

HB

194

<TARGET><BILL>HB 194</BILL><SUBJECT>HB
194</SUBJECT><COMM>HJUD29</COMM></TARGET>

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Governor Bill Walker
STATE OF ALASKA

April 11, 2015

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault:

Under the authority of Article III, Section 18, of the Alaska Constitution, I am transmitting a bill relating to the Alaska Securities Act and certain provisions of the Alaska Native Claims Settlement Act (ANCSA) proxy solicitations.

The bill would modify AS 45 by adding a new chapter, AS 45.56, relating to the Alaska Securities Act. The proposed updates would modernize and streamline the State's outdated securities laws to recognize industry changes and to support new means of raising capital, while enhancing investor protections and remedies. By adopting relevant provisions of the Uniform Securities Act (2002), this new Alaska Securities Act would incorporate proven successful practices in the industry but maintain Alaska-specific provisions relevant to the unique features of the state. Moreover, the updates would eliminate redundant or outdated references and practices.

Currently, AS 45.55 governs securities transactions in the state. Since its adoption in 1961, there have only been two relevant changes to our securities law. In 1999, a portion of the existing law was revised after the passage of the National Securities Markets Improvement Act of 1996. In 2014, Chapter 46, SLA 2014 eliminated several filing requirements for certain securities exemptions, but otherwise left the majority of the Alaska Securities Act unchanged. It remains outdated. By example, the current version of the Alaska Securities Act limits official notification of certain dates to telegram or telephone, but not electronic means, and continues to list stock exchanges that have merged with other entities or no longer exist. The financial industry has changed dramatically in the last 15 years and an entire overhaul of the Alaska Securities Act is necessary to put the State's laws governing securities transactions in line with other regulatory regimes.

Using the Uniform Securities Act as a springboard for changes to the Alaska Securities Act, our State benefits from a time-tested regulatory regime that has been adopted and used in at least 20 other states. By incorporating provisions proven to improve the regulation of the securities industry in other states into our laws, the state and persons doing business here will benefit. Using the Uniform Securities Act for the basic framework also provides familiarity to many industry professionals that are familiar with the Alaska Securities Act.

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Using the Uniform Securities Act as the starting point, the bill would incorporate several Alaska-specific provisions aimed at protecting and supporting the public and industry. By example, proposed AS 45.56.220 would provide an exemption for small intrastate investment opportunities, commonly referred to as "crowdfunding." This would encourage local capital raising without burdensome administrative oversight and still provide necessary protections to Alaskan investors. Additionally, most notice filings relating to small projects or investments are eliminated, but investor protections are maintained.

The bill would update enforcement provisions by increasing penalties for those who violate the Alaska Securities Act, allow restitution to be ordered to compensate victims for their losses, and provide for enhanced civil penalties against violators who harm or injure an older Alaskan. Further, the bill would direct that a small portion of civil penalties may be used to provide investor education to Alaskans.

The bill also would modify existing provisions related to the treatment of ANCSA proxy solicitations in the existing chapter, AS 45.55. These limited modifications do not change any substantive law, but instead reorganize the existing laws regulating ANCSA proxy solicitations into their own chapter, as they are best regulated.

I urge your prompt and favorable action on this measure.

Sincerely,



Bill Walker
Governor

Enclosure

Alaska Securities Act CSHB 194\N
House Judiciary Committee
April 4, 2016

OVERVIEW: HB 194 repeals and reenacts the Alaska Securities Act. This Act provides the legal framework for offering or selling securities in Alaska or to Alaskans including provisions for crowdfunding, registration of the securities and salesforce, taking action against those who violate the Act, and providing education about securities and investments to Alaskans, including citizens, entrepreneurs and industry.

Highlights:

- Separates securities statutes from Alaska Native Claims Settlement Act (ANCSA) related statutes to reduce confusion and improve understanding of each Act
- Synthesize with other states' laws to make it easier for businesses, entrepreneurs and investors to understand their rights, responsibilities and opportunities in Alaska. Clarifies disclosure requirements.
- Eliminates filings for all exemptions except crowdfunding
- Allows Alaskans to invest up to \$5,000 in Alaskan businesses that file disclosure materials with the division including information about the business, control persons, salespersons and depository (crowdfunding).
- Deters investment scams using Alaska entities or harming Alaskans through
 - Increased penalties against those who break the law and scam Alaskans
 - Trebled penalties against those who harm older persons
- Facilitates requirements for broker/agent continuing education
- Allows the division to develop and implement investor education initiatives and to accept grants or donation for those specific purposes
 - 1/3 of civil penalties received may be deposited into an Investor Education Fund (IED);
 - Legislature may appropriate IED funds for investor education and training
- Recognize and incorporate current industry terms and standards, as well as update legal citations (removes telegram notice about effective registrations)
- Facilitates use of electronic records and signatures
- Improves statutory organization

Significant Changes to Administrative Enforcement (Division ordered)

- Civil penalties increased from \$25,000 to \$100,000 per violation with no maximum limit
- Penalties may be trebled when the victim is 60 years of age or older
- Division may order the bad actor to pay losses to the investor (restitution)
- Division can bar a bad actor from having an Alaska securities license
- Superior Court can hold a person in violation of a final administrative order in civil contempt, subject to potential \$100,000 fine per violation

Significant Changes to Civil Enforcement

- Provides guidance regarding remedies available including injunctions, asset freezes and receivership
- Treble penalties where victim is age 60 or older
- Order of rescission or disgorgement
- Restitution
- Ordering repayment of prejudgment or post judgment interest
- Civil liability is separated from rescission
- Describes circumstances and remedies where sellers/issuers and purchasers are liable
- Salespeople who violate the act are liable to their clients, who may recover damages

- Statute of limitations is generally three years from the date of sale, unless there is fraud

Significant changes to rescission offers:

- Aggrieved party has 30 days to accept rescission offer
- Offeror must demonstrate ability to pay and deliver the offer in a way that ensures receipt
- Offeror must actually pay as promised

Criminal Enforcement.

- Five year statute of limitations
- For certain provisions, "willful violation" is changed to "knowing violation"
- Knowing violations - Class C felony under AS 12.55.125 and fine increased from \$5,000 to \$100,000
- An unknowing violation is a Class A misdemeanor
- Altering or destroying evidence is a Class C felony

WHY DOES ALASKA NEED TO UPDATE THE SECURITIES LAW NOW?

13-1095-S, Fortune Oil & Gas, Russell Vera and R. Gerald Bailey: On February 3, 2014, the Division issued a Final Cease and Desist Order that included the MAXIMUM civil penalty of \$25,000 against Respondents for selling over \$3.1 million in unregistered limited partnership interests in Texas Oil and Gas ventures, mainly to Alaskan investors.

14-1442-S, Global Arena Capital Corp.: On October 23, 2015, the Division issued a Final Cease and Desist Order that included a civil penalty of \$150,000 against Global Arena and six of its employees for violations of the Alaska Securities Act. Specifically, an employee of Global Arena contacted an elderly Alaska halibut fisherman in poor health and sold him junk bonds, although the investor believed he was buying something like a CD. The investigation revealed that the agents were instructed to offer and sell the junk bonds as "safe investments." The fisherman invested \$27,000 in the bonds, which rapidly lost value. The firm even attempted to sell the investor to purchase other bonds, including one that would not reach maturity until the investor was 119 years old. The investment lost nearly \$16,000. Global Arena was cited for deceptive and misleading representations and offering unsuitable securities. Under the current statute, money received by the state from a court judgment goes into the General Fund. Currently, the Division can only get money back for a defrauded investor with an agreement with a bad actor to pay restitution directly to the investor. In this case, the Division successfully negotiated with one of the Respondents to pay restitution to the investor.

15-1520-S/15-1520-2-S, Garden State Securities/Garland James: Garland James, previously an agent at Global Arena Capital Corp., went to work for Garden State. He cold-called the same elderly Alaskan fleeced by Global and tried to sell him purchase \$82,000 of a risky biotechnology stock. When he made the call, James was not registered as a broker-dealer agent in Alaska. The Division entered into a consent agreement with Garden State to withdraw its registration in Alaska and pay a \$25,000 civil penalty (maximum) for failing to supervise James. The Division issued Temporary Cease and Desist Order against James on March 21, 2016 for unregistered activity and for offering an unsuitable security to the investor, seeking a \$25,000 civil penalty.

12-85-S, Troy Stafford and Patrick Williams: Stafford and Williams formed an Alaska LLC, GS Capital and WS Seafood. Stafford offered an Alaska resident an opportunity to invest \$40,000 in WS Seafood and employment. Stafford also stated, falsely, that another corporation had promised a \$10 million loan to assist the endeavors. The investor invested his money. The deal fell through and the investor never received the promised management role. The Division negotiated a settlement with the Respondents, requiring them to offer rescission to the investor, which Respondents agreed to do and promised to pay, even filing a notice of rescission with the Division. Respondents never paid the investor as promised. The Division issued a Cease and Desist and received a court order to enforce it.



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House Bill 194/CS-N
AK Securities Act; Penalties; Crt. Rules
Brief Sectional Analysis

SECTIONS 1 – 14 (pp. 1-11) include the corresponding changes to statutes that refer to former AS 45.55 provisions that have been moved to AS 45.56.

SECTIONS 15 – 24 (pp. 11-24) modify AS 45.55 as necessary to delete references to statutes that have no bearing on the Alaska Native Claims Settlement Act corporations because of the enactment of AS 45.56.

SECTION 25 (p. 14) Proposed new Chapter AS 45.56

Article 1. General Provisions (pp. 14-15)

Sec. 45.56.105. Securities registration requirement – same as current law (AS 45.55.070). Securities must be registered before offer or sale unless federally covered or specifically exempt from registration.

Article 2. Exemptions from Registration of Securities (pp. 15-29)

Sec. 45.56.205. Exempt securities – generally the same as current law (AS 45.55.900(a)) with a few additions including securities issued by an insurance company; certain options, warrants and rights that are not federal covered securities; certain cooperatives and equipment trust certificates.

Sec. 45.56.210. Exempt transactions – similar to current law AS 45.55.900(b), reorganized with additions reflecting transactions allowed under the Uniform Securities Act of 2002 (USA).

Sec. 45.56.220. Small intrastate securities offerings (referred to as “Crowdfunding”) Allows Alaskans to invest up to \$5,000 per person, per offering, in an Alaskan business. Businesses can raise up to \$1 million per offering and requires a notice filing with the state and certain investor disclosures and protections.

Sec. 45.56.230. Disqualifier – prohibits persons who have been subject to regulatory action or participated in certain crimes from using exemptions from the registration requirement.

Sec. 45.56.240. Waiver and modification – broadens the administrator’s authority to waive or change requirements or conditions for exemptions.

Sec. 45.56.250. Denial, suspension, revocation, condition, or limitation of exemptions – same as current law, although the appeal rights and hearing information is moved to Article 6.

Article 3. Registration of Securities and Notice Filing of Federal Covered Securities. (pp. 29-42)

No significant changes to registration provisions from AS 45.55. Material changes are noted by section.

Sec. 45.56.305. Securities registration by coordination – registration statement must be on file with the Administrator for 20 days unless reduced by regulation. 10 days is the current requirement. References to prompt notice by telegram are deleted.

Sec. 45.56.310. Securities registration by qualification – adds a new requirement that registrants disclose pending litigation that may materially affect the issuer or litigation that is known to be contemplated but not yet filed.

Sec. 45.56.320. Securities registration filings – allows the administrator to set escrow time by regulation or order for certain securities issued to a promoter or to other persons at a price substantially less than the public offering price.

Sec. 45.56.330. Notice filing of federal covered securities – adds the imposition of fees for late filings.

Sec. 45.56.340. Viatical settlement interests – combines current AS 45.55.120 and AS 45.55.905(c) to explain the joint regulation of these interests by the Securities and Insurance statutes.

Sec. 45.56.350. Waiver and modification – administrator allowed waiver authorities are consolidated in this section instead of throughout the chapter.

Sec. 45.56.360. Denial, suspension, and revocation of securities registration – adds requirement to establish regulations explaining what conduct may be fraud upon purchasers; unreasonable discounts, compensation, profits (including options, etc.) and terms that are unfair, unjust or inequitable.

Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers. (pp. 42-66)

Firm, salesperson, and adviser registration (licensing) provisions are reorganized into one article, making it more user-friendly than current law. Notable changes are listed below.

Sec. 45.56.405. Broker-dealer registration requirement and exemptions – includes a new “snowbird exemption” to facilitate ongoing broker-customer relationships with customers who have established a second or other residence and clarifies the number of transactions a broker-dealer may effect annually (3) if not registered in Alaska.

Sec. 45.56.410. Limited registration of Canadian broker-dealers and agents – changed annual renewal to December 31 from December 1 for easier state and firm processing.

Sec. 45.56.420. Registration exemption for merger and acquisition broker – this new provision exempts mergers and acquisitions brokers from registration (licensing) requirements because these transactions are typically between knowing parties with adequate legal counsel and scrutiny. The exemption is not available if the broker actually handles the securities exchanged in the transaction or otherwise represents an issuer or public shell company, or is subject to a Securities and Exchange Commission action.

Sec. 45.56.430. Agent registration requirement and exemptions – the rewrite of this section includes a statement of the types of business covered here instead of in a definitional section.

Sec. 45.56.435. Investment adviser registration requirement and exemptions – includes a new “snowbird” exemption that mirrors the broker-dealer exemption in Sec. 45.56.405.

Sec. 45.56.440. Investment adviser representative registration requirement and exemptions – these provisions mirror the broker-dealer agent requirements in Sec. 45.56.430.

Sec. 45.56.445. Federal covered investment adviser notice filing requirement – these provisions are not separately stated in the current law.

Sec. 45.56.450. Registration by broker-dealer, agent, investment adviser, and investment adviser representative – combines provisions in current statute and regulations and extends the automatic registration from 30 to 45 days unless the registration is denied.

Sec. 45.56.455. Succession and change in registration of broker-dealer or investment adviser – clarifies that an organizational change can generally be completed by amendment instead of a new registration (for instance a sole proprietorship moving to a limited liability company).

Sec. 45.56.460. Termination of employment or association of agent and investment adviser representative and transfer of employment or association – requires the registrant file a notification with the division. Allows for an immediate temporary effective registration with a new firm when there is no new disciplinary information added.

Sec. 45.56.465. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative – extends the effective date of registration withdrawal up to 60 days and allows a revocation proceeding to commence within one year.

Sec. 45.56.470. Filing fees – are established and may be paid through a designee by regulation.

Sec. 45.56.475. Post registration requirements – in addition to current requirements, adds the provision for continuing education by regulation.

Sec. 45.56.480. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration – in addition to current provisions, allows the administrator to bar

registration and includes actions taken by other regulators. Civil penalty for registrants is increased from \$2,500-\$10,000 per violation to up to \$100,000 per violation.

Article 5. Fraud and Liabilities. (pp. 66-69)

Sec. 45.56.505. General fraud – same as current AS 45.55.010.

Sec. 45.56.510. Prohibited conduct in providing investment advice – allows administrator to define prohibited conduct by regulation.

Sec. 45.56.520. Misleading filings – same as current AS 45.55.160.

Sec. 45.56.530. Misrepresentations concerning registration or exemption – same content as AS 45.55.170.

Sec. 45.56.540. Evidentiary burden – same content as AS 45.55.900(c).

Sec. 45.56.550. Filing of sales and advertising literature – same content as AS 45.55.150.

Sec. 45.56.560. Qualified immunity – registered persons are not liable to other registered persons, under state defamation laws, for statements contained in disclosure records required to be filed with the administrator for purposes of licensing and potential discipline. This provision encourages full disclosure to the administrator.

Article 6. Administration and Judicial Review. (pp. 69-89)

Sec. 45.56.605. Administration – adds a new provision allowing the administrator to develop and implement investor education initiatives and accept grants or donations for investor education.

Sec. 45.56.610. Administrative files and opinions – requires the administrator keep records according to a retention schedule and outlines publicly disclosable documents.

Sec. 45.56.615. Public records; confidentiality – clarifies and specifies record confidentiality.

Sec. 45.56.620. Uniformity and cooperation with other agencies – expands opportunity for cooperation and sharing with governmental units, regulatory organizations for collaborative efforts including regulation, enforcement and coordination to reduce the burden of raising capital by small business.

Sec. 45.56.625. Securities investor education and training fund – creates a securities and investor education and training fund within the general fund to provide funds for investor education. 33% of the money received from civil penalties may be used for investor education and training if so appropriated by the legislature.

Sec. 45.56.630. Service of process – same as current AS 45.55.980.

Sec. 45.56.635. Applicability of the chapter – same as current AS 45.55.980.

Sec. 45.56.640. Regulations, forms, orders, interpretative opinions, and hearings – combines existing AS 45.55.950 and 45.55.970 and clarifies that GAAP compliant financial statements may only be required as allowed by federal law.

Sec. 45.56.645. Investigations and subpoenas – similar to existing AS 45.55.910 and allows broader cooperation with other regulators.

