When
24 a registration statement is withdrawn before the effective date or a
25 pre-effective stop order is entered under sec. 120 of this chapter,
26 the administrator shall retain the \$50 filing [\$25 OF THE] fee.

27 * Sec. 9. AS 45.55.130(10) is amended to read:

28 (10) "sale" or "sell" includes every contract of sale of,
29 contract to sell, or disposition of, a security or interest in a

1 security for value; "offer" or "offer to sell" includes every attempt
2 or offer to dispose of, or solicitation of an offer to buy, a security
3 or interest in a security for value; a security given or delivered
4 with, or as a bonus on account of, a purchase of securities or any
5 other thing is considered to constitute part of the subject of the
6 purchase and to have been offered and sold for value; a purported
7 gift of assessable stock is considered to involve an offer and sale;
8 every sale or offer of a warrant or right to purchase or subscribe to
9 another security of the same or another issuer, as well as every sale
10 or offer of a security which gives a holder a present or future right
11 or privilege to convert into another security of the same or another
12 issuer, is considered to include an offer of the other security.

13 [; THE TERMS DEFINED IN THIS SUBSECTION DO NOT INCLUDE

14 (A) A BONA FIDE PLEDGE OR LOAN;

15 (B) A STOCK DIVIDEND, WHETHER THE CORPORATION
16 DISTRIBUTING THE DIVIDEND IS THE ISSUER OF THE STOCK OR NOT, IF
17 NOTHING OF VALUE IS GIVEN BY STOCKHOLDERS FOR THE DIVIDEND OTHER
18 THAN THE SURRENDER OF A RIGHT TO A CASH OR PROPERTY DIVIDEND WHEN
19 EACH STOCKHOLDER MAY ELECT TO TAKE THE DIVIDEND IN CASH OR
20 PROPERTY OR IN STOCK;

21 (C) AN ACT INCIDENT TO A CLASS VOTE BY STOCKHOLDERS,
22 UNDER THE CERTIFICATE OF INCORPORATION OR THE APPLICABLE CORPORA-
23 TION STATUTE, ON A MERGER, CONSOLIDATION, RECLASSIFICATION OF
24 SECURITIES, OR SALE OF CORPORATE ASSETS IN CONSIDERATION OF THE
25 ISSUANCE OF SECURITIES OF ANOTHER CORPORATION; OR

26 (D) AN ACT INCIDENT TO A JUDICIALLY APPROVED RE-
27 ORGANIZATION IN WHICH A SECURITY IS ISSUED IN EXCHANGE FOR ONE OR
28 MORE OUTSTANDING SECURITIES, CLAIMS, OR PROPERTY INTERESTS, OR
29 PARTLY IN THE EXCHANGE AND PARTLY FOR CASH:]

1 * Sec. 10. AS 45.55.130(12) is amended to read:

2 (12) "security" means a note; stock; treasury stock; bond;
3 debenture; evidence of indebtedness; certificate of interest or
4 participation in any profit-sharing agreement; collateral-trust
5 certificates; preorganization certificate or subscription; trans-
6 ferable share; investment contract; voting-trust certificate;
7 certificate of deposit for a security; certificate of interest or
8 participation in an oil, gas, or mining title or lease or in payments
9 out of production under the title or lease or in any sale of or
10 indenture or bond or contract for the conveyance of land or any
11 interest in land; or, in general, any interest or instrument commonly
12 known as a "security", or any certificate of interest or participation
13 in, temporary or interim certificate for, receipt for, guarantee of,
14 or warrant or right to subscribe to or purchase, any of the foregoing;
15 "security" does not include an insurance or endowment policy or
16 annuity contract under which an insurance company promises to pay a
17 fixed sum of money either in a lump sum or periodically for life or
18 for some other specified period; ["SECURITY" DOES NOT INCLUDE A
19 CERTIFICATE OF MEMBERSHIP OR SHARE IN A COOPERATIVE CORPORATION:]

20 * Sec. 11. AS 45.55.140(a) is amended to read:

21 (a) The following securities are exempted from sec. 70 [SECS. 70
22 AND 150] of this chapter:

23 (1) a security, including a revenue obligation, issued or
24 guaranteed by the United States, a state, a political subdivision of a
25 state, or an agency or corporate or other instrumentality of one or
26 more of the foregoing; or a certificate of deposit for any of the
27 foregoing;

