

HB

143

# HOUSE COMMITTEE REPORT

(11)

Date referred: 4/8/87

FURTHER REFERRALS:

DATE: 4/27/87

The Finance Committee has considered HB 143

"An Act relating to the assessment of civil penalties under the Alaska Securities Act; and providing for an effective date."

**RECOMMENDS:**

- replace with CS HB 143 (L.C.)  the same title
- attached amendment(s)  a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the \_\_\_\_\_ Committee

**ADOPTS:**  \_\_\_\_\_ letter of intent

**ATTACHES NEW FISCAL NOTE(S):**

- fiscal impact  same as previous fiscal note published \_\_\_\_\_
- zero fiscal note  same as previous zero fiscal note published 2/20/87
- zero with analysis

**SIGNING DO PASS:**

DAVIS Mike Davis

BROWN Ray Brown

FRANK Frank

BOYER Mark Boyer

SWACK-HAMMER Swack-Hammer

GILL Gill

LARSON Ronald L. Larson

ADAMS Albert Adams

POURCHOT Pat Pourchot

**SIGNING OTHER RECOMMENDATIONS:**

There is No Recommendation

Albert Adams  
Chairman's signature

DATE Reported out 4/27/87  
 DATE Reported in 1/27/88

STATE OF ALASKA  
 1988 LEGISLATIVE SESSION

BILL VERSION: CS HB 143  
 PUBLISH DATE: \_\_\_\_\_

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Dev.  
 Title: Act relating the assessment of civil penalties under the Alaska Securities Act BRU: \_\_\_\_\_  
 Sponsor: Rules Committee Components: Banking & Securities  
 Requester: \_\_\_\_\_

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULLTIME	-0-	-0-	-0-	-0-	-0-	-0-
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Willis F. Kirkpatrick, Director Phone: 465-2521  
 Division: Banking, Securities and Corporations Date: \_\_\_\_\_  
 Approved by Commissioner: J. Anthony Smith, Commissioner Date: 1/22/88  
 Agency: Department of Commerce and Economic Development

Distribution (by preparer):  
 Legislative Finance  
 Legislative Sponsor  
 Requestor  
 Office of Management and Budget  
 Impacted Agency(ies)  
 0644D-2/11988a

RECEIVED  
 JAN 26 1988

LEGISLATIVE FINANCE

CS HB 143

*OK*

STATE OF ALASKA 1986 LEGISLATIVE SESSION  
FISCAL NOTE

No. 1

Bill Version: CS HB 143 (L+C)  
Publish Date: HOUSE 2/20/87

REQUEST

Bill/Resolution No. : \_\_\_\_\_  
Title : An Act assessing civil penalties  
under the Alaska Securities Act.  
Sponsor : Rules Committee  
Requestor : Governor  
Date of Request : \_\_\_\_\_

FISCAL DETAIL

Agency Affected : Commerce & Econ. Dev.  
BRU : Banking, Securities & Corporations  
Components : Consumer Protection

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by: Edward C. Watkins  
Division : Banking, Securities & Corporations