Sec. 45.56.650. Administrative enforcement – time period for a respondent to request a hearing after an action is taken is extended from 15 days to 30 days. Civil penalties are increased from \$2,500 for a single violation and \$25,000 for multiple violations to a maximum of \$100,000 for a single violation with no cap for multiple violations. If a victim is an “older person” (a person over 60 years old), the respondent is subject to treble damages. Restitution and actual costs of investigation may be ordered. The administrator may deny the use of securities exemptions under Article 2 and registration (licensing) exemptions under Article 4 if a person violates the Act. The administrator may petition the Superior Court to enforce a final order and the Court may hold a person in contempt for violating an order of the administrator, punishable by up to \$100,000 per violation, in addition to any administrative penalties that were originally assessed.

Sec. 45.56.655. Civil enforcement – the administrator may seek remedies such as asset freezes, an order of rescission, restitution, and civil penalties of up to \$100,000 per violation, and all damages may be trebled if the victim is an “older person” (person over 60 years of age).

Sec. 45.56.660. Civil liability – outlines instances where the seller is liable to the purchaser and potential remedies (actual damages including interest as determined by the court); also describes instances where the buyer may be liable to the seller.

Sec. 45.56.665. Rescission offers – outlines the rescission offer process, including a new requirement that the offeror must demonstrate the ability to pay and then actually pay as promised.

Sec. 45.56.670. Criminal enforcement – knowing violations of the Act and fraud are punishable as class C felonies punishable under AS 12.55.125. Unknowing violations are punishable as class A misdemeanors and fine of not more than \$100,000. Individuals who alter or destroy evidence are guilty of a class C felony and a fine of not more the \$500,000 or both.

Sec. 45.56.675. Judicial review – appellants have 30 days to request review of a final order.

Article 7. Miscellaneous and Additional General Provisions. (pp. 89-100)

Sec. 45.56.710. Reimbursement of expenses incident to examination or investigation – same as AS 45.55.915.

Sec. 45.56.720. Electronic records and signatures – facilitates filing of electronic records and signatures. Consumers must consent and have the option to withdraw such consent.

Sec. 45.56.730. References to federal statutes – a list of all federal statutes referenced in the Act.

Sec. 45.56.740. References to federal agencies – notes that a reference to an agency of the United States is also a reference to a successor agency.

Sec. 45.56.900. Definitions.

- Updates federal citations
- New definitions include:
 - o Disqualifier
 - o Filing
 - o Institutional investor (reflects federal law)
 - o Insurance company
 - o Insured
 - o International Banking Institution
 - o Offer to purchase
 - o Older person – a person that is age 60 or older (from AS 47.65.290(6))
 - o Price amendment
 - o Record
 - o Self-regulatory organization
 - o Sign

Sec. 45.56.995. Short title. This chapter may be cited as the Alaska Securities Act.

SECTIONS 26 – 28 (pp. 101-105). Citations are modified to reflect Chapter 45.56 in place of Chapter 45.55 references; federal law citations are updated.

SECTION 29 (p. 105) – Repeals statutes that are no longer needed in AS 45.55 because they do not apply to Alaska Native Claims Settlement Act corporation proxy solicitations.

SECTION 30 (p. 105) – Amends indirect Court Rules relating to changes in AS 45.56.

SECTION 31 (pp. 105-106) – Allows the department to adopt transition regulations.

SECTION 32 (pp. 106-107) – Amends the law to effect transition and application of AS 45.55 for existing proceedings, existing rights and duties.

SECTION 33 (p. 107) – Reviser’s instruction to rename AS 45.55 to Alaska Native Claims Settlement Act Corporations Proxy Solicitations and Initial Issuance of Stock.

SECTION 34 (p. 107) – Conditional effect of certain provisions upon constitutionally required vote of each house.

SECTION 35 – July 1, 2016 effective date.

Comparison of HB 194 CS N to Existing Alaska Securities Act (AS 45.55)

HB 194/CS-H Proposed AS 45.56	Alaska Securities Act AS 45.55	Comments	Page number
<p>Sections 1-14: Substantive Additions to Other Chapters in the Alaska Statutes</p>		<p>Only certain provisions are highlighted here; most of the changes are numbering updates with the Securities Act moving to 45.56.</p>	
<p>Sections 15-23 Alaska Native Claims Settlement Act Corporations Proxy Solicitations</p> <p>Sec. 15. AS 45.55.138 is amended to read: Sec. 45.55.138. Application to Alaska Native Claims Settlement Act corporations. The initial issue of stock of a corporation organized under Alaska law under [PURSUANT TO] 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act) is not a sale of a security under AS 45.56.105 [AS 45.55.070] and AS 45.56.900(27) [45.55.990(28)].</p> <p>Sec. 16. AS 45.55.139 is amended to read: Sec. 45.55.139. Reports of corporations. A copy of all annual reports, proxies, consents or authorizations, proxy statements, and other materials relating to proxy solicitations distributed, published, or made available by any person to at least 30 Alaska resident shareholders of a corporation organized under Alaska law under 43 U.S.C. 1601 et. seq. (Alaska Native Claims Settlement Act) that has total assets exceeding \$1,000,000 and a class of equity security held of record by 500 or more 3 persons [AND WHICH IS EXEMPTED FROM THE REGISTRATION 4 REQUIREMENTS OF AS 45.55.070 BY 45.55.138], shall be filed with the administrator concurrently with its distribution to shareholders.</p> <p>Sec. 17. AS 45.55.920(a) is amended to read: (a) If it appears</p>		<p>All provisions related to Alaska Native Claims Settlement Act (ANCSA) corporations' proxy solicitations from 45.55 are retained. A few of the provisions had to be modified to remove references to general securities as these provisions now only relate to the ANCSA corporations' proxy solicitations. No substantive changes to these provisions were made, and the ANCSA corporate proxy solicitations will continue to be regulated by the Division as they have been since ANCSA's inception.</p>	<p>11</p>

<p>to the administrator that a person has engaged or is about to engage in an act or practice in violation of a provision of this chapter or regulation or order under this chapter, the administrator may (1) in the public interest [OR FOR THE PROTECTION OF INVESTORS,] issue an order (A) directing the person to cease and desist from continuing the act or practice; (B) directing the person, for a period not to exceed three years, to file the annual reports, proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 with the administrator for examination and review 10 working days before a distribution to shareholders; and (C) voiding the proxies obtained by a person required to file under AS 45.55.139, including their future exercise or actions resulting from their past exercise, if the proxies were solicited by means of an untrue or misleading statement prohibited under AS 45.55.160; or (2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or regulation or order under this chapter, and upon a proper showing, the appropriate remedy must be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.</p> <p>Sec. 18. AS 45.55.920(b) is amended to read: (b) The administrator may issue an order against <u>a person</u> [AN APPLICANT, REGISTERED PERSON, OR OTHER PERSON] who knowingly or intentionally violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$2,500 for a single violation, or not more than \$25,000 for multiple violations, in a single proceeding or a series of related proceedings.</p>			
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<p>Sec. 19. AS 45.55.920(c) is amended to read: (c) For violations not covered by (b) of this section, the administrator may issue an order against <u>a person</u> [AN APPLICANT, REGISTERED PERSON, OR OTHER PERSON] who violates this chapter or a regulation or order of the administrator under this chapter, imposing a civil penalty of not more than \$500 for a single violation, or not more than \$5,000 for multiple violations, in a single proceeding or a series of related proceedings.</p> <p>Sec. 20. AS 45.55.925(a) is amended to read: (a) In addition to the civil penalties assessed under AS 45.55.920, a person who wilfully violates a provision of this chapter except AS 45.55.160 [AS 45.55.030(e), 45.55.040(h), 45.55.075, or 45.55.160], or who wilfully violates a regulation or order under this chapter, or who wilfully violates AS 45.55.160 knowing the statement made to be false or misleading in a material respect or the omission to be misleading by any material respect, upon conviction, is punishable by a fine of not more than \$5,000, or by imprisonment of not less than one year nor more than five years, or both. Upon conviction of an individual for a felony under this chapter, imprisonment for not less than one year is mandatory. However, an individual may not be imprisoned for the violation of a regulation or order if the individual proves that the individual had no knowledge of the regulation or order. An indictment or information may not be returned under this chapter more than five years after the alleged violation.</p> <p>Sec. 21. AS 45.55.935(a) is repealed and reenacted to read: (a) The administrator shall adopt regulations, consistent with the provisions of this chapter and with regulations adopted under AS 44.64.060, governing administrative hearings conducted by the office of administrative hearings (AS 44.64.010) for</p>			
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orders issued under AS 45.55.920.

Sec. 22. AS 45.55.950(a) is amended to read: (a) The administrator may make, adopt, amend, and rescind the regulations, forms, and orders that are necessary to carry out this chapter [,INCLUDING REGULATIONS AND FORMS GOVERNING REGISTRATION STATEMENTS, APPLICATIONS, AND REPORTS, AND DEFINING TERMS, WHETHER OR NOT USED IN THIS CHAPTER INsofar as the definitions are not inconsistent with this chapter. FOR THE PURPOSE OF REGULATIONS AND FORMS, THE ADMINISTRATOR MAY CLASSIFY SECURITIES, PERSONS, AND MATTERS WITHIN THE JURISDICTION OF THE ADMINISTRATOR, AND PRESCRIBE DIFFERENT REQUIEIMENTS FOR DIFFERENT CLASSES].

Sec. 23. AS 45.55.950(b) is amended to read: (b) A regulation, form, or order may not be made, adopted, amended, or rescinded unless the administrator finds that the action is necessary or appropriate in the public interest [OR FOR THE PROTECTION OF INVESTORS AND CONSISTENT WITH THE PURPOSES FAIRLY INTENDED BY THE POLICY AND PROVISIONS OF THIS CHAPTER. IN ADOPTING REGULATIONS AND FORMS THE ADMINISTRATOR MAY COOPERATE WITH THE SECURITIES ADMINISTRATORS OF THE OTHER STATES AND THE SECURITIES AND EXCHANGE COMMISSION WITH A VIEW TO EFFECTUATING THE POLICY OF THIS SECTION TO ACHIEVE MAXIMUM UNIFORMITY IN THE FORM AND CONTENT OF REGISTRATION STATEMENTS, APPLICATIONS, AND REPORTS

WHEREVER PRACTICABLE].			
Sec. 24. AS 45.55 is amended by adding a new section to read: Sec. 45.55.985. Definitions. In this chapter, unless the context otherwise requires, "administrator" means the commissioner of commerce, community, and economic development or a designee of the commissioner.			
Section 25 Proposed AS 45.56	Alaska Securities Act AS 45.55	Comments	Page number
Article 1. General Provisions Sec. 45.56.105. Securities registration requirement. A person may not offer or sell a security in the state unless (1) the security is a federal covered security; (2) is registered under this chapter; or (3) the security or transaction is exempted from registration under AS 45.56.205 – 45.56.250.	45.55.070	Same as 45.55.	14-15
Article 2. Exemptions from the Registration of Securities	See generally 45.55.900		
45.56.205. Exempt securities. The following securities are exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360 and 45.56.550:	See generally 45.55.900(a)		15
(1) a security, including a revenue obligation or a separate security, as defined in 17 C.F.R. Part 230.131 adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933), issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by the United States Congress; or a certificate of deposit for any of the foregoing;	45.55.900(a)(1)	Same as 45.55.	15
(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or by any of its political subdivisions, if	Similar to 45.55.900(a)(2)	Adopted from the Uniform Securities Act (USA); removes redundant specific reference to Canada.	15

the security is recognized as a valid obligation by the issuer, insurer, or guarantor;			
(3) a security issued by and representing, or that will represent an interest in or a direct obligation of, or be guaranteed by, (A) an international banking institution; (B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the business of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the United States Comptroller of Currency under 12 U.S.C. 92a; or (C) any other depository institution, unless, by a regulation or order, the administrator proceeds under AS 45.56.250;	Similar to 45.55.900(a)(3), (6) and (8)	The three exemptions from 45.55.900(a) (3), (6), and (8) are combined into one.	15
(4) a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state;	Similar to 45.55.900(a)(7)		16
(5) a security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is (A) regulated with respect to its rates and charges by the United States or a state; (B) regulated with respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or (C) a public utility holding company registered under 42 U.S.C. 16451 et seq. (Energy Policy Act of 2005) or a subsidiary of the registered holding company within the meaning of that Act;	45.55.900(a)(9)	Same as 45.55.	16

<p>(6) a federal covered security specified in 15 U.S.C. 77r(b)(1) or adopted by rule under that provision or a security listed or approved for listing on another securities market specified by regulation under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to the security; an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934) or an offer or sale of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under 15 U.S.C. 78i(b);</p>	<p>45.55.900(a)(10)</p>	<p>45.55 provides an exemption for securities listed on specific exchanges (NYSE, American Stock Exchange, Chicago Stock Exchange, Pacific Coast Stock Exchange, Chicago Board of Options Exchange or other as designated by order of the Administrator). NSMIA expanded the definition of covered securities to additional exchanges, so the new language covers these as well.</p> <p>This exemption addresses specified options, warrants, and rights that are not federal covered securities under the Securities Act of 1933, but have generally always been exempted under the uniform securities acts (both 1956 and 2002).</p> <p>The provision also makes clear that any offer or sale of the underlying security that occurs as a result of the offer or sale of an option or other derivative security exempted under this provision or as the result of the exercise of the option or other derivative security, is covered by the exemption if the option met the terms of the exemption at the time such derivative security was written (that is, sold) or issued. Any transaction in an underlying security that results from the offer, sale, or exercise of any derivative security issued by a registered clearing agency and traded on a national securities exchange or association is exempt if the derivative security when written was exempt under 45.56. This language is consistent with federal case law (see, e.g. H. Kook & Co., Inc. v. Scheinman, Hochstin & Trotta, Inc., 414 F.2d 93 (2d Cir. 1969)).</p>	<p>16</p>
<p>(7) a security issued by a person organized and operated</p>	<p>Similar to</p>	<p>This exemption does not mandate any filing, but</p>	<p>17</p>

<p>exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under 15 U.S.C. 80a-3(c)(10)(B), except that, with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by the person, a regulation may be adopted under this chapter limiting the availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying, with respect to (B) of this paragraph, the scope of the exemption and the grounds for denial or suspension, and requiring an issuer</p> <p>(A) to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the administrator does not disallow the exemption within the period established by the regulation;</p> <p>(B) to file a request for exemption authorization for which a regulation adopted under this chapter may specify the</p> <p>(i) scope of the exemption;</p> <p>(ii) requirement of an offering statement;</p> <p>(iii) filing of sales and advertising literature;</p> <p>(iv) filing of consent to service of process complying with AS 45.56.630, and</p> <p>(v) grounds for denial or suspension of the exemption; or</p> <p>(C) to register under AS 45.56.310;</p>	<p>45.55.900(a)(11)</p>	<p>adds statutory authority to allow the administrator to require either a notice filing, request for exemption, or registration by regulation or order if it deems necessary. The nonprofit exemption can be of concern due to its potential use by fraudsters and potential affinity fraud.</p>	
<p>(8) a member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative</p>	<p>None.</p>	<p>This provision exempts securities issued by cooperatives from the registration requirement. The exemption is not available if the securities are offered or sold to the public generally.</p>	<p>17</p>

laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative;			
(9) an equipment trust certificate with respect to equipment leased or conditionally sold to a person if any security issued by the person would be exempt under this section or would be a federal covered security under 15 U.S.C. 77r(b)(1); and	None.	Provides an exception relating to equipment lease financing through leveraged leases, conditional sales and other devices. The premise is that if the securities of the person using such a financing device would be exempt under some other paragraph, the security used to acquire the property in question is also exempt.	18
(10) shares of membership stock in the Alaska Commercial Fishing and Agriculture Bank under AS 44.81.010, and other securities issued by that bank to members or in connection with loans to members.	45.55.900(a)(12)	Same as 45.55.	18
		Additional Comments on Exempt Securities 45.55.900(a)(10) is deleted and not carried over. These securities are exempt under federal law by virtue of the National Securities Markets Improvement Act of 1996 (NSMIA), Public Law 104-290, 1996.	
Sec. 45.56.210. Exempt transactions. The following transactions are exempt from the requirements of AS 45.56.105, 45.56.305 - 45.56.360 and 45.56.550:	See generally 45.55.900(b)		18
(1) an isolated nonissuer transaction, whether effected by or through a broker-dealer or not, if the seller is not a promoter or controlling person as the administrator may define by regulation or order;	45.55.900(b)(9)	45.56 removes the waiver process under 45.55 which allows for the seller to request a waiver for the requirement that the seller not be a promoter or controlling person. "Controlling person" is currently defined in regulation as a person who owns more than 50% of outstanding shares of a person. Formerly, a controlling person was one who owned 10%.	18
(2) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter and a resale transaction by a sponsor of a unit investment trust	See generally 45.55.900(b)(17)	This section is an update of the "securities manual" exemption (45.55.900(b)(17)) that was present under 45.55. The update in the USA was	18