28 (2) a security issued or guaranteed by Canada, a Canadian
29 province, a political subdivision of a Canadian province, an agency or

1 corporate or other instrumentality of one or more of the foregoing, or
2 a foreign government with which the United States currently maintains
3 diplomatic relations, if the security is recognized as a valid obliga-
4 tion by the issuer or guarantor;

5 (3) a security issued by and representing an interest in or
6 a debt of, or guaranteed by, a bank organized under the laws of the
7 United States, or a bank, savings institution, savings and loan
8 association, building and loan association, or trust company organized
9 and supervised under the laws of a state or of the United States;

10 (4) a commercial paper which arises out of a current trans-
11 action or the proceeds of which have been or are to be used for
12 current transactions, and which evidences an obligation to pay cash
13 within nine months of the date of issuance, exclusive of days of grace,
14 or any renewal of the paper which is likewise limited, or a guarantee
15 of the paper or of the renewal, if the commercial paper is of the type
16 available for discount at a Federal Reserve Bank;

17 (5) an investment contract issued in connection with an
18 employee's stock purchase, savings, pension, profit-sharing, or
19 similar benefit plan if the administrator is notified in writing 30
20 days before the inception of the plan or, with respect to plans which
21 are in effect on May 9, 1959, within 60 days thereafter, or within 30
22 days before they are reopened if they are closed on May 9, 1959;

23 (6) a security issued by and representing an interest in
24 or a debt of, or guaranteed by, a federal savings and loan association,
25 or a building and loan or similar association organized under the laws
26 of a state and authorized to do business in this state;

27 (7) a security issued by and representing an interest in or
28 a debt of, or guaranteed by, an insurance company organized under the
29 laws of a state and authorized to do business in this state; but this

1 exemption does not apply to an annuity contract, investment contract,
2 or similar security under which the promised payments are not fixed in
3 dollars but are substantially dependent upon the investment results of
4 a segregated fund or account invested in securities; except that
5 policies or annuity contracts of insurance companies admitted to do
6 business in the state are not subject to this chapter;

7 (8) a security issued or guaranteed by a federal credit
8 union or any credit union, industrial loan association, or similar
9 association organized and supervised under the laws of this state;

10 (9) a security issued or guaranteed by a railroad, other
11 common carrier, public utility, or holding company which is

12 (A) subject to the jurisdiction of the Interstate
13 Commerce Commission;

14 (B) a registered holding company under the Public
15 Utility Holding Company Act of 1935 or a subsidiary of the company
16 within the meaning of that act;

17 (C) regulated in respect of its rates and charges by
18 a governmental authority of the United States or a state; or

19 (D) regulated in respect of the issuance or guarantee
20 of a security by a governmental authority of the United States, a
21 state, Canada, or a Canadian province;

22 (10) a security listed or approved for listing upon notice
23 of issuance on the New York Stock Exchange, the American Stock Exchange,
24 the Midwest Stock Exchange, or the Pacific Coast Stock Exchange, or any
25 other security of the same issuer which is of senior or substantially
26 equal rank; a security called for by subscription rights or warrants so
27 listed or approved; or a warrant or right to purchase or subscribe to
28 any of the foregoing;

29 (11) a security issued by a person organized and operated

1 not for private profit but exclusively for religious, educational,
2 benevolent, charitable, fraternal, social, athletic or reformatory
3 purposes, or as a chamber of commerce or trade or professional
4 association.

5 * Sec. 12. AS 45.55.140(b) is amended to read:

6 (b) The following transactions are exempted from sec. 70 [SECS.
7 70 AND 150] of this chapter:

8 (1) a transaction between the issuer or other person on
9 whose behalf the offering is made and an underwriter, or among
10 underwriters:

11 (2) a transaction in a bond or other evidence of indebted-
12 ness secured by a real or chattel mortgage or deed of trust, or by an
13 agreement for the sale of real estate or chattels, if the entire
14 mortgage, deed of trust, or agreement, together with all the bonds or
15 other evidence of indebtedness, secured thereby, is offered and sold
16 as a unit;

17 (3) a transaction by an executor, administrator, sheriff,
18 marshal, receiver, trustee in bankruptcy, guardian, or conservator;