Phone : 465-2521  
Date : November 20, 1986

Approved by Commissioner : \_\_\_\_\_  
Agency : Commerce & Economic Development

Date : 11/19/86

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

Original sponsor: Rules/Governor

1 IN THE HOUSE  
2  
3 CS FOR HOUSE BILL NO. 143 (L&C)  
4 IN THE LEGISLATURE OF THE STATE OF ALASKA  
5 FIFTEENTH LEGISLATURE - FIRST SESSION  
6 A BILL  
7 For an Act entitled: "An Act relating to the Alaska Securities Act; and  
8 providing for an effective date."  
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
10 \* Section 1. AS 45.55.140(a)(5) is amended to read:  
11 (5) a security [AN INVESTMENT CONTRACT] issued in connec-  
12 tion with an employee's stock purchase, savings, pension, profit-  
13 sharing, or similar employee's benefit plan [IF THE ADMINISTRATOR IS  
14 NOTIFIED IN WRITING 30 DAYS BEFORE THE INCEPTION OF THE PLAN OR, WITH  
15 RESPECT TO PLANS WHICH ARE IN EFFECT ON MAY 9, 1959, WITHIN 60 DAYS  
16 THEREAFTER, OR WITHIN 30 DAYS BEFORE THEY ARE REOPENED IF THEY ARE  
17 CLOSED ON MAY 9, 1959];  
18 \* Sec. 2. AS 45.55.200 is repealed and reenacted to read:  
19 Sec. 45.55.200. ORDERS, INJUNCTIONS, AND CIVIL PENALTIES. (a)  
20 If it appears to the administrator that a person has engaged or is  
21 about to engage in an act or practice in violation of a provision of  
22 this chapter or regulation or order under this chapter, the adminis-  
23 trator may  
24 (1) in the public interest or for the protection of inves-  
25 tors, issue an order  
26 (A) directing the person to cease and desist from  
27 continuing the act or practice;  
28 (B) directing the person, for a period not to exceed  
29 three years, to file the annual reports, proxies, consents or  
authorizations, proxy statements, or other materials relating to

1 proxy solicitations required under AS 45.55.139 with the adminis-  
2 trator for examination and review 10 working days before a dis-  
3 tribution to shareholders; and

4 (C) voiding the proxies obtained by a person required  
5 to file under AS 45.55.139, including their future exercise or  
6 actions resulting from their past exercise, if the proxies were  
7 solicited by means of an untrue or misleading statement pro-  
8 hibited under AS 45.55.160; or

9 (2) bring an action in the superior court to enjoin the  
10 acts or practices and to enforce compliance with this chapter or  
11 regulation or order under this chapter, and upon a proper showing, the  
12 appropriate remedy must be granted and a receiver or conservator may  
13 be appointed for the defendant or the defendant's assets; the court  
14 may not require the administrator to post a bond.

15 (b) The administrator may issue an order against an applicant,  
16 registered person, or other person who knowingly or intentionally vio-  
17 lates this chapter or a regulation or order of the administrator under  
18 this chapter, imposing a civil penalty of not more than \$2,500 for a  
19 single violation, or not more than \$25,000 for multiple violations, in  
20 a single proceeding or a series of related proceedings.

21 (c) For violations not covered by (b) of this section, the  
22 administrator may issue an order against an applicant, registered per-  
23 son, or other person who violates this chapter or a regulation or  
24 order of the administrator under this chapter, imposing a civil  
25 penalty of not more than \$500 for a single violation, or not more than  
26 \$5,000 for multiple violations, in a single proceeding or a series of  
27 related proceedings.

28 (d) Before issuing an order under (a)(1), (b), or (c) of this  
29 section, the administrator shall give reasonable notice of and an

1 opportunity for a hearing. However, the administrator may issue a  
2 temporary order under (a)(1) of this section pending the hearing,  
3 which remains in effect until 10 days after the hearing is held and  
4 which becomes final if the person to whom notice is addressed does not  
5 request a hearing within 15 days after the receipt of notice.

6 \* Sec. 3. AS 45.55.210(a) is amended to read:

7 (a) In addition to the civil penalties assessed under AS 45.55.-  
8 200, a [A] person who wilfully violates a provision of this chapter  
9 except AS 45.55.160, or who wilfully violates a regulation or order  
10 under this chapter, or who wilfully violates AS 45.55.160 knowing the  
11 statement made to be false or misleading in a material respect or the  
12 omission to be misleading by any material respect, upon conviction, is  
13 punishable by a fine of not more than \$5,000, or by imprisonment for  
14 not less than one year nor more than five years, or both. Upon con-  
15 viction of an individual for a felony under this chapter, imprisonment  
16 for not less than one year is mandatory. However, an individual may  
17 not be imprisoned for the violation of a regulation or order if the  
18 individual proves that the individual had no knowledge of the regu-  
19 lation or order. An indictment or information may not be returned  
20 under this chapter more than five years after the alleged violation.