<p>registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940) in a security of a class that has been outstanding in the hands of the public for at least 90 days if, at the date of the transaction,</p> <p>(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that does not have a specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with or an acquisition of an unidentified person;</p> <p>(B) the security is sold at a price reasonably related to its current market price;</p> <p>(C) the security does not constitute the whole or part of an unsold allotment to or a subscription or participation by the broker-dealer as an underwriter of the security or a redistribution;</p> <p>(D) a nationally recognized securities manual or its electronic equivalent designated by a regulation adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains</p> <p>(i) a description of the business and operations of the issuer;</p> <p>(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;</p> <p>(iii) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and</p> <p>(iv) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a</p>		<p>proposed by the North American Securities Administrators Association (NASAA) and the section generally follows the NASAA amendment.</p> <p>Note: Rule 419 issued under the Securities Act of 1933 defines a "blank check company" to be a company that "is a development stage company that has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person." A "blind pool" is similar and would involve an investment in a blank check or other entity with no identified business plan or purpose. A "shell company" is also similar and would involve an entity, which, to date, has no significant business assets, plan, or purpose.</p>	
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<p>pro forma income statement; and (E) any one of the following requirements is met: (i) the issuer of the security has a class of equity securities listed on a national securities exchange registered under 15 U.S.C. 78f or designated for trading on the National Association of Securities Dealers Automated Quotation System; (ii) the issuer of the security is a unit investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940); (iii) the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or (iv) the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization;</p>			
<p>(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;</p>	None	This addition reflects a compromise between USA drafters and NASAA proposal (which would have required a manual exemption for specified foreign nonissuer transactions) by limiting the exemption to margin securities only, which are subject to heightened regulation by the Federal Reserve System.	20
<p>(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of 15 U.S.C. 78m or 15 U.S.C. 78o (Securities Exchange Act of 1934);</p>	None.	This provision allows nonissuer secondary trading in the securities of issuers subject to reporting requirements of the 1934 Act, which bars immediate secondary trading in nonregistered IPOs. This exemption is limited to guarantors only because if the issuer is a reporting company, the transaction is preempted from state regulation under NSMIA.	20

<p>(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that</p> <p>(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or</p> <p>(B) has a fixed maturity or a fixed interest or dividend if</p> <p>(i) a default has not occurred during the current fiscal year or within the three previous fiscal years or, if the issuer has been in business less than three fiscal years, during the existence of the issuer and any predecessor in the payment of principal, interest, or dividends on the security; and</p> <p>(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not, within the previous 12 months, been a blank check, blind pool, or shell company that does not have a specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with or an acquisition of an unidentified person;</p>	<p>See generally 45.55.900(b)(17)</p>	<p>Should be read with 45.56.210(2) in the bill (explains which securities transactions would be considered “exempt under this chapter”)</p> <p>Ratings organizations include Moody’s and Standard and Poor’s and covers ratings from AAA-BBB.</p> <p>Section includes both debt securities with fixed maturity or a fixed interest rate and preferred stock with fixed dividend provisions.</p>	<p>20</p>
<p>(6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;</p>	<p>45.55.900(b)(10)</p>	<p>USA removes the language at the end of 45.55.900(b)(10) which stated: “however, the administrator may by regulation require that the customer acknowledge on a specified form that the sale was unsolicited, and that a signed copy of each form be preserved by the broker-dealer for a specified period.” This requirement is preempted by NSMIA for federal covered securities.</p>	<p>20</p>
<p>(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;</p>	<p>45.55.900(11)</p>	<p>Same as 45.55.</p>	<p>21</p>
<p>(8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;</p>	<p>None.</p>	<p>USA added because of a recognition that federal covered investment advisers are sophisticated financial professionals capable of determining the merits of a security and do not require the</p>	<p>21</p>

		protections provided by requiring state registration.	
(9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in exchange for one or more bona fide outstanding securities, claims, or property interests and partly for cash if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing;	None.	From the USA. Provides a state counterpart to the specified exchange transaction exemption in section 3(a)(10) of the Securities Act of 1933. Commonly referred to as a “fairness hearing.”	21
(10) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;	45.55.900(b)(1)	Same as 45.55.	21
(11) a transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidence of indebtedness, secured under those documents, is offered and sold as a unit;	45.55.900(b)(2)	Same as 45.55.	21
(12) a transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;	45.55.900(b)(3)	Same as 45.55.	21
(13) a sale or offer to sell to (A) an institutional investor; (B) a federal covered investment adviser; or (C) any other person exempted by a regulation adopted or order issued under this chapter;	See generally 45.55.900(b)(4)	The USA language contains more inclusive language than 45.55. These are sophisticated investors which generally require less protection. Note: (B) is limited to transactions for the account of the adviser and not transactions on behalf of others by the adviser.	21
(14) a sale or offer to sell securities by or on behalf of an issuer if the transaction is part of a single issue in which (A) not more than 25 purchasers in this state during any 12 consecutive months, other than a person designated in (13)	45.55.900(b)(5)(B)	Identical language to (b)(5)(B) Note (b)(5)(A), which was limited to 10 purchasers and did not include the provision that prospective buyers receive information sufficient to make an	22

<p>of this section regardless of whether the seller or any of the buyers is then present in this state;</p> <p>(B) a general solicitation or general advertising is not made in connection with the sale of or offer to sell the securities;</p> <p>(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state;</p> <p>(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in (13) of this section, are purchasing for investment and not with a view to distribution;</p> <p>(E) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from this chapter; and</p> <p>(F) before a sale, each prospective buyer is furnished information that is sufficient to make an informed investment decision, which information shall be furnished to the administrator upon request; in this subparagraph, “information that is sufficient to make an informed investment decision” includes a business plan, an income and expense statement, a balance sheet, a statement of risks, and a disclosure of any significant negative factors that may affect the outcome of the investment.</p>		<p>informed investment decision (but otherwise had identical requirements), has been eliminated under 45.56.</p>	
<p>(15) a transaction under an offer to existing security holders of the issuer, including persons that, at the date of the transaction, are holders of convertible securities, options, or warrants if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;</p>	<p>45.55.900(b)(7)</p>	<p>45.55 required that a notice filing be made if there is a commission paid associated with these transactions. The new language simply prohibits the payment of commissions.</p>	<p>22</p>
<p>(16) an offer to sell, but not a sale of, a security not exempt</p>	<p>45.55.900(b)(8)</p>	<p>(b)(8) is split into two exemptions. (16) is for</p>	<p>23</p>

<p>from registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933) if</p> <p>(A) a registration, offering statement, or similar record as required under 15 U.S.C. 77a - 77aa (Securities Act of 1933) has been filed but is not effective, or the offer is made in compliance with 17 C.F.R. Part 230.165, adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933); and</p> <p>(B) a stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;</p>		<p>securities not exempt under the 33 Act and (17) is for securities that are exempt. Both only exempt offers, but not sales, and the registration statement must have been filed with the administrator. A stop order must not have been issued.</p>	
<p>(17) an offer to sell, but not a sale of, a security exempt from registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933) if</p> <p>(A) a registration statement has been filed under this chapter but is not effective;</p> <p>(B) a solicitation of interest is provided in a record to offerees in compliance with a regulation adopted by the administrator under this chapter; and</p> <p>(C) a stop order of which the offeror is aware has not been issued by the administrator under this chapter, and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;</p>	<p>45.55.900(b)(8)</p>	<p>(b)(8) is split into two exemptions. (16) is for securities not exempt under the 33 Act and (17) is for securities that are exempt. Both only exempt offers, but not sales, and the registration statement must have been filed with the administrator. A stop order must not have been issued.</p>	<p>23</p>
<p>(18) a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer or its parent or subsidiary and the other person or its parent or subsidiary are parties;</p>	<p>See generally 45.55.900(b)(14)</p>	<p>Expands prior language on mergers. Because most merger and similar transactions require shareholder approval and shareholders often have appraisal rights if they choose to dissent, the potential for abuse is less than in an offering of securities for cash. When appropriate, the administrator can deny, condition, limit or revoke this exemption under 45.56.250.</p>	<p>23</p>
<p>(19) a rescission offer, sale, or purchase under AS 45.56.665</p>	<p>45.55.900(b)(19)</p>	<p>Same as 45.55.</p>	<p>23</p>

<p>(20) an offer to sell or sale of a security to a person not a resident of this state and not present in the state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;</p>	<p>None.</p>	<p>A 3rd circuit court case, A.S. Goldmen & Co., Inc. v. New Jersey Bur. of Sec., 163 F.3d 780 (3d Cir. 1999), held that under the United States Constitution’s Commerce Clause a State could authorize a securities administrator to prevent a broker-dealer from selling securities from a State to purchasers in other States where purchase of the securities was authorized. The concluding phrase “and is not part of an unlawful plan or scheme to evade this [Act]” is intended to preclude reliance on this exemption by boiler rooms and others engaged in illegal activities. This exemption also does not affect the administrator’s ability to bring actions under the licensing or enforcement provisions of the Act.</p>	<p>23</p>
<p>(21) employees' stock purchase, savings, option, profit-sharing, pension, or similar benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, the issuer's parent, the issuer's majority-owned subsidiary, or the majority-owned subsidiary of the issuer's parent for the participation of their employees, including offers to sell or sales of the securities to</p> <p>(A) directors, general partners, trustees, managers, and members if the issuer is a limited liability company, if the issuer is a business trust, officers, consultants, and advisors;</p> <p>(B) family members who acquire the securities from those persons through gifts or domestic relations orders;</p> <p>(C) former employees, directors, general partners, trustees, officers, consultants, limited liability managers or members, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and</p>	<p>AS 45.55.900(a)(5)</p>	<p>These moved from exempt securities to exempt transactions. Employees’ interests in plans subject to ERISA are not securities under the definitions (see 45.56.90(30)). For interests in benefit plans that are securities (non-ERISA), a transactional exemption is now provided.</p>	<p>24</p>

<p>(D) insurance agents who are exclusive insurance agents of the issuer or the issuer's subsidiary or parent or who derive more than 50 percent of their annual income from those organizations;</p>			
<p>(22) a transaction involving (A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock; (B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in exchange for one or more outstanding securities, claims, or property interests and partly for cash; or (C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with 17 C.F.R. Part 230.162, adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933);</p>	<p>(A) = 45.55.900(b)(13) (B) = 45.55.900 (b)(12) (C) = None.</p>	<p>(A) and (B) are carried over from 45.55. (C) is a new provision, corresponding to Rule 162 under the Securities Act of 1933, which allows the offeror in a stock exchange offer to solicit tenders of securities before a registration statement is effective as long as no securities are purchased until the registration statement is effective and the tender offer has expired.</p>	<p>24</p>
<p>(23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by a regulation adopted or order issued under this chapter; the issuer has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by a regulation adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed</p>	<p>None.</p>	<p>This exemption relates to nonissuer transactions involving specified foreign issuer securities traded on designated securities exchanges. The exemption expressly covers Toronto Stock Exchange issuers that are public reporting companies under Canadian securities law and meet the 180 day continuous reporting requirement. In conformance with the North American Free Trade Agreement (NAFTA) and General Agreement on Trade in Services (GATS), the exemption separately provides authority for the administrator to designate by rule or order other specific foreign</p>	<p>25</p>

<p>security or is a warrant or right to purchase or subscribe to any of the foregoing; for purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction, and TSX, Inc., formerly known as the Toronto Stock Exchange, Inc., is a designated securities exchange; after an administrative hearing in compliance with AS 45.56.650(c), the administrator, by a regulation adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors;</p>		<p>jurisdictions and their trading exchanges upon an adequate showing. The exemption also provides authority for an administrator to revoke any designation if necessary or appropriate in the public interest and for the protection of investors.</p>	
<p>(24) sales by an issuer to the buyer of an enterprise or a business and the assets and liabilities of the enterprise or business if</p> <p>(A) the transfer of stock to the buyer is solely incidental to the sale of the enterprise or business and its assets and liabilities;</p> <p>(B) the seller provides full access to the buyer the books and records of the enterprise or business; and</p> <p>(C) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;</p>	<p>45.55.900(b)(5)(D)</p>	<p>Same as 45.55.</p>	<p>25</p>
<p>(25) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles, or leases, or in payments out of production under the rights, titles, or leases, if the purchasers</p> <p>(A) are or have been during the preceding two years engaged primarily in the business of exploring for, mining, producing, refining oil, gas, or minerals; or</p> <p>(B) have been found by the administrator upon written application to be substantially engaged in the business of exploring for, mining, producing, or refining oil, gas, or</p>	<p>45.55.900(b)(16)</p>	<p>Same as 45.55.</p>	<p>26</p>

minerals so as not to require the protection provided by this chapter;			
(26) a transaction involving only family members who are related, including related by adoption, within the fourth degree of affinity or consanguinity, or involving only those family members and the corporations, partnerships, limited liability companies, limited partnerships, limited liability partnerships, associations, joint-stock companies, or trusts that are organized, formed, or created by those family members or at the direction of those family members; or	45.55.900(b)(20)	Same as 45.55.	26
(27) a transaction relating to a security that is not part of an initial issue of stock covered by AS 45.55.138, but that is issued by a corporation organized under state law in accordance with 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), if the corporation qualifies for exempt status under 43 U.S.C.1625(a).	45.55.900(b)(21)	New exemption added by HB 308 in 2014. Clarifies that stock issued by ANCSA corporations in accordance with federal law is exempt.	26
Sec. 45.56.220. Small intrastate securities offerings. (a) An offer or sale of securities conducted solely in this state, to a person who has established residency in this state, by an issuer in a transaction that meets the requirements of this section is exempted from the requirements of AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550 and is subject to the following limitations: (1) the issuer of the security shall be a for-profit corporation or other for-profit entity, or business cooperative with its principal place of business in this state and licensed with the administrator; (2) the transaction shall meet the requirements of the federal exemption for intrastate offerings in 15 U.S.C. 77c(a)(11) (Securities Act of 1933) and 17 C.F.R. Part 230.147; the securities must be offered to and sold only to persons who have established residency in this state at the time of purchase; before any offer or sale pursuant to this exemption, the seller shall obtain documentary evidence	None	This is the “Crowdfunding Exemption.” Highlights: (1) issuer must be AK business (2) purchasers must be AK residents, and issuer must have some evidence proving residency (3) total offering is capped at \$1 million (4) issuers can collect no more than \$5,000 per purchaser (6) No commissions may be paid in connection with the sale of these securities unless salespeople are licensed in AK (8) Notice filing required (10 days before general solicitation or within 15 days of first sale if no general solicitation) (8) Notice filing must include information on the issuer, control persons, salespersons, and the bank where the funds will be deposited	26

