

HB

143

RE: ORIGINAL BILL

Department of Commerce  
& Economic Development / POSITION PAPER

HB 143 "An Act relating to the assessment of civil penalties under the Alaska Securities Act; and providing for an effective date."

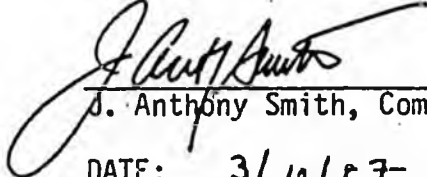
The Department of Commerce and Economic Development supports passage of HB 143 as drafted.

The Governor's transmittal letter as spread in the journal of Friday, February 20, 1987, on pages 279 and 280, accurately describes the amendments being requested to the Alaska Securities Act under Section 45.55.200; Orders, Injunctions and Powers of the Administrator.

The inclusion of the additions at 45.55.200(b), (c) and (d) as well as the addition to 45.55.210(a) will give a wide range of latitude to the Administrator of Securities in curing deficiencies under the Alaska Securities Act and violations thereunder. While it is now possible for the Administrator of Securities to issue cease and desist orders, they are often ignored or neglected by those individuals to whom they are directed. The ability to assess a monetary penalty will strengthen the enforcement capability of the Division of Banking, Securities and Corporations.

We should now point out that the imposition of civil penalties gives us an alternative to the shutting down totally of an enterprise or operation who has violated the Securities Act. Under the present scheme, our alternative is simply to order a business to cease and desist its operation in toto. With the addition of the civil penalties remedies, applicants and/or registrants may continue in business having corrected their deficiencies and paid civil penalties to remind them to not repeat the violations.

The department supports and urges passage of the bill.

  
\_\_\_\_\_  
J. Anthony Smith, Commissioner  
DATE: 3/10/87

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# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF LAW

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

March 23, 1984

The Honorable Fritz Pettyjohn  
Alaska State Senate  
Pouch V  
Juneau, Alaska 99811

Re: SB 432, "an Act amending  
the Alaska Security's Act"

Dear Senator Pettyjohn:

At the Senate Labor and Commerce Committee hearing on February 15, 1984, you requested our opinion with respect to the effect on the jurisdictional scope of SB 432. This legislation would clarify the existing Alaska Security's Act to better reach fraudulent or high pressure out-of-state sales of oil and gas lease hold interests on state or federal lands in Alaska.

The Administration believes that Alaska is well served by having an ability to regulate sales of land or lease hold interests located in Alaska, even where the transactions take place outside the state between non-residents of the state. The state may protect the legitimate concerns of its citizens by exercising the right to sue according to the doctrine of parens patriae. This doctrine is recognized in Alaska. State v. First National Bank of Anchorage, 660 P.2d 406, 420-21 (Alaska 1982); Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975).

Because we believe there is a substantial state interest in preventing fraudulent sales of oil and gas leases located within the state's border, we believe a constitutional challenge against Alaska's assertion of jurisdiction provided by the proposed legislation would fail. A claim that the jurisdiction afforded by the proposed legislation violates an out-of-state citizen's rights under the Due Process Clause, Full Faith and Credit Clause or Commerce clause of the U.S. Constitution would, in all likelihood, be dismissed. See generally, Aldens, Inc., v. Packel, 524 F.2d 38 (3rd Cir. 1975). The Aldens case is instructive because it involved a challenge to Pennsylvania's right to enforce state credit sales laws as applied to an

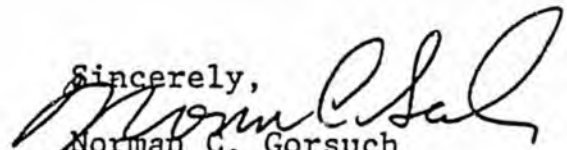
Illinois corporation operating a mail order business in all fifty states and where all orders were accepted in Chicago. In that case, the court performed a thorough and comprehensive analysis of a variety of constitutional issues and concluded that none of the constitutional provisions were violated by enforcement of Pennsylvania's laws.

The currently accepted approach to Due Process Clause limitation challenges is one of interest analysis where the court focuses on whether a state has sufficient interest "to justify any exercise of it's sovereignty in connection with the trans- action and dispute." Id. at 42-43, (citing McGee v. International Company, 355 U.S. 220 (1957)) emphasis in original. The court further noted in Alden that a relatively low threshold of state interest is needed to justify jurisdiction. Id. at 43.

In conclusion, because Alaska has a substantial interest in transactions involving land or interest of land within its borders, we believe a court would find that the exercise of jurisdiction through the proposed legislation does not interfere with an out-of-state defendant's due process or other constitutional rights.