21 \* Sec. 4. AS 45.55.260(c) is amended to read:

22 (c) For the purpose of this section, an offer to sell or to buy  
23 is made in this state, whether or not either party is then present in  
24 this state, when the offer

25 (1) originates from this state; [OR]

26 (2) is directed by the offeror to this state and received at  
27 the place to which it is directed, or at a post office in this state  
28 in the case of a mailed offer;

29 (3) is for an interest or participation in an oil, gas, or

1 mining right, title, or lease on land in the state, including sub-  
2 merged land, regardless of where the offer is made;

3 (4) is for an interest or participation in payments out of  
4 production under an oil, gas, or mining right, title or lease on land  
5 in the state, including submerged land, regardless of where the offer  
6 is made; or

7 (5) is for an interest or participation in real property  
8 located in the state, or in a domestic corporation or a domestic  
9 limited partnership; jurisdiction under this paragraph may be ex-  
10 ercised only when the exercise is not inconsistent with the consti-  
11 tution of this state or of the United States.

12 \* Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

# State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
HOUSE JUDICIARY  
HOUSE RULES



Representative Max F. Gruenberg, Jr.  
District 11  
Spenard, Upper Midtown Anchorage

P.O. BOX V  
JUNEAU, ALASKA 99811  
(907) 465-3718  
465-4968/4986

914 CLAY COURT  
ANCHORAGE, ALASKA 99503  
(907) 276-6844

## MEMORANDUM

April 6, 1987

TO: Members of the House Judiciary Committee

FROM: Max F. Gruenberg, Jr. *MFG*

RE: *5* HB 143, "An Act relating to the Alaska Securities Act;  
and providing for an effective date."

### Section 1

AS 45.55.140(a)(5) Exempts securities issued in connection with an employee benefit plan from the registration requirements of the Alaska Securities Act.

### Section 2

AS 45.55.200 Allows the state to assess civil penalties for violations of the Alaska Securities Act in addition to the present civil sanctions which may be imposed.

### Section 3

AS 45.55.210(a) Allows the state to impose civil penalties in addition to the criminal penalties which can presently be imposed for violations of the Alaska Securities Act.

### Section 4

AS 45.55.260(c) Allows the state to prosecute fraudulent out-of-state sales of Alaskan oil, gas, mining rights and other interest in Alaskan land or mineral production rights.

### Section 5

Provides for an immediate effective date.

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 18, 1987

The Honorable Ben Grussendorf  
Speaker of the House  
Alaska State Legislature  
P.O. Box V  
Juneau, AK 99811

Dear Representative Grussendorf:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill to amend the penalty provisions of the Alaska Securities Act.

The bill provides that the administrator of securities, generally known as the director of the division of banking, securities and corporations, Department of Commerce and Economic Development, may assess civil fines of up to \$5,000 against a person who violates the Alaska Securities Act, and up to \$25,000 if the violations are done knowingly or intentionally. These provisions of the bill are based on sec. 602(b)(4) of the Revised Uniform Securities Act, promulgated in 1985 by the National Conference of Commissioners on Uniform State Laws.

Although current Alaska law permits criminal prosecution of individuals who wilfully violate the Act (AS 45.55.210), by authorizing the department to assess civil penalties the state will be able to avoid the substantial time and expense of criminal investigation and prosecution in many cases. On a number of occasions, individuals have wilfully violated the Act and then ignored orders issued by the administrator to stop the practice, because these individuals recognized that the administrator has no authority to enforce his or her own orders. Passage of this bill would correct this problem.

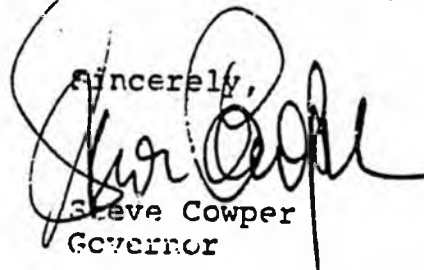
It should be noted that the assessment of civil fines is not without precedent in Alaska. For example, AS 21.09.260 and AS 21.36.320 provide that the director of the division of insurance may assess civil fines of up to \$25,000 for violations of the Alaska Insurance Code. Similarly, I am proposing legislation to provide that the commissioner of the Department of Revenue may assess a civil fine against a person who attempts to obtain permanent fund dividends by means of fraud.