<p>from each prospective purchaser that provides the seller with a reasonable basis to believe such investor has established residency in this state;</p> <p>(3) the sum of all cash and other consideration to be received for all sales of the security in reliance upon this exemption shall not exceed \$1,000,000, less the aggregate amount received for all sales of securities by the issuer within the 12 months before the first offer or sale made in reliance upon this exemption;</p> <p>(4) the issuer shall not accept more than \$5,000 from any single purchaser unless the purchaser is an accredited investor as defined by 17 C.F.R. Part 230.501;</p> <p>(5) the issuer must reasonably believe that all purchasers of securities are purchasing for investment and not for sale in connection with a distribution of the security;</p> <p>(6) a commission or remuneration shall not be paid or given, directly or indirectly, for any person's participation in the offer or sale of securities for the issuer unless the person is registered as a broker-dealer, agent, investment adviser representative, or investment adviser under AS 45.56.405 - 45.56.440;</p> <p>(7) all funds received from investors shall be deposited into a bank or depository institution authorized to do business in Alaska, and all funds shall be used in accordance with representations made to investors;</p> <p>(8) not less than 10 days before the use of any general solicitation or within 15 days after the first sale of the security pursuant to this exemption, provided no general solicitation has been used prior to such sale, whichever occurs first, the issuer shall provide a notice to the administrator as prescribed in regulations for this section; the notice shall specify that the issuer is conducting an offering in reliance upon this exemption and shall contain the names and addresses of</p>		<p>(10) Issuer must disclose that securities are not able to be resold unless exempt or registered (are illiquid)</p> <p>(11) Purchaser must acknowledge risk of investment</p> <p>Bad actor disqualifier from 45.56.230 applies.</p> <p>Disclosures required under 17 CFR 230.147(f):</p> <p>(1) The issuer shall, in connection with any securities sold by it pursuant to this rule:</p> <p>(i) Place a legend on the certificate or other document evidencing the security stating that the securities have not been registered under the Act and setting forth the limitations on resale contained in paragraph (e) of this section;</p> <p>(ii) Issue stop transfer instructions to the issuer's transfer agent, if any, with respect to the securities, or, if the issuer transfers its own securities make a notation in the appropriate records of the issuer; and</p> <p>(iii) Obtain a written representation from each purchaser as to his residence.</p> <p>(2) The issuer shall, in connection with the issuance of new certificates for any of the securities that are part of the same issue that are presented for transfer during the time period specified in paragraph (e), take the steps required by paragraphs (f)(1)(i) and (ii) of this section.</p> <p>(3) The issuer shall, in connection with any offers, offers to sell, offers for sale or sales by it pursuant to this rule, disclose, in writing, the limitations on resale contained in paragraph (e) and the provisions of paragraphs (f)(1)(i) and (ii) and</p>	
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<p>(A) the issuer;</p> <p>(B) officers, directors, and any control person of the issuer;</p> <p>(C) all persons who will be involved in the offer or sale of securities on behalf of the issuer; and</p> <p>(D) the bank or other depository institution in which investor funds will be deposited.</p> <p>(9) the issuer shall not be, either before or as a result of the offering;</p> <p>(A) an investment company as defined by 15 U.S.C. 80a-1-80a-64 (Investment Company Act of 1940), or subject to the reporting requirements of 15 U.S.C. 78m or 15 U.S.C. 78o (Securities Exchange Act of 1934); or</p> <p>(B) a broker-dealer, agent, investment adviser representative, or investment adviser as defined by AS 45.56.401 - 45.56.406;</p> <p>(10) the issuer shall inform all purchasers that the securities have not been registered under AS 45.56.105, 45.56.305 - 45.56.360, and 45.56.550, and therefore, cannot be resold unless the securities are registered or qualify for an exemption from registration under AS 45.56.205, AS 45.56.210, or 45.56.240. In addition, the issuer shall make the disclosures required by 17 C.F.R. Part 230.147(f);</p> <p>(11) the issuer shall require all purchasers to sign the following statement at the time of sale: "I acknowledge that I am investing in a high-risk, speculative business venture, that I may lose all of my investment, and that I can afford the loss of my investment."</p> <p>(12) this exemption shall not be used in conjunction with any other exemption under AS 45.56 except the exemption to institutional investors under AS 45.56.405 and 45.56.435 and for offers and sales to controlling persons of the issuer. Sales to controlling persons shall not count toward the limitation in AS 45.56.220(a)(3).</p> <p>(13) nothing in this exemption shall be construed to alleviate any person from the anti-fraud provisions under AS</p>		<p>paragraph (f)(2) of this section.</p>	
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<p>45.56.505 – AS 45.56.560, nor shall such exemption be construed to provide relief from any other provisions of AS 45.56 other than as expressly stated;</p> <p>(14) in this section, “residency” has the meaning given in AS 01.10.055.</p> <p>(b) The administrator may by order deny or revoke the exemption specified in this section with respect to a specific security if it finds that the sale of such security would work or tend to work a fraud upon the purchasers thereof. No order under this subsection may operate retroactively. No person may be considered to have violated this article by reason of any offer or sale effected after the entry of an order under this subsection if the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could have not known of the order. In any proceeding under AS 45.56, the burden of proving an exemption from a definition is upon the person claiming the exemption.</p> <p>(c) Any individual, corporation, partnership, or association who makes application to the administrator for any exemption from full registration under AS 45.56.220 shall be assessed a filing fee as prescribed in regulations for this section.</p>			
<p>Sec. 45.56.230. Disqualifier. A security or transaction exempted from registration under AS 45.56.205 - 45.56.250 shall not be available if the issuer, or any of its officers, controlling people or promoters is subject to a disqualifier enumerated in 15 U.S.C. 78c(a)(39) (Dodd-Frank Wall Street Reform and Consumer Protection Act) as of the date of the transaction or offer.</p>	<p>None, though bad actor provisions applied to notice filings under Reg D and exemptions under 45.55.900(b)(18)</p>	<p>Disqualifiers under Dodd Frank include:</p> <ul style="list-style-type: none"> - Expulsion or suspension from self-regulatory organization (SRO) - Subject to SEC, CFTC, or similar regulatory authority (including foreign) order denying, suspending, or revoking registration as a broker-dealer (or similar) - association with a person subject to order described above - commission of certain crimes including securities fraud, dishonesty crimes (bribery, perjury, etc.), or 	<p>29</p>

		<p>any felony within past 10 years</p> <ul style="list-style-type: none"> - willful violation of the Securities Act of 1933, the Investment Advisers Act of 1940, Investment Company Act of 1940 or related rules - subject to an order finding willful false or misleading filing with SRO - subject to order by state securities or banking commission barring a person from association with entity regulated by the state or from engaging in the business of securities, insurance, banking - subject to final order by state based on violations of law prohibiting fraudulent, manipulative or deceptive conduct. 	
<p>Sec. 45.56.240. Waiver and modification. For any security or transaction or any type of security or transaction, the administrator may by order, waive, withdraw, or modify any of the requirements or conditions of AS 45.56.205-45.56.250.</p>	<p>See generally, 45.55.900(h)</p>	<p>45.55.900(h) had the same language, but limited only to (b)(5) exemptions. The 45.55 language was retained and modified rather than adopting USA language.</p>	<p>29</p>
<p>Sec. 45.56.250. Denial, suspension, revocation, condition, or limitation of exemptions. (a) Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under AS 45.56.205(3)(C), (7), or (8) or 45.56.210 or 45.56.220, or an exemption or waiver created under AS 45.56.240 with respect to a specific security, transaction, or offer. An order under this subsection only may be issued under the procedures in AS 45.56.360(d) or 45.56.650 and only prospectively.</p> <p>(b) A person does not violate AS 45.56.105, 45.56.305, 45.56.310, 45.56.320, 45.56.340, 45.56.360, 45.56.550, or 45.56.665 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care, could not have known, of the order.</p>	<p>See generally, 45.55.900(d)</p>	<p>Prior language included the specific rights of appeal and hearing (even though identical to the appeal rights listed in enforcement provisions). The new language refers to the procedures outlined in Article 6 rather than restating them.</p>	<p>29</p>

Article 3. Registration of Securities and Notice Filing of Federal Covered Securities.	Article 3. Registration of Securities		
<p>Sec. 45.56.305. Securities registration by coordination.</p> <p>(a) A security for which a registration statement has been filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) in connection with the same offering may be registered by coordination under this section.</p> <p>(b) A registration statement and accompanying records under this section must contain or be accompanied by the following records, in addition to the information specified in AS 45.56.320, and a consent to service of process complying with AS 45.56.630:</p> <p>(1) a copy of the latest form of prospectus filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933);</p> <p>(2) if the administrator requires, a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any other information or any other records filed by the issuer under 15 U.S.C. 77a - 77aa (Securities Act of 1933) requested by the administrator; and a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by a regulation adopted or order issued under this chapter; and</p> <p>(3) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.</p> <p>(c) A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all the following conditions are satisfied:</p> <p>(1) a stop order under (d) of this section or AS 45.56.360 or</p>	45.55.090	<p>Former (d) is split into (d) and (e).</p> <p>Only material change is in (c)(2), which requires the registration statement to be on file for 20 days, or less by regulation. Prior language required only 10 days.</p> <p>References to prompt notice by telegram were deleted.</p>	29

<p>issued by the Securities and Exchange Commission is not in effect, and a proceeding is not pending against the issuer under AS 45.56.440; and</p> <p>(2) the registration statement has been on file for at least 20 days or a shorter period provided by a regulation adopted or order issued under this chapter.</p> <p>(d) The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telephone or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirements of this subsection, the stop order is void as of the date of its issuance.</p> <p>(e) If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telephone or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under AS 45.56.360. The notice by the administrator does not preclude the institution of a proceeding under AS 45.56.360.</p>			
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<p>Sec. 45.56.310. Securities registration by qualification. (a) A security may be registered by qualification under this section.</p> <p>(b) A registration statement under this section must contain the information or records specified in AS 45.56.320, a consent to service of process complying with AS 45.56.630, and the following information or records:</p> <p>(1) with respect to the issuer and any significant subsidiary, the name, address, and form of organization of the issuer and subsidiary; the state or foreign jurisdiction and date of organization of the issuer and subsidiary; the general character and location of the business of the issuer and subsidiary; a description of the physical properties and equipment of the issuer and subsidiary; and a statement of the general competitive conditions in the industry or business in which the issuer and subsidiary are or will be engaged;</p> <p>(2) with respect to each director and officer of the issuer and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;</p> <p>(3) with respect to persons covered by (2) of this subsection, the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;</p>	<p>45.55.100</p>	<p>Identical provisions, except 45.56.310(12) adds a requirement that filers disclose pending litigation that materially affects the issuer's business or assets or any litigation, action or proceeding known to be contemplated.</p>	<p>31</p>
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(4) with respect to a person owning of record or owning beneficially, if known, 10 percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in (2) of this subsection, other than the person's occupation;

(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in (2) of this subsection, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;

(7) the capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which the offering price is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made

<p>if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made, or the proposed form of an underwriting or selling group agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered other than through an underwriter;</p> <p>(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, other than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;</p> <p>(10) a description of any stock options or other security options outstanding or to be created in connection with the offering, and the amount of those options held or to be held</p>			
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<p>by each person required to be named in (2), (4), (5), (6), or (8) of this subsection and by any person that holds or will hold 10 percent or more in the aggregate of those options;</p> <p>(11) the dates of, parties to, and general effect, concisely stated, of each managerial or other material contract made or to be made other than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of each contract;</p> <p>(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects the issuer's business or assets and any litigation, action, or proceeding known to be contemplated;</p> <p>(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date of the registration statement to be used in connection with the offering and any solicitation of interest used in compliance with AS 45.56.210(17)(B);</p> <p>(14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;</p> <p>(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, that states whether the security when sold will be validly issued, fully paid, nonassessable and, if a debt security, a binding obligation of the issuer;</p> <p>(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person if the person is named as having prepared or certified a report or valuation, other than an official record, that is</p>			
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<p>public, that is used in connection with the registration statement;</p> <p>(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and</p> <p>(18) any additional information or records required by a regulation adopted or order issued under this chapter.</p> <p>(c) A registration statement under this section becomes effective when the administrator so orders.</p> <p>(d) A regulation adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in (b) of this section be sent or given to each person to which an offer is made, before or concurrently, with the earliest of</p> <p>(1) the first offer made in a record to the person other than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;</p> <p>(2) the confirmation of a sale made by or for the account of the person;</p> <p>(3) payment under the sale; or</p> <p>(4) delivery of the security under the sale.</p>			
<p>Sec. 45.56.320. Securities registration filings. (a) A</p>	<p>See generally 45.55.110</p>	<p>Tracks fairly closely to 45.55.</p>	<p>35</p>

registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) A person filing a registration statement shall pay a filing fee established by a regulation adopted under this chapter and consent to service of process as described under AS 45.56.630.

(c) A registration statement filed under AS 45.56.305 or 45.56.310 must specify

- (1) the amount of securities to be offered in the state;
- (2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and
- (3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(d) A record filed under this chapter or former AS 45.55 within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) In the case of a nonissuer distribution, information or a record may not be required under (i) of this section or AS 45.56.310 unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) A regulation adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow and that the proceeds from the sale of the registered security in the state be impounded

Moves provision allowing administrator to permit omission of a required document for a registration or notice filing to 45.56.350.

Securities issued to the promoter for consideration substantially less than public offering price issued within previous five years can be held in escrow per regulation or order (Change in USA; is three years in 45.55).

Signed or conformed copy of contracts may be required to be filed or preserved for up to five years per regulation or order (Change in USA; is three years in 45.55).

<p>until the issuer receives a specified amount from the sale of the security, either in the state or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by a regulation adopted or order issued under this chapter, but the administrator may not reject a depository institution solely because of its location in another state.</p> <p>(g) A regulation adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the regulation or order, not to exceed five years.</p> <p>(h) Except while a stop order is in effect under AS 45.56.360, a registration statement is effective for one year after the effective date of the registration statement or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after the effective date of the registration statement. A registration statement may be withdrawn only with the approval of the administrator.</p> <p>(i) While a registration statement is effective, a regulation adopted or order issued under this chapter may require the</p>			
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<p>person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.</p> <p>(j) A registration statement may be amended after the effective date of the registration statement. The posteffective amendment becomes effective when the administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee established by a regulation adopted under this chapter. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.</p>			
<p>Sec. 45.56.330. Notice filing of federal covered securities. (a) With respect to a federal covered security, as defined in 15 U.S.C. 77r(b), that is not otherwise exempt under AS 45.56.205 - 45.56.240, a regulation adopted or order issued under this chapter may require the filing of any or all of the following records:</p> <p>(1) before the initial offer of a federal covered security in the state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933) and a consent to service of process complying with AS 45.56.630 signed by the issuer and the payment of a fee established in a regulation adopted under this chapter;</p> <p>(2) after the initial offer of the federal covered security in the state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933); and</p> <p>(3) to the extent necessary or appropriate to compute fees, a</p>	45.55.075	Allows for late fees for reg D notice filings.	37

<p>report of the value of the federal covered securities sold or offered to persons present in the state if the sales data are not included in records filed with the Securities and Exchange Commission and payment of a fee established in a regulation adopted under this chapter.</p> <p>(b) A notice filing under (a) of this section is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by a regulation adopted or order issued under this chapter to be filed and by paying a renewal fee established in a regulation adopted under this chapter. A previously filed consent to service of process complying with AS 45.56.630 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.</p> <p>(c) With respect to a security that is a federal covered security under 15 U.S.C. 77r(b)(4)(D) (Securities Act of 1933), a regulation adopted under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as adopted by the Securities and Exchange Commission, and a consent to service of process complying with AS 45.56.630 signed by the issuer not later than 15 days after the first sale of the federal covered security in the state and the payment of a fee established in a regulation adopted under this chapter; and the payment of a fee established in a regulation adopted under this chapter for any late filing.</p> <p>(d) Except with respect to a federal security under 15 U.S.C. 77r(b)(1), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer</p>			
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<p>and sale of a federal covered security in the state. If the deficiency is corrected, the stop order is void as of the time of its issuance and a penalty may not be imposed by the administrator.</p>			
<p>Sec. 45.56.340. Viatical settlement interests. (a) Before the sale of a viatical settlement interest, an issuer shall provide a prospective buyer with information that is sufficient to make an informed investment decision. The issuer shall also provide the information to the administrator upon request if the issuer is not otherwise required to file the information with the administrator. In this subsection, "information that is sufficient to make an informed investment decision" includes state-mandated disclosure forms and a disclosure of any significant factors that may affect the outcome of the investment.</p> <p>(b) Except as may be required in the course of conduct of the responsibilities of the administrator, an issuer of a viatical settlement interest may not disclose to another person the identity of the viator or insured of the insurance policy that is the subject of the viatical settlement interest. The viator may waive this prohibition against disclosure if the waiver is in writing and signed by the viator.</p> <p>(c) The administrator shall regulate transactions between a viatical settlement provider or person acting as an agent of a viatical settlement provider and a subsequent investor, while the authority of the director of the division of insurance extends to the regulation of viatical settlement contracts under AS 21.96.110.</p> <p>(d) In this section,</p> <p>(1) "viatical settlement contract" has the meaning given in AS 21.96.110(h);</p> <p>(2) "viatical settlement interest"</p> <p>(A) means the entire interest or any fractional interest in a life insurance policy or in the death benefit under a life insurance</p>	<p>45.55.155, 45.55.905(c)</p>	<p>Puts all of viatical provisions into one statute (separated into two under 45.55). (c) clarifies that the administrator regulates transactions between viatical settlement providers and subsequent investors while the Division of Insurance regulates viatical settlement contracts under AS 21.89.110.</p>	<p>39</p>

<p>policy that is the subject of a viatical settlement contract; (B) does not include the initial purchase from the viator by a viatical settlement provider; (3) “viatical settlement provider” has the meaning given in AS 21.96.110(h); (4) “viator” has the meaning given in AS 21.96.110(h)</p>			
<p>Sec. 45.56.350. Waiver and modification. The administrator may waive or modify, in whole or in part, any or all of the requirements of AS 45.56.305 and 45.56.320 or the requirement of any information or record in a registration statement or in a periodic report filed under AS 45.56.310(i).</p>	<p>See 45.55.110(e)</p>	<p>New provision gives the administrator authority to waive or modify the requirements for registrations. 45.55 allowed the Administrator to permit omission of certain documents otherwise required.</p>	<p>40</p>
<p>Sec. 45.56.360. Denial, suspension, and revocation of securities registration. (a) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that</p> <p>(1) the registration statement as of the effective date of the registration statement or before the effective date in the case of an order denying effectiveness, an amendment under AS 45.56.320(j) as of the effective date of the amendment, or a report under AS 45.56.320(i) is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;</p> <p>(2) this chapter or a regulation adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated in connection with the offering by</p> <p>(A) the person filing the registration statement; (B) the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; (C) a promoter of the issuer; (D) a person directly or indirectly controlling or controlled by</p>	<p>45.55.120</p>	<p>Stop orders may be issued against promoters of the issuer in addition to the classes of people described in 45.55.</p> <p>The administrator is required to adopt regulations explaining what type of conduct meets the requirements of (a)(7):</p> <p>(7) the offering</p> <p>(A) will work or tend to work a fraud upon purchasers or would operate;</p> <p>(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or</p> <p>(C) is being made on terms that are unfair, unjust, or inequitable.</p>	<p>40</p>

the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer; or

(E) an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering; the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) with respect to a security sought to be registered under AS 45.56.305, there has been a failure to comply with the undertaking required by AS 45.56.305(b)(4);

(6) the applicant or registrant has not paid the filing fee; the administrator shall void the order if the deficiency is corrected and the order was based solely on the nonpayment of the filing fee; or

(7) the offering

(A) will work or tend to work a fraud upon purchasers or would operate;

(B) has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or

(C) is being made on terms that are unfair, unjust, or inequitable.

(b) To the extent practicable, the administrator shall, by a regulation adopted or order issued under this chapter, publish standards that provide notice of conduct that violates (a)(7) of this section.