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

25 (5) a transaction pursuant to an offer directed by the
26 offeror to not more than 20 persons, other than those designated in
27 (b)(4) of this section, in this state during a period of 12 consecutive
28 months, whether or not the offeror or any of the offerees is then
29 present in this state, if the seller reasonably believes that all the

1 buyers in this state are purchasing for investment, and no commission
2 or other remuneration is paid or given directly or indirectly for
3 soliciting a prospective buyer in this state [; HOWEVER, THE
4 ADMINISTRATOR MAY BY RULE OR ORDER, AS TO A SECURITY OR TRANSACTION
5 OR TYPE OF SECURITY OR TRANSACTION, WITHDRAW OR FURTHER CONDITION THIS
6 EXEMPTION, OR INCREASE OR DECREASE THE NUMBER OF OFFEREEES PERMITTED,
7 OR WAIVE THE CONDITIONS IN (b)(5) OF THIS SECTION WITH OR WITHOUT THE
8 SUBSTITUTION OF A LIMITATION ON REMUNERATION];

9 (6) an offer or sale of a preorganization certificate or
10 subscription if

11 (A) no commission or other remuneration is paid or
12 given directly or indirectly for soliciting a prospective
13 subscriber,

14 (B) the number of subscribers does not exceed 10, and

15 (C) no payment is made by any subscriber;

16 (7) a transaction under an offer to existing security
17 holders of the issuer, including persons who at the time of the trans-
18 action are holders of convertible securities, nontransferable warrants,
19 or transferable warrants exercisable within not more than 90 days of
20 their issuance, if

21 (A) no commission or other remuneration, other than a
22 standby commission, is paid or given directly or indirectly for
23 soliciting a security holder in this state, or

24 (B) the issuer first files a notice specifying the
25 terms of the offer and the administrator does by order disallow
26 the exemption within the next five full business days;

27 (8) an offer (but not a sale) of a security for which
28 registration statements have been filed under both this chapter and
29 the Securities Act of 1933 if no stop order or refusal order is in

1 effect and no public proceeding or examination looking toward an order
2 is pending under either act;

3 (9) an isolated nonissuer transaction, whether effected
4 through a broker-dealer or not;

5 (10) a nonissuer distribution of an outstanding security if

6 (A) a recognized securities manual contains the names
7 of the issuer's officers and directors, a balance sheet of the
8 issuer as of a date within 18 months, and a profit and loss state-
9 ment for either the fiscal year preceding that date or the most
10 recent year of operations, or

11 (B) the security has a fixed maturity or a fixed
12 interest or dividend provision and there has been no default during
13 the current fiscal year or within the three preceding fiscal years,
14 or during the existence of the issuer and any predecessors if
15 less than three years, in the payment of principal, interest, or
16 dividends on the security;

17 (11) a nonissuer transaction effected by or through a
18 registered broker-dealer under an unsolicited order or offer to buy;
19 however, the administrator may by rule require that the customer
20 acknowledge upon a specified form that the sale was unsolicited, and
21 that a signed copy of each form be preserved by the broker-dealer for
22 a specified period;

23 (12) a transaction executed by a bona fide pledgee without
24 any purpose of evading this chapter;

25 (13) a transaction incident to a right of conversion or a
26 statutory or judicially approved reclassification, recapitalization,
27 reorganization, quasi-reorganization, stock split, reverse stock split,
28 merger, consolidation or sale of assets, if

29 (A) no commission or other remuneration, other than a

1 standby commission is paid or given directly or indirectly for
2 soliciting a security holder in this state; and

3 (B) the issuer files a notice in the form specified by
4 the administrator not less than 30 days before making the offer;

5 (14) a stock dividend, whether the corporation distributing
6 the dividend is the issuer of the stock or not, if nothing of value is
7 given by stockholders for the dividend other than the surrender of a
8 right to a cash or property dividend when each stockholder may elect
9 to take the dividend in cash or property or in stock;

10 (15) an act incident to a class vote by stockholders, under
11 the certificate of incorporation or the applicable corporation statute,
12 on a merger, consolidation, reclassification of securities or sale of
13 securities of another corporation;

14 (16) the offer or sale by a registered broker-dealer, acting
15 either as principal or agent, of securities previously sold and
16 distributed to the public if

17 (A) the securities are sold at prices reasonably
18 related to the current market price at the time of sale, and, if
19 broker-dealer is acting as agent, the commission collected by the
20 broker-dealer on account of the sale is not in excess of usual and
21 customary commissions collected with respect to securities and
22 transactions having comparable characteristics;

23 (B) the securities do not constitute the whole or a
24 part of an unsold allotment to or subscription or participation
25 by the broker-dealer as an underwriter of the securities or as a
26 participant in the distribution of the securities by the issuer,
27 by an underwriter or by a person or group of persons in sub-
28 stantial control of the issuer or of the outstanding securities
29 of the class being distributed; and

1 (C) the securities have been lawfully sold and
2 distributed in this state or any other state of the United States
3 under this or any act regulating the sale of the securities.