Please feel free to call if we can be of additional assistance.

Sincerely,



Norman C. Gorsuch  
Attorney General

NCG:eer

cc: Senator Richard I. Elaison  
Chairman, Senate Labor and  
Commerce Committee

Senator Bob Mulcahy  
Vice-Chairman, Senate Labor  
and Commerce Committee

Senator Patrick Rodey  
Senate Labor and Commerce  
Committee

Senator John C. Sackett  
Senate Labor and Commerce  
Committee

The Honorable Fritz Pettyjohn  
Senate Bill 432

March 23, 1984  
Page #3

Connie Sipe  
Assistant Attorney General  
Consumer Protection

Jeff Bush Ø  
Assistant Attorney General  
Commercial

BILL SHEFFIELD  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 2, 1984

Mr. James C. Miller, III  
Chairman  
Federal Trade Commission  
Washington, DC 20580

Dear Mr. Chairman:

In recent years, we have seen a huge increase in the number of questionable companies taking advantage of the Bureau of Land Management's noncompetitive oil and gas leasing program, as well as the State of Alaska's competitive leasing program. Many of these companies are reaping sizable profits at the expense of innocent investors across the nation through misrepresentations and high-pressure sales techniques.

In an effort to gain greater State control over the secondary sales of these leases where the leased land is located in Alaska, I have introduced a bill in our State Legislature to amend the Alaska Securities Act. The purpose of this proposed legislation is to bring these secondary lease sales under the jurisdiction of the Act, thereby making these sales subject to State regulation. I have enclosed a copy of the bill (SB 432) for your reference.

It is my understanding that the Federal Trade Commission would like to express its support for this legislation. Your comments or suggestions would be appreciated. I would appreciate your forwarding any comments to the Honorable Richard I. Eliason, Chairman, Senate Labor and Commerce Committee, State Capitol, Pouch V, Juneau, Alaska 99811.

Thank you for your offer of support in this matter.

Sincerely,

Bill Sheffield  
Governor

Enclosure:

cc w/enc. Art Cornell  
Federal Trade Commission  
Washington, D.C. 20580

cc w/o enc. Jeffrey W. Bush  
Assistant Attorney General  
Department of Law

Introduced: 2/9/84  
Referred: Labor and Commerce  
and Judiciary

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 432

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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

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

8 \* Section 1. AS 45.55.260(c) is amended to read:

9 (c) For the purpose of this section, an offer to sell or to buy  
10 is made in this state, whether or not either party is then present in  
11 this state, when the offer (1) originates from this state; [OR] (2) is  
12 directed by the offeror to this state and received at the place to  
13 which it is directed, or at a post office in this state in the case of  
14 a mailed offer; or (3) in the case of an offer to sell or to buy an  
15 interest or participation in oil, gas, or mining rights, titles, or  
16 leases, or in payments out of production under those rights, titles,  
17 or leases, if the oil, gas, or mining right, title, or lease is on  
18 land, including submerged land, located in the state, regardless of  
19 where the offer to sell or the offer to buy is made.

# State of Alaska

House Majority Leader

COMMITTEES

HOUSE HEALTH, EDUCATION  
AND SOCIAL SERVICES  
HOUSE JUDICIARY  
HOUSE RULES



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

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

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

## MEMORANDUM

DATE: May 6, 1987  
TO: ALL SENATE LABOR & COMMERCE COMMITTEE MEMBERS  
FROM: Max F. Gruenberg, Jr. *MFG*  
RE: CSHB 143(L&C), "An Act relating to the Alaska Securities Act."

CSHB 143(L&C) passed the House by a vote of 33-5. It will allow the state to assess civil penalties for violations of the Alaska Securities Act in addition to, or as an alternative to, the present criminal sanctions in the act.

HB 143 was amended in the House Labor and Commerce Committee to include last year's House Bill 126. As a result, HB 143 will allow the state to prosecute fraudulent investment schemes in Alaskan oil and gas leases, land, and mineral rights as well as Alaskan corporations and limited partnerships.

HB 143 has zero fiscal notes from the Department of Law and the Department of Commerce. It will be enforced to the extent that present resources allow.

In 1985 HB 126 passed the House 36-0. HB 143 received unanimous "Do-Pass" recommendations from the Labor and Commerce Committee and the Judiciary Committee. It received ten "Do-Passes" and one "No Recommendation" from the Finance Committee.

SECTIONAL ANALYSIS  
CSHB 143(L&C)

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.