(c) The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(d) The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in (e) of this section that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(e) A stop order may not be issued under this section without

- (1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
- (2) an opportunity for hearing conducted in the manner provided in AS 45.56.650(c); and

<p>(3) findings of fact and conclusions of law in a record. (f) The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.</p>			
<p>Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers.</p>	<p>Article 2: Registration of Broker-Dealers, Agents, and Investment Advisers</p>	<p>45.55 is not very user friendly when it comes to licensing provisions. While 45.55.030 generally discusses registration of broker-dealers, agents, and investment advisers, many, but not all, of the exemptions are located within the definitions in 45.55.990. The proposed bill reorganizes all securities licensing provisions into one article which is laid out in a straightforward manner, making it much more user-friendly. The sections are organized by broker-dealers (including Canadian broker-dealers and mergers and acquisitions brokers), broker-dealer agents, investment advisers, investment adviser representatives, and federal covered investment advisers.</p>	<p>42</p>
<p>Sec. 45.56.405. Broker-dealer registration requirement and exemptions. (a) A person may not transact business in the state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under (b) of this section.</p>	<p>45.55.030(a)</p>	<p>Language is the same as 030(a) but limited to broker-dealers only (not including agents)</p>	<p>42</p>
<p>(b) The following persons are exempt from the registration requirement of (a) of this section: (1) a broker-dealer without a place of business in the state if the broker-dealer's only transactions effected in the state are with (A) the issuer of the securities involved in the transactions; (B) a broker-dealer registered as a broker-dealer under this</p>	<p>See generally 45.55.990(7)</p>	<p>Current Alaska law explains what types of business activities are exempt in the definition of broker-dealer rather than including them in the registration statute. This provision moves the explanation of what conduct is exempt from registration up to the general registration statute, which is much more user friendly.</p>	<p>42</p>

<p>chapter or not required to be registered as a broker-dealer under this chapter;</p> <p>(C) an institutional investor;</p> <p>(D) a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others under discretionary authority in a signed record;</p> <p>(E) a bona fide preexisting customer whose principal place of residence is not in the state and the person is registered as a broker-dealer under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required to be registered under 15 U.S.C. 78a - 78ll (Securities Exchange Act of 1934) and is registered under the securities act of the state in which the customer maintains a principal place of residence;</p> <p>(F) a bona fide preexisting customer whose principal place of residence is in the state but who was not present in the state when the customer relationship was established if</p> <p>(i) the broker-dealer is registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) or not required to be registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934) and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and</p> <p>(ii) within 45 days after the customer's first transaction in the state, the person files an application for registration as a broker-dealer in the state and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the person that the administrator has denied the application for registration or has stayed the pendency of the application for good cause;</p> <p>(G) not more than three customers in the state during the previous 12 months, in addition to those customers specified</p>		<p>The USA adds a new “snowbird exemption” at 45.56.405(b)(1)(E) and (F) in order to facilitate ongoing broker-customer relationships with customers who have established a second or other residence for such purposes as a winter home.</p> <p>45.56.405(b)(G) changes the de minimis exemption to allow for an exemption from registration if the broker-dealer (firm, not agent) has less than three Alaskan customers in a 12 month period, aside from those listed in (A)-(F) and is properly registered in its home state or exempt from registration under the Securities Exchange Act of 1934. 45.55 exempts a broker-dealer who effects no more than 15 transactions within a 12 month period at the initiation and direction of the customer (provided other conditions are met). 45.56 is much more straightforward and should result in less confusion for industry, as this is a topic of many of our inquiries.</p>	
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<p>in (A) - (F) of this paragraph and under (H) of this paragraph if the broker-dealer is registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934) or not required to be registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934) and is registered under the securities act of the state in which the broker-dealer has its principal place of business; and</p> <p>(H) any other person exempted by a regulation adopted or order issued under this chapter; and</p> <p>(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the United States Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision, United States Department of the Treasury.</p>			
<p>(c) A broker-dealer or an issuer engaged in offering, offering to purchase, purchasing, or selling securities in the state may not, directly or indirectly, employ or associate with an individual to engage in an activity related to securities transactions in the state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and, in the exercise of reasonable care, could not have known of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.</p>	<p>None</p>	<p>(c) prohibits a broker-dealer or issuer from employing or associating with an individual in a capacity for which that individual has been suspended by the administrator. Violation of this provision does not result in strict liability. In order for a broker-dealer or issuer to be liable, the broker-dealer or issuer must have known or should have known of the administrator’s order to the individual suspended or barred.</p>	<p>44</p>

<p>Sec. 45.56.410. Limited registration of Canadian broker-dealers and agents. (a) If a broker-dealer is registered under this section and its principal office is located in a province or territory of Canada that provides at least equivalent registration for a broker-dealer that is resident in the United States, a broker-dealer that is resident in Canada and does not have an office or other physical presence in this state may effect transactions in securities with or for or induce or attempt to induce the purchase or sale of a security by a person from Canada who is</p> <p>(1) temporarily resident in this state and with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or</p> <p>(2) resident in this state and whose transactions are in a self-directed tax-advantaged retirement plan in Canada of which the person is the holder or contributor.</p> <p>(b) An agent who represents a Canadian broker-dealer registered under this section may, if the agent is registered under this section, effect transactions in securities in this state as permitted for the broker-dealer under (a) of this section.</p> <p>(c) Subject to the requirements of (a) of this section, a Canadian broker-dealer may register under this section if the broker-dealer</p> <p>(1) files an application in the form required by the jurisdiction in which the broker-dealer has its principal office;</p> <p>(2) files a written consent to service of process under AS 45.56.630;</p> <p>(3) is registered as a broker or dealer in good standing in the jurisdiction from which the broker-dealer is effecting transactions into this state and files evidence of the registration; and</p> <p>(4) is a member of a self-regulating organization or stock exchange in Canada.</p> <p>(d) An agent may register under this section in order to effect</p>	<p>45.55.035</p>	<p>Identical to existing provision except renewal date was moved from December 1 to December 31, to encourage better compliance by our licensees. (typical licensing renewal date is the end of the year, as with the U.S. broker-dealers)</p>	<p>44</p>
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<p>transactions in securities in this state if the agent represents a Canadian broker-dealer that is registered under this section, and the agent</p> <p>(1) files an application in the form required by the jurisdiction in which the broker-dealer has its principal office;</p> <p>(2) files a written consent to service of process under AS 45.56.630; and</p> <p>(3) is registered and files evidence of good standing in the jurisdiction from which the agent is effecting transactions into this state.</p> <p>(e) Registration under this section becomes effective on the 30th day after an application is filed unless it is made effective earlier by the administrator or a denial order is in effect and a proceeding is pending under AS 45.56.480.</p> <p>(f) A Canadian broker-dealer registered under this section shall</p> <p>(1) maintain provincial or territorial registration and membership in good standing in a self-regulating organization or stock exchange;</p> <p>(2) provide the administrator on request with books and records relating to its business in the state as a broker-dealer;</p> <p>(3) inform the administrator promptly of any criminal action taken against the broker-dealer or of any finding or sanction imposed on the broker-dealer as a result of regulatory action, including that of a self-regulating organization, involving fraud, theft, deceit, misrepresentation, or similar conduct; and</p> <p>(4) disclose to its clients in this state that the broker-dealer and its agents are not subject to the full regulatory requirements of this chapter.</p> <p>(g) An agent of a Canadian broker-dealer registered under this section shall</p> <p>(1) maintain provincial or territorial registration in good standing; and</p> <p>(2) inform the administrator promptly of any criminal action</p>			
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<p>taken against the agent or of any finding or sanction imposed on the broker-dealer or agent as a result of regulatory action, including that of a self-regulating organization, involving fraud, theft, deceit, misrepresentation, or similar conduct.</p> <p>(h) Renewal applications for Canadian broker-dealers and agents under this section must be filed by midnight on December 31 of each year and may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its principal office or, if a renewal application is not required, the most recent application filed under (c)(1) or (d)(1) of this section.</p> <p>(i) An applicant for registration or renewal registration under this section shall pay the fee for broker-dealers and agents required by this chapter.</p> <p>(j) A Canadian broker-dealer or agent registered under this section may not effect transactions in this state except</p> <p>(1) as permitted under (a) or (b) of this section;</p> <p>(2) with or through</p> <p>(A) the issuers of the securities involved in the transactions;</p> <p>(B) other broker-dealers; or</p> <p>(C) banks, savings institutions, trust companies, insurance companies, investment companies as defined in 15 U.S.C. 80a-3 (Investment Company Act of 1940), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or</p> <p>(3) as otherwise permitted by this chapter.</p> <p>(k) A Canadian broker-dealer or agent registered under this section and acting in accordance with the limitations in (j) of this section is exempt from all of the requirements of this chapter except the anti-fraud provisions under AS 45.56.505 and the requirements of this section. The registration of a Canadian broker-dealer or agent under this section may not be denied, suspended, or revoked except in accordance with the provisions of AS 45.56.480 for a breach of the anti-fraud</p>			
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<p>provisions under AS 45.56.505 or the requirements of this section.</p> <p>(l) In this section, “Canadian broker-dealer” means a broker-dealer that has its principal office in a province or territory of Canada.</p>			
<p>Sec. 45.56.420. Registration exemption for merger and acquisition broker. (a) In general, except as provided in (b) and (d) of this section, a merger and acquisition broker shall be exempt from registration pursuant to AS 45.55.405.</p> <p>(b) A merger and acquisition broker is not exempt from registration pursuant to AS 45.55.405 if such broker does any of the following:</p> <p>(1) directly or indirectly, in connection with the transfer of ownership of an eligible privately held company, receives, holds, transmits, or has custody of the funds or securities to be exchanged by the parties to the transaction;</p> <p>(2) engages on behalf of an issuer in a public offering of any class of securities that is registered, or is required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b) or with respect to which the issuer files, or is required to file, periodic information, documents, and reports under the Securities Exchange Act of 1934 Section 15(b) subsection (d), 15 U.S.C. 78o(d); or</p> <p>(3) engages on behalf of any party in a transaction involving a public shell company.</p> <p>(c) A merger and acquisition broker is not exempt from registration under AS 45.55.405 if the broker is subject to</p> <p>(1) Suspension or revocation of registration under Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4);</p> <p>(2) a statutory disqualification described in Section 3(a)(39) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(39);</p> <p>(3) a disqualification under the rules adopted by the United</p>	<p>None.</p>	<p>Taken from NASAA proposed model rule on mergers and acquisition (M&A) brokers based on an SEC no action letter dated January 31, 2014 stating that M&A brokers meeting specific requirements should not have to register with the SEC. Advocates have also made multiple attempts to have Congress pass legislation exempting M&A brokers from registration under the 1934 Act, but nothing has passed as of this date. It is appropriate to exempt these brokers in the specific circumstances outlined in the bill because these transactions are conducted under significant scrutiny and all parties typically have adequate representation in these deals.</p> <p>Generally, M&A brokers are exempt from the requirement that they register as broker-dealers under the Act. An M&A broker is defined as a broker or agent who effects securities transactions solely in connection with the transfer of ownership of an eligible privately held company as long as they believe that the purchaser will control the company and before the purchaser engages in the transaction, they will have access to the financials of the purchased company.</p> <p>The exemption is NOT available if the broker - receives, holds, transmits or has custody of the securities exchanged in the transaction,</p>	<p>47</p>

<p>States Securities and Exchange Commission under Section 926 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (15 U.S.C. 77d note); or</p> <p>(4) a final order described in paragraph (4)(H) of Section 15(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b)(4)(H).</p> <p>(d) Nothing in this section shall be construed to limit any other authority of the department to exempt any person, or any class of persons, from any provision of this title, or from any provision of any rule or regulation thereunder.</p> <p>(e) In this section,</p> <p>(1) “control” means the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. There is a presumption of control for any person who</p> <p>(A) is a director, general partner, member or manager of a limited liability company, or officer exercising executive responsibility, or has similar status or functions;</p> <p>(B) has the right to vote 20 percent or more of a class of voting securities or the power to sell or direct the sale of 20 percent or more of a class of voting securities; or</p> <p>(C) in the case of a partnership or limited liability company, has the right to receive upon dissolution, or has contributed, 20 percent or more of the capital;</p> <p>(2) “eligible privately held company” means a company meeting both of the following conditions:</p> <p>(A) the company does not have any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. 78o(b), or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d); and</p> <p>(B) in the fiscal year ending immediately before the fiscal year</p>		<ul style="list-style-type: none"> - engages on behalf of an issuer in a public offering of any class of securities that is registered with the SEC under the Securities Exchange Act of 1934, - engages on behalf of a public shell company (a company with a class of securities registered with the SEC but has no assets and only nominal operations), - is subject to suspension or revocation of registration under the Exchange Act or other disqualifier. 	
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<p>in which the services of the merger and acquisition broker are initially engaged with respect to the securities transaction, the company meets either or both of the following conditions, determined in accordance with the historical financial accounting records of the company:</p> <p>(i) The earnings of the company before interest, taxes, depreciation, and amortization are less than \$25,000,000;</p> <p>(ii) The gross revenues of the company are less than \$250,000,000;</p> <p>(3) “merger and acquisition broker” means any broker and any person associated with a broker engaged in the business of effecting securities transactions solely in connection with the transfer of ownership of an eligible privately held company, regardless of whether that broker acts on behalf of a seller or buyer, through the purchase, sale, exchange, issuance, repurchase, or redemption of, or a business combination involving, securities or assets of the eligible privately held company, if the broker reasonably believes that</p> <p>(A) upon consummation of the transaction, any person acquiring securities or assets of the eligible privately held company, acting alone or in concert, will control and, directly or indirectly, will be active in the management of the eligible privately held company or the business conducted with the assets of the eligible privately held company; and</p> <p>(B) if any person is offered securities in exchange for securities or assets of the eligible privately held company, the person will, before becoming legally bound to consummate the transaction, receive or have reasonable access to the most recent fiscal year-end financial statements of the issuer of the securities as customarily prepared by its management in the normal course of operations and, if the financial statements of the issuer are audited, reviewed, or compiled, any related statement by the independent accountant; a balance sheet dated not more than 120 days before the date of the</p>			
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<p>exchange offer; and information pertaining to the management, business, results of operations for the period covered by the foregoing financial statements, and any material loss contingencies of the issuer.</p> <p>(4) “public shell company” means a company that at the time of a transaction with an eligible privately held company</p> <p>(A) has any class of securities registered, or required to be registered, with the United States Securities and Exchange Commission under Section 12, 15 U.S.C. 78o(b), or with respect to which the company files, or is required to file, periodic information, documents, and reports under subsection (d), 15 U.S.C. 78o(d); and</p> <p>(B) has no or nominal operations; and</p> <p>(C) has</p> <p>(i) no or nominal assets;</p> <p>(ii) assets consisting solely of cash and cash equivalents; or</p> <p>(iii) assets consisting of any amount of cash and cash equivalents and nominal other assets.</p>			
<p>Sec. 45.56.430. Agent registration requirement and exemptions. (a) An individual may not transact business in the state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under (b) of this section.</p>	45.55.030(a)	Language is the same as 45.55.030(a) but limited to agents only (not including firms)	50
<p>(b) The following individuals are exempt from the registration requirement of (a) of this section:</p> <p>(1) an individual who represents a broker-dealer in effecting transactions in the state limited to those described in 15 U.S.C. 78o(i);</p> <p>(2) an individual who represents a broker-dealer that is exempt under AS 45.56.405(b) or AS 45.56.410;</p> <p>(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's</p>	See generally 45.55.990(5) (definition of “agent”) and also some provisions of 45.55.030	<p>Current Alaska law explains what types of business activities are exempt in the definition of agent rather than including them in the registration statute. This provision moves the explanation of what conduct is exempt from registration up to the general registration statute, which is much more user friendly.</p> <p>(1) 15 U.S.C. 78o(i) refers to a limited federal exemption from registration for broker-dealer agents who are effecting certain types of</p>	50

<p>participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;</p> <p>(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by AS 45.56.210, other than AS 45.56.210(11) and (14);</p> <p>(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under 15 U.S.C. 77r(b)(3) or (b)(4)(D) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;</p> <p>(6) an individual who represents a broker-dealer registered in the state under AS 45.56.405(a) or exempt from registration under AS 45.56.405(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others under discretionary authority in a signed record;</p> <p>(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;</p> <p>(8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or</p> <p>(9) any other individual exempted by a regulation adopted or order issued under this chapter.</p>		<p>transactions for preexisting customers on a limited basis while registered in another state, but not in Alaska.</p> <p>(2) If the broker-dealer is exempt, the agent is also exempt.</p> <p>(3)-(5) same as 45.55.990(5)(A)</p> <p>(6) similar to 45.55.030(c)(2)(A)</p> <p>(7) security buy-back by the issuer.</p> <p>(8) ministerial or clerical acts might include preparing written communications or responding to inquiries, per the USA comments.</p>	
<p>(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing the issuer's securities in this state.</p>	<p>45.55.030(b)</p>	<p>Language directly from first part of 45.55.030(b).</p>	<p>51</p>
<p>(d) A broker-dealer or an issuer engaged in offering, selling, or purchasing securities in the state may not employ or associate with an agent who transacts business in the state on</p>	<p>45.55.030(b)</p>	<p>Language directly from second part of 45.55.030(b).</p>	<p>51</p>

behalf of broker-dealers or issuers unless the agent is registered under (a) of this section or exempt from registration under (b) of this section.			
(e) An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts is affiliated by direct or indirect common control or is authorized by a regulation or order issued under this chapter.	45.55.030(f)	Under 45.55, agents wishing to be dual registered must receive a waiver from the administrator. This process will remain the same.	51
Sec. 45.56.435. Investment adviser registration requirement and exemptions. (a) A person may not transact business in the state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under (b) of this section.	45.55.030(c)	Same as 45.55.	51
(b) The following persons are exempt from the registration requirement in (a) of this section: (1) a person without a place of business in this state that is registered under the securities act of the state in which the person has the person's principal place of business if the person's only clients in this state are (A) federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter; (B) institutional investors; (C) bona fide preexisting clients whose principal places of residence are not in the state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or (D) exempt by regulation adopted or order issued under this chapter; (2) a person without a place of business in the state if the person has had, during the preceding 12 months, not more than five clients that are resident in the state in addition to those specified under (1) of this subsection; or	See generally 45.55.030(c)(2)	The exemptions follow those found in 45.55.030(c)(2). (C) provides a new "snowbird" exemption, matching the one for broker-dealers in 45.56.405, to facilitate ongoing relationships with customers who have established a second or other residence for such purposes as a winter home.	52