Hon. Ben Grussendorf

Page 2

This bill represents a valuable tool for the Department of Commerce and Economic Development to prevent willful violations of the Alaska Securities Act, and I urge your support of it.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the typed name below.

Steve Cowper  
Governor

1 IN THE HOUSE

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

2

HOUSE BILL NO. 143

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to the assessment of civil penalties  
7 under the Alaska Securities Act; and providing for an  
8 effective date."

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

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11 Sec. 45.55.200. ORDERS, [AND] INJUNCTIONS, AND CIVIL PENALTIES.

12 (a) If [WHENEVER] it appears to the administrator that a person has  
13 engaged or is about to engage in an act or practice in violation of  
14 any provision of this chapter or rule or order under this chapter, the  
15 administrator may

16 (1) in the public interest or for the protection of inves-  
17 tors, issue an order (A) directing the person to cease and desist from  
18 continuing the act or practice, (B) directing the person, for a period  
19 not to exceed three years, to file the annual reports, proxies, con-  
20 sents or authorizations, proxy statements, or other materials relating  
21 to proxy solicitations required under AS 45.55.139 with the adminis-  
22 trator for examination and review 10 working days before a distribu-  
23 tion to shareholders, and (C) voiding any proxies obtained by a person  
24 required to file under AS 45.55.139, including their future exercise  
25 or actions resulting from their past exercise, if the proxies were  
26 solicited by means of an untrue or misleading statement prohibited  
27 under AS 45.55.160; or

28 (2) bring an action in the superior court to enjoin the  
29 acts or practices and to enforce compliance with this chapter or rule

1 or order under this chapter, and upon a proper showing, the appropri-  
2 ate remedy must [SHALL] be granted and a receiver or conservator may  
3 be appointed for the defendant or the defendant's assets; the court  
4 may not require the administrator to post a bond.

5 (b) The administrator may issue an order against an applicant,  
6 licensed person, or other person who knowingly or intentionally vio-  
7 lates this chapter or a rule or order of the administrator under this  
8 chapter, imposing a civil penalty of not more than \$2,500 for a single  
9 violation, or not more than \$25,000 for multiple violations, in a  
10 single proceeding or a series of related proceedings.

11 (c) For violations not covered by (b) of this section, the  
12 administrator may issue an order against an applicant, licensed per-  
13 son, or other person who violates this chapter or a rule or order of  
14 the administrator under this chapter, imposing a civil penalty of not  
15 more than \$500 for a single violation, or not more than \$5,000 for  
16 multiple violations, in a single proceeding or a series of related  
17 proceedings.

18 (d) Before issuing an order under (a)(1), (b), or (c) of this  
19 section, the administrator shall give reasonable notice of and an  
20 opportunity for a hearing. However, the administrator may issue a  
21 temporary order under (a)(1) of this section pending the hearing,  
22 which remains [ORDER SHALL REMAIN] in effect until 10 days after the  
23 hearing is held and which becomes [SHALL BECOME] final if the person  
24 to whom notice is addressed does not request a hearing within 15 days  
25 after the receipt of notice.

26 \* Sec. 2. AS 45.55.210(a) is amended to read:

27 (a) In addition to any civil penalties assessed under AS 45.55.-  
28 200, a [A] person who wilfully violates a provision of this chapter  
29 except AS 45.55.160, or who wilfully violates a rule or order under

1       this chapter, or who wilfully violates AS 45.55.160 knowing the state-  
2       ment made to be false or misleading in a material respect or the  
3       omission to be misleading by any material respect, upon conviction, is  
4       punishable by a fine of not more than \$5,000, or by imprisonment for  
5       not less than one year nor more than five years, or both. Upon con-  
6       viction of an individual for a felony under this chapter, imprisonment  
7       for not less than one year is mandatory. However, no individual may  
8       be imprisoned for the violation of a rule or order if he proves that  
9       he had no knowledge of the rule or order. No indictment or informa-  
10      tion may be returned under this chapter more than five years after the  
11      alleged violation.

12      \* Sec. 3. This Act takes effect immediately under AS 01.10.070(c).