

Introduced: 4/11/72  
Referred: Commerce

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 789

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 AS 45.55.040(c) is repealed and re-enacted to read: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 the 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 eligible for discount by 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 the security by a governmental authority of the United States,  
21 a 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 A 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 45.55.140 is amended by adding a new subsection to read:

5                   (f) The administrator shall by regulation prescribe a schedule of  
6 fees for examination or investigation of claimed exemption.

7 \* Sec. 14. AS 45.55.150 is amended to read:

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

15 \* Sec. 15. AS 45.55.160 is repealed and re-enacted to read:

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

22 \* Sec. 16. AS 45.55 is amended by adding a new section to read:

23                   Sec. 45.55.195. REIMBURSEMENT OF EXPENSES INCIDENT TO EXAMINATION.

24                   (a) An issuer, broker-dealer, agent, or investment adviser shall re-  
25 imburse the administrator for actual travel expenses and per diem  
26 incurred in connection with an examination incident to a registration  
27 under this chapter.

28                   (b) The administrator may by rule or order adopt a schedule of  
29 charges for annual examination fees of issuers, broker-dealers, agents

1 and investment advisers.

2 (c) If an issuer, broker-dealer, agent or investment adviser  
3 fails to pay the fees and expenses provided for in this section, the  
4 fees and expenses shall be paid out of the funds of the administrator  
5 in the same manner as other disbursements made by the administrator.  
6 The amounts paid from the funds of the administrator are a lien upon  
7 all of the assets and property in this state of the issuer, broker-  
8 dealer, agent or investment advisor and the amount may be recovered by  
9 the attorney general on behalf of the state.

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

14 \* Sec. 17. AS 45.55.210(a) is amended to read:

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

28 \* Sec. 18. AS 45.55.220(f) is amended to read:

29 (f) No person may sue under this section more than three [TWO]

1 years after the contract of sale. No person may sue under this section

2 (1) if the buyer received a written offer, before suit and  
3 at a time when he owned the security, to refund the consideration paid  
4 together with interest at six per cent a year from the date of payment,  
5 less the amount of income received on the security, and he failed to  
6 accept the offer within 30 days of its receipt, or

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