(3) any other person exempted by a regulation adopted or order issued under this chapter.			
(c) An investment adviser may not, directly or indirectly, employ or associate with an individual to engage in an activity related to investment advice in the state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and, in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the administrator may by order, waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.	None	Bad actor disqualifier for persons performing investment advisory activities; this provision prevents IA firms from employing or associating with individuals who have been barred from the industry by Alaska, the SEC, or FINRA (or other SRO). The Administrator may waive this prohibition upon a showing of good cause.	52
(d) An investment adviser may not employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in the state on behalf of the investment adviser unless the individual is registered under AS 45.56.440(a) or is exempt from registration under AS 45.56.440(b).	45.55.030(g)	Same as 45.55.	53
Sec. 45.56.440. Investment adviser representative registration requirement and exemptions. (a) An individual may not transact business in the state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under (b) of this section. (b) The following individuals are exempt from the registration requirement of (a) of this section: (1) an individual who is employed by or associated with an investment adviser that is exempt from registration under AS 45.56.435(b) or a federal covered investment adviser that is	None.	45.55 did not specifically address investment adviser representatives, only state investment advisers and federal covered investment advisers. The new provisions generally mirror the requirements for broker-dealer agents. (f) explains that an investment adviser that is already registered with the state receiving referral fees from another state-registered entity (broker-dealer or investment adviser) does not need to separately register as an investment adviser	53

<p>excluded from the notice filing requirements of AS 45.56.445; and</p> <p>(2) any other individual exempted by a regulation adopted or order issued under this chapter.</p> <p>(c) The registration of an investment adviser representative is not effective while the investment adviser representative is not employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under AS 45.56.445.</p> <p>(d) An individual may transact business as an investment adviser representative for more than one investment adviser or federal covered investment adviser unless a regulation adopted or order issued under this chapter prohibits or limits an individual from acting as an investment adviser representative for more than one investment adviser or federal covered investment adviser.</p> <p>(e) An individual acting as an investment adviser representative may not, directly or indirectly, conduct business in the state on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the administrator may by order, waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.</p> <p>(f) An investment adviser registered under this chapter, a federal covered investment adviser that has filed a notice under AS 45.56.445, or a broker-dealer registered under this</p>		<p>representative of the entity paying referral fees.</p>	
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<p>chapter is not required to employ or associate with an individual as an investment adviser representative if the only compensation paid to the individual for a referral of investment advisory clients is paid to an investment adviser registered under this chapter, a federal covered investment adviser who has filed a notice under AS 45.56.445, or a broker-dealer registered under this chapter with which the individual is employed or associated as an investment adviser representative.</p>			
<p>Sec. 45.56.445. Federal covered investment adviser notice filing requirement. (a) Except with respect to a federal covered investment adviser described in (b) of this section, a federal covered investment adviser may not transact business in the state as a federal covered investment adviser unless the federal covered investment adviser complies with (c) of this section.</p> <p>(b) The following federal covered investment advisers are not required to comply with (c) of this section:</p> <p>(1) a federal covered investment adviser without a place of business in the state if the only clients of the federal covered investment adviser in the state are</p> <p>(A) federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;</p> <p>(B) institutional investors;</p> <p>(C) bona fide preexisting clients whose principal places of residence are not in the state; or</p> <p>(D) other clients specified by a regulation adopted or order issued under this chapter;</p> <p>(2) a federal covered investment adviser without a place of business in the state if the person has had, during the preceding 12 months, not more than five clients that are resident in the state in addition to those specified under (1) of this subsection; and</p>	<p>See generally 45.55.030</p>	<p>45.55 did not generally separate out notice-filed advisers.</p> <p>In general, federal covered IAs do not need to be registered in the state unless they have more than five Alaska clients or a place of business in this state (de minimis exemption). This matches existing law.</p>	<p>54</p>

<p>(3) any other person excluded by a regulation adopted or order issued under this chapter.</p> <p>(c) A person acting as a federal covered investment adviser not excluded under (b) of this section shall file a notice, a consent to service of process complying with AS 45.56.630, and the records that have been filed with the Securities and Exchange Commission under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940) required by a regulation adopted or order issued under this chapter and shall pay the fees specified by regulation adopted under AS 45.56.470.</p> <p>(d) The notice under (c) of this section becomes effective upon filing.</p>			
<p>Sec. 45.56.450. Registration by broker-dealer, agent, investment adviser, and investment adviser representative. (a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with AS 45.56.630 and paying the fee specified in AS 45.56.430 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain</p> <p>(1) the information or record required for the filing of a uniform application; and</p> <p>(2) upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.</p> <p>(b) If the information or record contained in an application filed under (a) of this section is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.</p> <p>(c) If an order is not in effect, and a proceeding is not pending under AS 45.56.480, and the administrator has not initiated an investigation, registration becomes effective at noon on the 45th day after a completed application is filed,</p>	<p>45.55.040, 45.55.050, 3 AAC 08.011, 3 AAC 08.050</p>	<p>The registration statute combines provisions found in 45.55 and in current regulations.</p> <p>Under current regulations, an application becomes automatically effective 30 days after it is filed unless the division initiates an investigation. (c) extends it to 45 days. In practice, decisions are made, or investigations initiated, well before 30 days after an application is filed.</p> <p>(e) clarifies that the Administrator may impose other conditions upon licensing so long as they are consistent with NSMIA (i.e. not preempted by federal law).</p>	<p>55</p>

<p>unless the registration is denied. A regulation adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.</p> <p>(d) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under AS 45.56.480, a registration may be automatically renewed each year by filing the records required by a regulation adopted or order issued under this chapter, by paying the fee specified in AS 45.56.470, and by paying costs charged by the designee of the administrator for processing the filings.</p> <p>(e) A regulation adopted or order issued under this chapter may impose other conditions, not inconsistent with 15 U.S.C. 77b – 77c, 77e – 77f, 77r, 77z-3, 77ddd, 78a – 78d, 78g – 78h, 78n – 78o, 78q, 78bb, 78ee, 78kk, 78mm, 80a-2- 80a-3, 80a-6, 80a-12, 80a-24, 80a-26 – 80a-27, 80a-29-80a-30, 80a-34, 80a-51, 80a-54, 80a-60, 80a-63, 80b-2 – 80b-3a, 80b-5, 80b-10, 80b-18a, 80b-20, and 29 U.S.C. 1002 (P.L. 104-290) (National Securities Markets Improvement Act of 1996). An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration that are in the public interest and for the protection of investors.</p>			
<p>Sec. 45.56.455. Succession and change in registration of broker-dealer or investment adviser. (a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration under AS 45.56.405</p>	<p>45.55.040(d), 3 AAC 08.018, and 3 AAC 08.050</p>	<p>Successor provisions are currently generally referred to in 45.55.040 and then elaborated upon in the regulations.</p> <p>(b) clarifies that a change in organization, so long as there is not a material change in financial condition or management, can be completed through an amendment, rather than filing a new registration. An example would be an IA going</p>	<p>56</p>

<p>or 45.56.435 or a notice under AS 45.56.445 for the unexpired portion of the current registration or notice filing.</p> <p>(b) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.</p> <p>(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.</p> <p>(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a regulation adopted or order issued under this chapter.</p>		<p>from a sole proprietorship to an LLC or corporation.</p>	
<p>Sec. 45.56.460. Termination of employment or association of agent and investment adviser representative and transfer of employment or association. (a) If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser or federal covered investment adviser, or if either registrant terminates activities</p>	<p>45.55.030(b), (i)</p>	<p>45.55 separates the requirements for broker-dealers and investment advisers; they are combined here, and a procedure for the notification of termination is established.</p>	<p>57</p>

<p>that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination. The registrant may file the notice of termination if the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice.</p>			
<p>(b) If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter, or if an investment adviser representative registered under this chapter terminates employment by or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under AS 45.56.445 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under AS 45.56.445, then, within 30 days after the termination, upon the filing by or on behalf of the registrant of an application for registration that complies with the requirement of AS 45.56.450(a) and payment of the filing fee required under AS 45.56.470, the registration of the agent or investment adviser representative is</p> <p>(1) immediately effective as of the date of the completed filing, if the agent's record or successor record in the Central Registration Depository operated by the Financial Industry Regulatory Authority or the investment adviser representative's record or successor record in the Investment Adviser Registration Depository operated by the Financial Industry Regulatory Authority does not contain a new or amended disciplinary disclosure within the previous 12 months; or</p> <p>(2) temporarily effective as of the date of the completed</p>	<p>None</p>	<p>This outlines the procedure by which agents or investment adviser representative registration will be effective immediately as of the date of new employment when there is no new or added disciplinary disclosure in the relevant CRD or IARD records.</p> <p>Also provides for temporary registration when an agent/rep succeeds to a new firm and there is a new disclosure within the past 12 months.</p>	<p>57</p>

<p>filing, if the agent's record or successor record in the Central Registration Depository operated by the Financial Industry Regulatory Authority or the investment adviser representative's record or successor record in the Investment Adviser Registration Depository operated by the Financial Industry Regulatory Authority contains a new or amended disciplinary disclosure within the preceding 12 months.</p>			
<p>(c) The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in AS 45.56.480 and the administrator does so within 30 days after the filing of the application. If the administrator does not withdraw the temporary registration within the 30-day period, registration becomes automatically effective on the 31st day after filing.</p>	None	A temporary registration becomes permanent if no action taken by the administrator within 30 days. Note: in practice, action is typically taken within a few days.	58
<p>(d) The administrator may prevent the effectiveness of a transfer of an agent or investment adviser representative under (b)(1) or (2) of this section based on the public interest and the protection of investors.</p>	None	The administrator may prevent immediate effectiveness of agent/rep transfers in appropriate cases.	58
<p>(e) If the administrator determines that a registrant or applicant for registration is no longer in existence, has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, is the subject of an adjudication of incapacity, is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a regulation adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.</p>	45.55.060(f)	Same as 45.55.	58
<p>Sec. 45.56.465. Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative. Withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective 60 days after the</p>	45.55.060(g)	Current 45.55 makes a withdrawal effective 30 days after it is filed; new provision changes it to 60 days. In general, this provision retains the Administrator's jurisdiction over a registrant for enforcement purposes for a year after they	58

<p>filing of the application to withdraw or within any shorter period as provided by a regulation adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal becomes effective when and upon the conditions required by a regulation adopted or order issued under this chapter. The administrator may institute a revocation or suspension proceeding under AS 45.56.480 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.</p>		<p>withdraw registration.</p>	
<p>Sec. 45.56.470. Filing fees. (a) The administrator shall establish fees by regulation for</p> <ol style="list-style-type: none"> (1) an initial filing of an application as a broker-dealer and renewal of an application by a broker-dealer for registration; (2) an application for registration as an agent and renewal of registration as an agent; (3) an application for registration as an investment adviser and renewal of registration as an investment adviser; (4) an application for registration as an investment adviser representative, a renewal of registration as an investment adviser representative, and a change of registration as an investment adviser representative; and (5) an initial fee and annual notice fee for a federal covered investment adviser required to file a notice under AS 45.56.445. <p>(b) A person required to pay a filing or notice fee under this section may transmit the fee through or to a designee as provided by a regulation adopted or order issued under this chapter.</p>	<p>45.55.040(c)</p>	<p>Aside from the general fee requirement, this clarifies that the fee should be paid through or to a designee (FINRA) as provided in regulation.</p>	<p>59</p>
<p>Sec. 45.56.475. Postregistration requirements. (a) Subject to 15 U.S.C. 78o(i) or 15 U.S.C. 80b-18a, a regulation adopted or order issued under this chapter may establish</p>	<p>45.55.040, 45.55.050</p>	<p>NSMIA prohibits states from imposing specific capital, custody, margin, financial responsibility, making and keeping records, bonding, or financial</p>	<p>59</p>

<p>minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.</p> <p>(b) Subject to 15 U.S.C. 78o(i) or 80b-18a, a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file the financial reports required by a regulation adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.</p> <p>(c) Subject to 15 U.S.C. 78o(i) or 80b-18a,</p> <p>(1) a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by a regulation adopted or order issued under this chapter;</p> <p>(2) broker-dealer records required to be maintained under (1) of this subsection may be maintained in any form of data storage acceptable under 15 U.S.C. 78q(a) if they are readily accessible to the administrator; and</p> <p>(3) investment adviser records required to be maintained under (1) of this subsection may be maintained in any form of data storage required by a regulation adopted or order issued under this chapter.</p> <p>(d) The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to the reasonable periodic, special, or other audits or inspections by a representative of the administrator, in or outside the state, that the administrator considers necessary or appropriate in the public interest and for the protection of</p>		<p>or operational reporting requirements except for those specifically allowed by the Securities Act of 1933. This provision only includes those specific requirements, and generally mirrors 45.55.050.</p> <p>(d) fees for examinations or inspection were in 45.55.915 previously.</p> <p>(h) is new and allows the Administrator to require a registrant to complete continuing education requirements.</p>	
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<p>investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy and remove for audit or inspection copies of all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.</p> <p>(e) Subject to 15 U.S.C. 78o(i) or 80b-18a, a regulation adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount established by a regulation adopted under this chapter. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by a regulation adopted or order issued under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in AS 45.56.660(j)(2).</p> <p>(f) Subject to 15 U.S.C. 78o(i) or 15 U.S.C. 80b-18a, an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A regulation adopted or order issued under this chapter may prohibit, limit, or impose conditions on a</p>			
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<p>broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.</p> <p>(g) With respect to an investment adviser registered or required to be registered under this chapter, a regulation adopted or order issued under this chapter may require that information or other records be furnished or disseminated to clients or prospective clients in the state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.</p> <p>(h) A regulation adopted or order issued under this chapter may require an individual registered under AS 45.56.430 or 45.56.440 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization, or, in the absence of a continuing education program, a regulation adopted or order issued under this chapter may require continuing education for an individual registered under AS 45.56.440.</p>			
<p>Sec. 45.56.480. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration. (a) If the administrator finds that the order is in the public interest and (d) of this section authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.</p>	45.55.060	<p>This is the enforcement provision for registrants. The sections are generally already covered in 45.55.060 but are expanded upon here for clarity, and some specific provisions are changed as noted below.</p> <p>(a) relates to denial, condition or limitation of a registration not already approved.</p>	61
<p>(b) If the administrator finds that the order is in the public interest and (d) of this section authorizes the action, an order issued under this chapter may revoke, suspend, condition, or</p>		<p>(b) allows the Administrator to revoke, suspend, condition or limit the registration of approved registrants based on actions taken in another state</p>	61

<p>limit the registration of a registrant, and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser. However, the administrator may not</p> <p>(1) institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than three years after the date of the order on which it is based; or</p> <p>(2) under (d)(5)(A) and (B) of this section, issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which (d) of this section would authorize the action had the conduct occurred in this state.</p>		<p>(similar to 45.55.060(a)(6)(A) and (B)), but only within three years of the action being taken in another state. Current law limits it to one year, and because many of these matters are self-reported, the Administrator may not learn of them for some time. Three years provides added flexibility while still having a limit in place.</p>	
<p>(c) If the administrator finds that the order is in the public interest and (d)(1) - (6), (8) - (10), (12), or (13) of this section authorize the action, an order under this chapter may censure, impose a bar, or impose a civil penalty of not more than \$100,000 for a single violation, on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.</p>	<p>45.55.920</p>	<p>This provision allows the Administrator to impose a bar, which is not permitted under current law, and also increases potential civil penalties from \$2,500 to \$10,000 for a single violation to up to \$100,000 for a single violation.</p>	<p>61</p>
<p>(d) A person may be disciplined under (a) - (c) of this section if the person</p> <p>(1) has filed an application for registration in the state under this chapter or former AS 45.55, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or</p>	<p>45.55.060</p>	<p>(d) explains when action may be taken against a registrant, and generally tracks provisions already in place in 45.55.060, except for as noted below:</p> <p>(d)(4) expands on current (a)(4) which referred to conduct involving an aspect of "the securities business"</p>	<p>61</p>