**MEMORANDUM** (Brief Communications) **State of Alaska**

TO: Name	Senator Kertula	Dept./Div./Sect.	Mail Stop
FROM: Name	Jeff Bush	Dept./Div./Sect.	Telephone
SUBJ.:	HB 143 (Security Bill)	Attorney General's Ofc.	3600
		Date	5/15

Here is some additional background material, plus a sectional analysis, for HB 143. With luck, we can get to bill through the Finance Committee and onto the Floor before everyone goes home. Call me if you have any questions.

*[Handwritten signature]*

## SECTIONAL ANALYSIS

### CSHB 143(L&C)

Section 1. Slightly broadens the exemption for securities issued by employee pension plans, from an exemption for investment contracts to an exemption for all securities. This exemption applies only to issuances made directly to the employee by the plan, such as an issuance of shares in the company. This exemption does not apply to actual investments of the plan or trust. This section also repeals obsolete language.

Section 2. Adds new subsections (b) and (c), which provide that the administrator of securities (director of the Division of Banking, Securities and Corporations, Department of Commerce and Economic Development) may issue administrative orders imposing fines for violations of the Alaska Securities Act. Subsection (b) authorizes fines of up to \$25,000 for knowing or intentional violations, while subsection (c) provides for fines of up to \$5,000 for other violations. Subsection (d) then provides that notice and opportunity for hearing must precede the imposition of any fine. The authority to issue administrative fines is consistent with the Revised Uniform Securities Act of 1985.

Section 3. Simply provides that the imposition of administrative fines does not preclude criminal prosecution under the Alaska Securities Act.

Section 4. This section amends the Alaska Securities Act to extend its scope to include offers to buy or sell interests in oil, gas, or mining rights on land located in the state, regardless of where the offer or sale occurs. These provisions, originally proposed by Governor Sheffield in Senate Bill 432 (1984) and House Bill 126 (1985), are in response to numerous complaints of fraudulent oil and gas leasing schemes. This amendment would extend the jurisdiction of the state's securities regulators and of our courts over these fraudulent schemes, even if the "investment" sales are not made in our state or to Alaska residents.

Section 5. Provides an immediate effective date.

#### Attachments:

1. Position paper of DCED on original HB 143 (the civil penalty provisions of the current bill).
2. Revised Uniform Securities Act of 1985, sec. 602(b), which provides for the imposition of administrative penalties of up to \$25,000.

3. 1985 House Journal pp. 155-156, setting out the Governor's transmittal letter for HB 126, the provisions of which are now contained in sec. 4 of this bill.
4. Letter from former Attorney General Norman C. Gorsuch to former Senator Fritz Pettyjohn regarding the constitutionality of SB 432 (1984), the provisions of which are contained in sec. 4 of the current bill. The State's jurisdictional claim was upheld by the Alaska Superior Court in State v. Alaska Land Leasing, Case No. 3AN-83-8867.

HB 143 "An Act relating to the assessment of civil penalties under the Alaska Securities Act; and providing for an effective date."

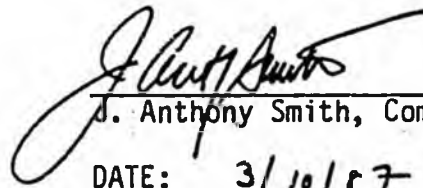
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J. Anthony Smith, Commissioner

DATE: 3/10/87

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ignated officer or employee may apply to the court for an order compelling compliance.

(e) A request for an order of compliance may be addressed to either:

(1) the [name of court having general trial jurisdiction] Court if the person is subject to service of process in this State; or

(2) a court of another state able to assert jurisdiction over the person refusing to testify or produce, if the person is not subject to service of process in this State.

Not later than the time the [Administrator] requests an order for compliance, the [Administrator] shall either send notice of the request by registered or certified mail, return receipt requested, to the respondent at the last known address or take other steps which are reasonably calculated to give the respondent actual notice.

**SECTION 602. ENFORCEMENT.**

(a) If the [Administrator] reasonably believes, whether or not based upon an investigation conducted under Section 601, that (i) the sale of a security is subject to registration under this [Act] and the security is being offered or has been offered or sold by the issuer or another person in violation of Section 301 or (ii) a person is acting as a broker-dealer or investment adviser in violation of Section 201 or Section 203, the [Administrator], in addition to any specific power granted under this [Act] and subject to compliance with the requirements of Section 712, may issue, without a prior hearing, an order against the person or persons engaged in the prohibited activities, directing them to desist and refrain from further activity unless and until the security is registered or the person has been licensed under this [Act]. The cease and desist order shall state the section of this [Act] or rule or order of the [Administrator] under this [Act] which the [Administrator] reasonably believes has been or is being violated.