4 * Sec. 13. AS 45.55.150 is amended to read:

5 Sec. 45.55.150. FILING OF SALES AND ADVERTISING LITERATURE. The
6 administrator may by rule or order require the filing of a prospectus,
7 pamphlet, circular, form letter, advertisement, or other sales
8 literature, or advertising communication addressed or intended for
9 distribution to prospective investors, including clients or prospective
10 clients of an investment adviser [, UNLESS THE SECURITY OR TRANSACTION
11 IS EXEMPTED BY SEC. 140 OF THIS CHAPTER].

12 * Sec. 14. AS 45.55.160 is repealed and re-enacted to read:

13 Sec. 45.55.160. MISLEADING FILINGS. It is unlawful for a person,
14 in a document filed with the administrator or in a proceeding under
15 this chapter, to make or cause to be made an untrue statement of a
16 material fact or to omit to state a material fact necessary in order
17 to make the statements made, in the light of the circumstances under
18 which they are made, not misleading.

19 * Sec. 15. AS 45.55 is amended by adding a new section to read:

20 Sec. 45.55.195. REIMBURSEMENT OF EXPENSES INCIDENT TO EXAMINATION.
21 (a) An issuer, broker-dealer, agent, or investment adviser shall re-
22 imburse the administrator for actual travel expenses and per diem
23 incurred in connection with an examination incident to a registration
24 under this chapter.

25 (b) The administrator may by rule or order adopt a schedule of
26 charges for annual examination fees of issuers, broker-dealers, agents
27 and investment advisers.

28 (c) If an issuer, broker-dealer, agent or investment adviser
29 fails to pay the fees and expenses provided for in this section, the

1 fees and expenses shall be paid out of the funds of the administrator
2 in the same manner as other disbursements made by the administrator.
3 The amounts paid from the funds of the administrator are a lien upon
4 all of the assets and property in this state of the issuer, broker-
5 dealer, agent or investment advisor and the amount may be recovered by
6 the attorney general on behalf of the state.

7 (d) Failure of the issuer, broker-dealer, agent or investment
8 advisor to pay fees and expenses under this section is a wilful
9 violation of this chapter and the violation falls within the provi-
10 sions of secs. 60, 120, 200 and 210 of this chapter.

11 * Sec. 16. AS 45.55.210(a) is amended to read:

12 (a) A person who wilfully violates a provision of this chapter
13 except sec. 160 of this chapter, or who wilfully violates a rule or
14 order under this chapter, or who wilfully violates sec. 160 of this
15 chapter knowing the statement made to be false or misleading in a
16 material respect or the omission to be misleading by any material
17 respect, upon conviction, is punishable fina fine of not more than
18 \$5,000 or by imprisonment for not less than one year nor more than
19 five [THREE] years, or by both. Upon conviction of an individual for
20 a felony under this chapter, imprisonment for not less than one year
21 is mandatory. However, no individual [PERSON] shall be imprisoned for
22 a violation of any rule or order if he proves that he had no knowledge
23 of the rule or order. No indictment or information may be returned
24 under this chapter more than five years after alleged violation.

25 * Sec. 17. AS 45.55.220(f) is amended to read:

26 (f) No person may sue under this section more than three [TWO]
27 years after the contract of sale. No person may sue under this section
28 (1) if the buyer received a written offer, before suit and
29 at a time when he owned the security, to refund the consideration paid

1 together with interest at six per cent a year from the date of payment,
2 less the amount of income received on the security, and he failed to
3 accept the offer within 30 days of its receipt, or

4 (2) if the buyer received the offer before suit and at a
5 time when he did not own the security, unless he rejected the offer
6 in writing within 30 days of its receipt.
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