<p>misleading with respect to a material fact;</p> <p>(2) willfully violated or willfully failed to comply with this chapter or former AS 45.55 or a regulation adopted or order issued under this chapter or former AS 45.55;</p> <p>(3) has been convicted of a felony or within the previous 10 years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;</p> <p>(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or former AS 45.55, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;</p> <p>(5) is the subject of an order, issued after notice and opportunity for hearing by</p> <p>(A) the securities or other financial services regulator of a state or the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;</p> <p>(B) the securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;</p> <p>(C) the Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;</p> <p>(D) a court adjudicating a United States Postal Service fraud order;</p>		<p>(d)(5)(E) is new, and allows for the Administrator to conduct enforcement based on action taken by a state insurance administrator</p> <p>(d)(5)(F) is new, and allows for the Administrator to conduct enforcement based on action taken by a state banking/financial services administrator.</p> <p>(d)(6) is similar to 45.55.060(a)(6), but is broadened significantly to include actions taken by the SEC, CFTC, FTC, federal depository institution regulator, or state depository or financial services regulator when a finding is made that the respondent violated the Securities Act of 1933, Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, the securities or commodities laws of a state, or a federal or state law involving investments, franchises, insurance, banking or finance.</p> <p>Under (d)(5) and (6), the administrator is not required to prove the validity of the ground which led to the earlier disciplinary order because the subject of the order was already given notice and an opportunity for hearing.</p> <p>(d)(8) relates to refusal to cooperate with a reasonable audit or inspection and can include withholding or concealing records, refusing to furnish required records, or refusing the administrator reasonable access to any office or location within an office to conduct an audit or inspection under the Act.</p>	
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<p>(E) the insurance regulator of a state denying, suspending, or revoking registration as an insurance agent; or</p> <p>(F) a depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business;</p> <p>(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission, the Federal Trade Commission, a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated 15 U.S.C. 77a - 77aa (Securities Act of 1933), 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934), 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), or 7 U.S.C. 1 - 27 (Commodity Exchange Act), the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;</p> <p>(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;</p> <p>(8) refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under AS 45.56.475(d) or refuses access to a registrant's office to conduct an audit or inspection under AS 45.56.475(d);</p> <p>(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or former AS 45.55 or a regulation adopted or</p>		<p>(d)(11) is similar to earlier provisions, but relates to actions taken outside of the U.S.</p> <p>(d)(12) is new and specifically relates to cease and desist orders.</p> <p>(d)(14) is new and would allow for discipline for failure to fulfill continuing education requirements or other evidence of lack of knowledge or experience.</p> <p>(d)(15) is new and relates to denial of license renewal under the Education Loan Program (AS 14.43.091 et seq.) and nonissuance/nonrenewal of occupational license for failure to pay child support (AS 25.24 et seq.). Under these other state laws, a licensing authority may not renew a license if a person is in default on a loan made pursuant to the Educational Loan Program or if they are not in substantial compliance with a support order or child support payment schedule.</p>	
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<p>order issued under this chapter or former AS 45.55;</p> <p>(10) has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this paragraph when the deficiency is corrected;</p> <p>(11) after notice and opportunity for a hearing, has been found</p> <p>(A) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;</p> <p>(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or</p> <p>(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;</p> <p>(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;</p> <p>(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business;</p> <p>(14) is not qualified on the basis of factors that may include training, experience, and knowledge of the securities business; however, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully</p>			
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<p>completed all examinations required by (e) of this section; the administrator may require an applicant for registration under AS 45.56.430 or 45.56.440 who has not been registered in a state within the two years preceding the filing of an application in this state to successfully complete an examination; or</p> <p>(15) is a person whose license renewal is denied under AS 14.43.148 or whose license issuance or renewal is denied under AS 25.27.244.</p>			
<p>(e) A regulation adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a regulation adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.</p>	45.55.060(d)(6)	Same as 45.55.	65
<p>(f) The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that, within 15 days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject</p>	45.55.060(e)	Same as 45.55, but with the additional option of a bar.	66

to the order, may modify or vacate the order or extend the order until final determination.			
(g) An order may not be issued under this section, except under (f) of this section, without appropriate notice to the applicant or registrant, and an opportunity for hearing under AS 45.56.650(c).	45.55.060(h)	Same as 45.55.	66
(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under (a) - (c) of this section to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.	45.55.060(a)	Taken from 45.55.060(a); clarifies applicability to control persons, who are excused from liability if they did not know and could not have known of the conduct that is the basis for discipline under the Act.	66
(i) The administrator may not institute a proceeding under (a) - (c) of this section based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.	45.55.060(c)	This provision is the same as 45.55.060(c) except that the time limit is expanded from 30 days to one year. "Actually known" according to the USA comments, is used to signify that the mere filing of facts in the CRD or IARD system does not constitute actual knowledge on the part of the Administrator.	66
Article 5. Fraud and Liabilities.			
Sec. 45.56.505. General fraud. A person may not, in connection with the offer, sale, or purchase of a security, directly or indirectly, (1) employ a device, scheme, or artifice to defraud; (2) make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or (3) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.	45.55.010	Same as 45.55.	66
Sec. 45.56.510. Prohibited conduct in providing	45.55.020(a)	The proposed statute allows the Administrator to	67

<p>investment advice. (a) A person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or adopts analyses or reports relating to securities may not</p> <p>(1) employ a device, scheme, or artifice to defraud another person; or</p> <p>(2) engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.</p> <p>(b) A regulation adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative and may prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.</p> <p>(c) A regulation adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.</p>		<p>define by regulation the type of conduct that can be considered fraudulent, deceptive or manipulative. Many of these examples are currently listed in 45.55.023/.025 which are not carried over into the proposed language, but would likely be incorporated into regulations.</p> <p>(generally the same as SEC 10b-5 provisions)</p>	
<p>Sec. 45.56.520. Misleading filings. A person may not, in a document filed with the administrator or in a proceeding under this chapter, make or cause to be made an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.</p>	<p>45.55.160</p>	<p>Same as 45.55.</p>	<p>67</p>
<p>Sec. 45.56.530. Misrepresentations concerning registration or exemption. The filing of an application for</p>	<p>See generally 45.55.170</p>	<p>Same content as 45.55.170, just rewritten for clarity. In essence, the mere fact that something is</p>	<p>67</p>

<p>registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. A person may not make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.</p>		<p>filed does not mean that the administrator has judged the filing to be true, complete, or not misleading, and the existence of an exemption, etc. does not mean the administrator has given approval to the security or transaction.</p>	
<p>Sec. 45.56.540. Evidentiary burden. (a) In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim. (b) In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.</p>	<p>Generally 45.55.900(c)</p>	<p>This is in 45.55 for exemptions specifically, but this provision extends across the entire Act.</p>	<p>68</p>
<p>Sec. 45.56.550. Filing of sales and advertising literature. (a) Except as otherwise provided in (b) of this section, a regulation adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter. (b) This section does not apply to sales and advertising literature specified in (a) of this section that relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by AS</p>	<p>45.55.150</p>	<p>Same as 45.55.</p>	<p>68</p>

<p>45.56.205, 45.56.210, 45.56.220, or 45.56.240 except as required under AS 45.56.205(7). (c) The administrator may by regulation or order prohibit the publication, circulation, or use of any advertising deemed false or misleading.</p>			
<p>Sec. 45.56.560. Qualified immunity. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.</p>	<p>None.</p>	<p>Per the USA Comments: In 1994 The Securities and Exchange Commission Division of Market Regulation published The Large Firm Project: A Review of Hiring, Retention, and Supervisory Practices (1994), which found that a small number of “rogue brokers” were responsible for a significant proportion of customer disciplinary complaints. These brokers in some instances moved from one broker-dealer firm to another, it was explained, without full and complete disclosure of disciplinary problems by the broker-dealer, because of broker-dealer firms’ fear of state law defamation claims. In 1998, the NASD proposed qualified immunity for statements made in Forms U-4 and U-5 to address this problem. The rule went out for comment but was ultimately not adopted.</p> <p>New York and California have adopted absolute immunity by court decision.</p> <p>The following states have adopted qualified immunity under the USA: GA, HI, ID, IN, IA, KS, ME, MN, MS, MO, ND, OK, SC, SD, WI, and VT.</p>	<p>68</p>
<p>Article 6. Administration and Judicial Review.</p>			
<p>Sec. 45.56.605. Administration. (a) The Department of Commerce, Community, and Economic Development shall administer this chapter.</p>	<p>45.55.905</p>	<p>(a)-(c) are in existing 45.55.905(a)-(b) (d) is a new provision allowing the administrator</p>	<p>69</p>

<p>(b) The administrator or an officer, employee, or designee of the administrator may not use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that is not public under AS 45.56.615(b). This chapter does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with AS 45.56.615(c), 45.56.620, 45.56.645.</p> <p>(c) This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or regulation, or otherwise.</p> <p>(d) The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.</p>		<p>to develop investor education programs and permits the use of grant or donation funds from outside organizations to fund those programs.</p>	
<p>Sec. 45.56.610. Administrative files and opinions. (a) The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisors, and investment adviser representatives; notice filings by federal covered investment advisors that are or have been effective under this chapter or former AS 45.55;</p>	<p>See generally 45.55.970</p>	<p>(a) the administrator is required to keep records according to its retention schedule (45.55.970 says the administrator must keep a record of all applications, notice filings, etc. that “have ever been” effective, essentially requiring permanent retention of all securities filings.)</p> <p>(b) regulations, forms, opinions and orders are</p>	<p>69</p>

<p>notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or former AS 45.55; and interpretative opinions or no action determinations issued under this chapter. The register will be kept according to the existing retention schedule mandated by the department.</p> <p>(b) The administrator shall make all regulations, forms, interpretative opinions, and orders available to the public.</p> <p>(c) The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person upon request. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.</p>		publicly disclosable documents.	
<p>Sec. 45.56.615. Public records; confidentiality. (a) Except as otherwise provided in (b) of this section, records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination under AS 40.25.100 - 40.25.120.</p> <p>(b) The following records are not public records under AS 40.25.100 – 40.25.120 and are not available for public examination under (a) of this section:</p> <p>(1) a record obtained by the administrator in connection with an audit, examination or inspection under AS 45.56.475(d) or an investigation under AS 45.56.645;</p> <p>(2) a part of a record filed in connection with a registration statement under AS 45.56.105 and 45.56.305 - 45.56.320 or a record under AS 45.56.475(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;</p> <p>(3) a record that is not required to be provided to the</p>	See generally 45.55.910	<p>This provision expands upon the confidentiality provision in 45.55.910 relating to investigations. Currently, other information is confidential if designated by the administrator. This is much more clear. Examples of confidential information include exam materials, registration documents containing trade secrets, records containing information such as social security numbers, etc.</p> <p>Records may be disclosed as necessary in a civil, administrative, or criminal investigation, or action or proceeding.</p> <p>AS 40.25 is the Public Records Act.</p>	70

<p>administrator or filed under this chapter and is provided to the administrator only on the condition that the record may not be subject to public examination or disclosure;</p> <p>(4) a nonpublic record received from a person specified in AS 45.56.620(a); and</p> <p>(5) any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed.</p> <p>(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in AS 45.56.620(a), the administrator may disclose a record obtained in connection with an audit or inspection under AS 45.56.475(d) or a record obtained in connection with an investigation under AS 45.56.645.</p>			
<p>Sec. 45.56.620. Uniformity and cooperation with other agencies. (a) The administrator may cooperate, coordinate, consult, and, subject to AS 45.56.615, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to bring about greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.</p> <p>(b) In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by regulation, order, or waiver under this chapter, the administrator may take into consideration in carrying out the</p>	<p>See generally 45.55.050(d), 45.55.950(b)</p>	<p>45.56 expands upon some provisions already in place referring to cooperation with other agencies for examination purposes and a statement of policy that regulations, forms, orders, etc. should generally be uniform with those of other states where practicable.</p> <p>Considerations when cooperating include maximizing effective regulation for protection of consumers, maximizing uniformity among states/federal regulators, minimizing burdens on capital formation, and cost savings while protecting investors.</p>	<p>71</p>

<p>public interest the following general policies:</p> <p>(1) maximizing effectiveness of regulation for the protection of investors;</p> <p>(2) maximizing uniformity in federal and state regulatory standards; and</p> <p>(3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.</p> <p>(c) The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes</p> <p>(1) establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;</p> <p>(2) developing and maintaining uniform forms;</p> <p>(3) conducting a joint examination or investigation;</p> <p>(4) holding a joint administrative hearing;</p> <p>(5) instituting and prosecuting a joint civil or administrative proceeding;</p> <p>(6) sharing and exchanging personnel;</p> <p>(7) coordinating registrations under AS 45.56.105 and 45.56.405 - 45.56.440 and exemptions under AS 45.56.240;</p> <p>(8) sharing and exchanging records, subject to AS 45.56.615;</p> <p>(9) formulating regulations, statements of policy, guidelines, forms, and interpretative opinions and releases;</p> <p>(10) formulating common systems and procedures;</p> <p>(11) notifying the public of proposed regulations, forms, statements of policy, and guidelines;</p> <p>(12) attending conferences and other meetings among securities regulators, that may include representatives of governmental and private sector organizations involved in capital formation, considered necessary or appropriate to promote or achieve uniformity; and</p> <p>(13) developing and maintaining a uniform exemption from</p>			
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<p>registration for small issuers and taking other steps to reduce the burden of raising investment capital by small businesses.</p>			
<p>Sec. 45.56.625. Securities investor education and training fund. The securities investor education and training fund is created as a special fund in the general fund to provide funds for the purposes specified in 45.56.605(d). The legislature may appropriate 33 percent of the money received by this state from civil penalties under this chapter into the fund for securities investor education and training. Nothing in this section exempts money deposited into the fund from the requirements of AS 37.07 (Executive Budget Act) or dedicates money for a specific purpose.</p>	None	Creates a securities and investor education and training fund within the general fund to provide funds for investor education. 33% of the money received in civil penalties may go into such a fund if appropriated by the legislature.	72
<p>Sec. 45.56.630. Service of process. (a) A consent to service of process complying with this section required by this chapter shall be signed and filed in the form required by a regulation adopted or order issued under this chapter. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative under this chapter or a regulation adopted or order issued under this chapter after the consent is filed has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent under this subsection in connection with a previous application for registration or notice filing need not file an additional consent.</p> <p>(b) If a person, including a nonresident of the state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a regulation adopted or order issued under this chapter and the person has not filed a consent to service of process under (a) of this section, the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding</p>	45.55.980(g)-(i)	Same as 45.55.	73

<p>against the person or the person's successor or personal representative.</p> <p>(c) Service under (a) or (b) of this section may be made by providing a copy of the process to the office of the administrator, but the service is not effective unless</p> <p>(1) the plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set out in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and</p> <p>(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.</p> <p>(d) Service under (c) of this section may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.</p> <p>(e) If process is served under (c) of this section, the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.</p> <p>(f) Unless the persons are exempt elsewhere in this chapter, AS 45.56 applies to person who sell or offer to sell when an offer to</p> <p>(1) sell is made in this state; or</p> <p>(2) buy is made and accepted in this state.</p>			
<p>Sec. 45.56.635. Applicability of the chapter. (a) Unless the persons are exempt elsewhere in this chapter, AS 45.56 applies to persons who buy or offer to buy when an offer to</p>	<p>45.55.980(a)-(f)</p>	<p>Same as 45.55.</p>	<p>74</p>

<p>(1) buy is made in this state; or (2) sell is made and accepted in this state. (b) Unless the person is exempt elsewhere in this chapter, this chapter applies to a person who sells or offers to sell when an offer to</p> <p>(1) sell is made in this state; or (2) buy is made and accepted in this state. (c) For the purposes of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer</p> <p>(1) originates from this state; (2) is directed by the offeror to this state and received at the place to which it is directed, or at a post office in this state in the case of a mailed offer; (3) is for an interest or participation in an oil, gas, or mining right, title, or lease on land in the state, including submerged land, regardless of where the offer is made; (4) is for an interest or participation in payments out of production under an oil, gas, or mining right, title, or lease on land in the state, including submerged land, regardless of where the offer is made; (5) is for an interest or participation in real property located in the state, or in a corporation, a partnership, a limited liability company, a limited partnership, a limited liability partnership, an association, a joint-stock company; jurisdiction under this paragraph may be exercised only when the exercise is not inconsistent with the constitution of this state or of the United States. (d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state,</p>			
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<p>when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed or, in the case of a mailed acceptance, a post office in this state.</p> <p>(e) AS 45.56 applies to investment advisers, federal covered advisers, and investment adviser representatives when any act instrumental in effecting prohibited conduct is done in this state, regardless of whether either party is then present in this state.</p>			
<p>Sec. 45.56.640. Regulations, forms, orders, interpretative opinions, and hearings. (a) The administrator may</p> <p>(1) issue forms and orders; after notice and comment, adopt and amend regulations necessary or appropriate to carry out this chapter; and repeal regulations, including regulations and forms governing registration statements, applications, notice filings, reports, and other records;</p> <p>(2) by regulation, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter; and</p> <p>(3) by regulation, classify securities, persons, and transactions and adopt different requirements for different classes.</p> <p>(b) Under this chapter, a regulation or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the regulation, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending, and repealing regulations and forms, AS 45.56.620 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.</p> <p>(c) Subject to 15 U.S.C. 78o(i) and 80b-18a, the administrator</p>	<p>45.55.950 and 45.55.970</p>	<p>This provision combines regulations, forms, orders, interpretative opinions, and hearings into one statute, whereas in 45.55 it is divided into two.</p> <p>Language is updated to clarify that the administrator may require financial statements filed to be GAAP compliant only where permitted by federal law due to NSMIA (National Securities Market Improvement Act).</p>	<p>75</p>