(b) If the [Administrator] reasonably believes, whether or not based upon an investigation conducted under Section 601, that a person has violated this [Act] or a rule or order of the [Administrator] under this [Act], the [Administrator] may, in addition to any specific power granted under this [Act], after notice and hearing in an administrative proceeding unless the right to notice and hearing is waived by the person against whom the sanction is imposed:

- (1) issue a cease and desist order against the person;
- (2) censure the person if the person is a licensed broker-dealer, sales representative, or investment adviser;
- (3) bar or suspend the person from association with a licensed broker-dealer or investment adviser in this State;
- (4) issue an order against an applicant, licensed person, or other person who knowingly violates this [Act] or a rule or order of the [Administrator] under this [Act], imposing a civil penalty up to a maximum of [\$2,500] for a single violation or of [\$25,000] for multiple violations in a single proceeding or a series of related proceedings; or
- (5) initiate one or more of the actions specified in Section 603 as applicable.

(c) Imposition of the sanctions under this section is limited as follows:

(1) if the [Administrator] revokes the license of a broker-dealer, sales representative, or investment adviser or bars a person from association with a licensed broker-dealer, or investment adviser under this section or Section 212, the imposition of that sanction precludes imposition of the sanction specified in subsection (b)(4); and

(2) the imposition by the [Administrator] of one or more sanctions under subsection (b) with respect to a specific violation precludes the [Administrator] from later imposing

any other sanctions under subsection (b)(1) through (4) with respect to the violation.

(d) For purposes of determining a sanction, if any, to be imposed under subsection (b)(1) through (4), the [Administrator] shall consider, among other factors, the frequency and persistence of the conduct constituting a violation of this [Act] or a rule or order of the [Administrator] under this [Act], the number of persons adversely affected by the conduct, and the resources of the person committing the violation.

**SECTION 603. POWER OF COURT TO GRANT RELIEF.**

(a) Upon a showing by the [Administrator] that a person has violated or is about to violate this [Act] or a rule or order of the [Administrator] under this [Act], the [insert name of the appropriate court] may grant or impose one or more of the following appropriate legal or equitable remedies:

(1) upon a showing of a violation of this [Act] or a rule or order of the [Administrator] under this [Act]:

- (i) a temporary restraining order, permanent or temporary prohibitory or mandatory injunction, or a writ of prohibition or mandamus;
- (ii) a civil penalty up to a maximum of [\$2,500] for a single violation or of [\$25,000] for multiple violations in a single proceeding or a series of related proceedings;
- (iii) a declaratory judgment;
- (iv) restitution to investors;
- (v) the appointment of a receiver or conservator for the defendant or the defendant's assets; and
- (vi) other relief as the court deems just.

(2) upon a showing that the defendant is about to violate this [Act] or a rule or order of the [Administrator] under this [Act] only:

- (i) a temporary restraining order;
- (ii) a temporary or permanent injunction; or
- (iii) a writ of prohibition or mandamus.

(3) In determining the appropriate relief to grant, the court shall consider enforcement actions taken and sanctions imposed by the [Administrator] under Section 602 in connection with the transactions constituting violations of this [Act] or a rule or order of the [Administrator] under this [Act].

(b) The [Administrator] is not required to post a bond in an action under this section.

(c) Upon a showing by the securities agency or administrator of another state that a person has violated the securities act of that state or a rule or order of the securities agency or administrator of that state, the court, in addition to any other legal or equitable remedies may impose one or more of the following remedies:

- (1) appointment of a receiver, conservator, or ancillary receiver or conservator for the defendant or the defendant's assets located in this State; and
- (2) other relief as the court deems just.

**SECTION 604. CRIMINAL PENALTIES.**

(a) A person who willfully violates a provision of this [Act], except Section 504, or a rule of the [Administrator] under this [Act], or who violates Section 504, knowing the statement made to be false or misleading in any material respect, is guilty of a [insert the language for felony under applicable state law].

(b) A person who willfully violates a stop order or a cease and desist order issued by the [Administrator] under this [Act] is guilty of a [insert the language for misdemeanor under applicable state law].

# STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

## DEPARTMENT OF LAW

POUCH K - STATE CAPITOL  
JUNEAU, ALASKA 99811  
PHONE: (907) 465-3600

OFFICE OF THE ATTORNEY GENERAL

March 23, 1984

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Sincerely,



Norman C. Gorsuch  
Attorney General

NCG:eer

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Senator Bob Mulcahy  
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