<p>may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by regulation adopted or order issued under this chapter. A regulation adopted or order issued under this chapter may establish</p> <p>(1) subject to 15 U.S.C. 78o(f) and 80b-18a, the form and content of financial statements required under this chapter;</p> <p>(2) whether unconsolidated financial statements must be filed; and</p> <p>(3) whether required financial statements must be audited by an independent certified public accountant.</p> <p>(d) The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A regulation adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this chapter.</p> <p>(e) A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrative law judge or the administrator for good cause consistent with this chapter determines that the hearing may not be conducted in public.</p> <p>(f) AS 44.62 (Administrative Procedures Act) applies to all regulations adopted or authorized under this chapter.</p>			
<p>Sec. 45.56.645. Investigations and subpoenas. (a) The administrator may</p> <p>(1) conduct public or private investigations within or outside of the state that the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a regulation</p>	45.55.910	<p>Mostly the same language as is currently in 45.55.910, but (e) has been moved to 45.56.603 (confidentiality).</p> <p>(f) is a new provision that more explicitly permits and encourages cooperation with other states'</p>	76

<p>adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of regulations and forms under this chapter;</p> <p>(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and</p> <p>(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a regulation adopted or order issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.</p> <p>(b) For the purpose of an investigation under this chapter, the administrator or the designated officer of the administrator may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation.</p> <p>(c) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise obey a subpoena as required by the administrator under this chapter, the administrator may refer the matter to the attorney general, who may bring an action in the superior court or a court of another state to enforce compliance. The court may</p> <p>(1) hold the person in contempt;</p> <p>(2) order the person to appear before the administrator;</p> <p>(3) order the person to testify about the matter under investigation or in question;</p> <p>(4) order the production of records;</p> <p>(5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;</p>		<p>securities administrators in their investigations as to violations or potential violations of those states' securities laws, even if the conduct would not necessarily be a violation of Alaska's securities laws. Cooperation with other jurisdictions already takes place in practice, and we are always happy to share resources if we can be of some assistance. Under this provision, the statute also makes clear that the administrator may choose to not cooperate with another jurisdiction for public policy considerations or if resources are not available.</p>	
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<p>(6) impose a civil penalty of not more than \$100,000 for a single violation; and</p> <p>(7) grant any other necessary or appropriate relief.</p> <p>(d) This section does not preclude a person from applying to the superior court or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.</p> <p>(e) A person is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this chapter or in an action or proceeding instituted by the administrator under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the person refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to the superior court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under an order of the superior court may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.</p> <p>(f) At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or regulation of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred</p>			
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<p>by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested, whether compliance with the request would violate or prejudice the public policy of this state, and the availability of resources and employees of the administrator to carry out the request for assistance.</p>			
<p>Sec. 45.56.650. Administrative enforcement. (a) If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a regulation adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a regulation adopted or order issued under this chapter, the administrator may issue an order</p> <p>(1) directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;</p> <p>(2) denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under AS 45.56.405(b)(1)(D) or (F) or an investment adviser under AS 45.56.435(b)(1)(C); or</p> <p>(3) denying, suspending, conditioning, or limiting an exemption as provided under AS 45.56.250.</p> <p>(b) An order under (a) of this section is effective on the date of issuance. Upon issuance of the order, the administrator</p>	<p>See generally 45.55.920, and 45.55.935</p>	<p>The enforcement provisions have been significantly reorganized under the proposed bill, and are now divided into administrative, civil, and criminal sections, though the basic provisions are carried over, with some additions.</p> <p>Administratively, the administrator can issue an order to cease and desist (or take other action), impact a license under Article 4 of the Act, or limit or deny use of exemptions under Article 2 of the Act. (All permitted under current law in 45.55.920, 45.55.060, and 45.55.990, respectively).</p> <p>Orders are effective upon service and respondents have 30 days to request a hearing. This is a change from 15 days under current law. Note: the Securities Act is exempted from the Alaska Administrative Procedures Act under 44.62.330.</p> <p>Civil penalties are increased from \$2,500 for a single violation and \$25,000 maximum for</p>	<p>78</p>

<p>shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement of any civil penalty, restitution, or costs of investigation the administrator will seek, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, including the imposition of a civil penalty, the imposition of restitution, or requirement for payment of the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.</p> <p>(c) If a hearing is requested or ordered under (b) of this section, a hearing must be conducted by the office of administrative hearings (AS 44.64.010) and AS 44.64.040 - 44.64.200 shall apply and govern.</p> <p>(d) In a final order under (b) of this section, the administrator may impose a civil penalty of not more than \$100,000 for a single violation, unless the violation of this chapter is against an older person.</p> <p>(1) In addition to a civil penalty imposed pursuant to AS 45.56.650, a person or entity who engages in any conduct prohibited by the provisions of this chapter against an older person, may be liable for an additional civil penalty of treble statutory damages.</p> <p>(A) In determining whether to impose a supplemental civil penalty under (d)(1) of this section, the administrator shall consider, in addition to other appropriate factors, the extent to which the following factors are present:</p>		<p>multiple violations to \$100,000 maximum for a single violation with no limit for multiple violations. There is no longer a differentiation between knowing/intentional violations and other types. However, whether something is committed knowingly or intentionally would be a factor in determining where to set the penalty.</p> <p>New: If the victim is an “older person” (defined as a natural person over 60 years old), the respondent is subject to treble damages.</p> <p>New: Under (e)(1), restitution may now be ordered.</p> <p>Under (e)(2), actual costs of investigation may be ordered. Currently in 3 AAC 08.015(b).</p> <p>Under (e)(3), the administrator may deny the use of exemptions. The administrator may do this currently under 45.55.900(d), but only relating to specific securities transactions. This blanket provision prevents those who violate the securities act from benefitting from the use of exemptions. Currently, the administrator negotiates the denial of exemptions as may be appropriate.</p> <p>The administrator may petition a court to enter a final judgment to collect a civil penalty. Such a petition does not reopen the merits of the case to be decided in Superior Court. (Same as 45.55.920(e)).</p> <p>(g) is similar to current 45.55.920(e). The</p>	
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<p>(1) whether the respondent knew that the respondent's conduct was directed to an older person;</p> <p>(2) whether the respondent's conduct caused an older person to suffer severe loss or encumbrance of a primary residence, principal employment or source of income, substantial loss of property set aside for retirement or for personal and family care and maintenance, or</p> <p>(3) whether the respondent's conduct caused substantial loss of payments received under a pension or retirement plan or a government benefits program;</p> <p>(e) In a final order under (b) of this section, the administrator may</p> <p>(1) impose restitution to any person in interest for any monies or property, real or personal, that may have been acquired or transferred in violation of this chapter;</p> <p>(2) charge the actual cost of an investigation or proceeding for a violation of this chapter or a regulation adopted or order issued under this chapter; or</p> <p>(3) deny the violator of the use of any exemptions listed under this chapter.</p> <p>(f) The administrator may petition the superior court to enter a judgment against a person who is a respondent in the order for the amount of the civil penalty levied against the person. Subject to AS 44.62.570, the filing of the petition for a judgment does not reopen the final order to further substantive review. A judgment entered under this subsection may be executed on and levied under in the manner provided in AS 09.35.</p> <p>(g) If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in</p>		<p>administrator may petition a court to enforce a final order. The bill adds new language explaining that the court can hold a person who violates a final order in civil contempt and impose a further civil penalty of \$100,000 for each violation in addition to what was ordered administratively.</p>	
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<p>compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not greater than \$100,000 for each violation and may grant any other relief the court determines is just and proper in the circumstances.</p>			
<p>Sec. 45.56.655. Civil enforcement. (a) If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a regulation adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a regulation adopted or order issued under this chapter, the administrator may maintain an action in the superior court to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a regulation adopted or order issued under this chapter.</p> <p>(b) In an action under this section and on a proper showing, the court may</p> <p>(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;</p> <p>(2) order other appropriate or ancillary relief, which may include</p> <p>(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator that may be the administrator for the defendant or the defendant's assets;</p> <p>(B) ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;</p> <p>(C) imposing a civil penalty of not more than \$100,000 for a single violation unless the violation of this chapter is against</p>	<p>45.55.920(a)(2)</p>	<p>45.55 does not have very clear language explaining civil enforcement of the Securities Act, containing only one brief statement within AS 45.55.920 that gives the administrator the option of enforcing the Act in court rather than administratively. The proposed bill provides more guidance on the types of remedies available in civil court and the procedure to follow.</p> <p>(a) same as 45.55.920(a)(2). Gives the administrator the option of going to Superior Court to enforce the Securities Act rather than taking administrative action</p> <p>(b) New. Provides more specific guidelines to the possible actions that may take place in civil court including:</p> <p>(1) injunctions,</p> <p>(2)(A) asset freezes, including appointing the administrator as receiver,</p> <p>(2)(B) ordering the administrator to take charge and control of a defendant's property, including the ability to acquire and dispose of property,</p> <p>(2)(C) imposing a civil penalty of up to \$100,000 per violation, which may be higher if against an "older person." In determining whether to increase penalties, the court may consider factors such as whether the person knew that the victim</p>	<p>81</p>

<p>an older person; in determining whether to impose a supplemental civil penalty for a violation of this chapter against an older person, the court shall consider, in addition to other appropriate factors, the extent to which the following factors are present:</p> <p>(i) whether the respondent knew that the respondent's conduct was directed to an older person;</p> <p>(ii) whether the respondent's conduct caused an older person to suffer severe loss or encumbrance of a primary residence, principal employment or source of income, substantial loss of property set aside for retirement or for personal and family care and maintenance, or</p> <p>(iii) whether the respondent's conduct caused substantial loss of payments received under a pension or retirement plan or a government benefits program;</p> <p>(D) imposing an order of rescission, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or former AS 45.55 or a regulation adopted or order issued under this chapter or former AS 45.55;</p> <p>(E) imposing an order restitution to any person in interest for any monies or property, real or personal, that may have been acquired or transferred in violation of this chapter; and</p> <p>(F) ordering the payment of prejudgment and postjudgment interest; or</p> <p>(3) order other relief that the court considers appropriate.</p> <p>(c) The administrator may not be required to post a bond in an action or proceeding under this chapter.</p> <p>(d) After an order issued by the court under (b) of this section becomes final and all rights of appeal are exhausted, the administrator may petition the superior court to enter a judgment against a person who is a respondent in the order for the amount of the civil penalty levied against the person. Subject to AS 44.62.570, the filing of the petition for a</p>		<p>was an older person, whether the conduct caused severe loss or encumbrance of primary residence, employment or source of income, or substantial loss of property or loss of pension, retirement or government benefits. An older person is defined as a person over 60 years old.</p> <p>(2)(D) imposing an order of rescission or disgorgement</p> <p>(2)(E) imposing restitution</p> <p>(2)(F) ordering repayment of prejudgment or post judgment interest</p> <p>(c) New. Provides that the administrator is not required to post a bond in a civil proceeding.</p> <p>(d) New. Allows the administrator to petition for post-decision judgment if the judge ordered civil penalties.</p>	
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<p>judgment does not reopen the final order to further substantive review. A judgment entered under this subsection may be executed on and levied under in the manner provided in AS 09.35.</p>			
<p>Sec. 45.56.660. Civil liability. (a) Enforcement of civil liability under this section is subject to P.L. 105-353 (Securities Litigation Uniform Standards Act of 1998). (b) A person is liable to the purchaser if the person sells a security in violation of AS 45.56.105, or by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following: (1) the purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest under AS 09.30.070 or eight percent, whichever is greater, from the date of the purchase, costs, and reasonable attorney fees determined by the court, upon the tender of the security, or for actual damages as provided in (3) of this subsection; (2) the tender referred to in (1) of this subsection may be made any time before entry of judgment; tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified; a purchaser that no longer owns the security may recover actual damages as provided in (3) of this subsection; (3) actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it</p>	<p>See generally 45.55.930</p>	<p>Rescission offers and general civil liability to buyers, formerly within the same provision at 45.55.930, are now separate.</p> <p>(a) New. Enforcement of a civil liability is subject to the Securities Litigation Uniform Standards Act (SLUSA) of 1998. As the SLUSA is federal law, it already applied, but this makes its application clear in the statutes.</p> <p>(b) is the same in content as 45.55.930(a); rewritten for clarity.</p> <p>(b)(1)-(3) New. (b) covers instances where a SELLER is liable to a PURCHASER. The purchaser may sue to recover consideration for the security, minus the income received; interest from the date of purchase; and costs and attorney fees upon the tender of security. Or, the purchaser may choose actual damages under (3). The rate of interest is updated from a flat eight percent to the rate calculated in 09.30.070, which sets the interest rate at three points above the 12th Federal Reserve District discount rate in effect on January 2 of that year, OR eight percent, whichever is greater.</p> <p>(2) same as 45.55.930(d).</p> <p>(3) New. Calculation of actual damages is: the</p>	<p>82</p>

<p>and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of the purchase, costs, and reasonable attorney fees determined by the court.</p> <p>(c) A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:</p> <p>(1) the seller may maintain an action to recover the security and any income received on the security, costs, and reasonable attorney fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in (3) of this subsection;</p> <p>(2) the tender referred to in (1) of this subsection may be made any time before entry of judgment; tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified; if the purchaser no longer owns the security, the seller may recover actual damages as provided in (3) of this subsection;</p> <p>(3) actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater from the date of the sale of the security, costs, and reasonable attorney fees determined by the court.</p>		<p>consideration paid plus interest at the rate calculated in AS 09.30.070, or eight percent, whichever is greater, less any income received from the security.</p> <p>(c) New. This section applies to situations where a PURCHASER is liable to a SELLER. This would occur when a purchaser buys a security through misrepresentation.</p> <p>(c)(1)-(3) New. Mirrors the remedies available in (b)(1)-(3), but is regarding damages recoverable by the seller. The seller may recover the security and any income received, plus costs, attorney fees or actual damages.</p> <p>(d) New. A person acting as a broker-dealer or agent that sells a security in violation of the Act is liable to the customer, and they may recover actual damages under (b) or (c).</p> <p>(e) New. A person acting as an investment adviser or investment adviser representative providing advice in violation of the Act is liable to the client, who may recover consideration paid for the cost of the advice plus interest, costs and attorney fees.</p> <p>(f) New. A person that engages in fraudulent conduct is liable to the other person. The victim may recover consideration paid for advice plus actual damages, interest and attorney fees, minus any income received as a result of the fraudulent conduct.</p>	
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<p>(d) A person acting as a broker-dealer or agent that sells or buys a security in violation of AS 45.56.405(a), 45.56.435(a), or 45.56.530 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in (b)(1) - (3) of this section or, if a seller, for a remedy as specified in (c)(1) - (3) of this section.</p> <p>(e) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of AS 45.56.405(a), 45.56.406(a), or 45.56.504 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of payment, costs, and reasonable attorney fees determined by the court.</p> <p>(f) A person that receives, directly or indirectly, any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person is liable to the other person. An action under this subsection is governed by the following:</p> <p>(1) the person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of the fraudulent conduct, costs, and reasonable attorney fees determined by the court, less the amount of any income received as a result of the fraudulent conduct;</p> <p>(2) this subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and special compensation is not received for the investment advice.</p> <p>(g) The following persons are liable jointly and severally with</p>		<p>(g) is same as 45.55.930(c).</p> <p>Subsection (h) NEW A person liable under this section has a right of contribution against any other person liable under this section.</p> <p>(i) same as 45.55.930(e).</p> <p>(j) similar to 45.55.930(f) regarding the statutory limit for bringing an action under this section. For violations under subsection (d) or (e), the action must be instituted within three years after the violation occurred. For violations under subsection (c) or (f), the action must be instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation. The statute of limitations in 45.55 is three years from the sale or, if based on fraud, two years from the date of discovery, whichever is later.</p> <p>(k) same as 45.55.930(g).</p> <p>(l) same as 45.55.930(h).</p> <p>(m) same as 45.55.930(i).</p> <p>Note: attorney fees would only be recoverable by the plaintiff in all cases where it is allowed. This statute does not provide for “prevailing party” attorney fees.</p>	
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<p>and to the same extent as persons liable under (b) - (f) of this section:</p> <p>(1) a person that directly or indirectly controls a person liable under (b) - (f) of this section, unless the controlling person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist;</p> <p>(2) an individual who is a managing partner, executive officer, or director of a person liable under (b) - (f) of this section, including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist;</p> <p>(3) an individual who is an employee of or associated with a person liable under (b) - (f) of this section and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which the liability is alleged to exist; and</p> <p>(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under (b) - (f) of this section, unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care, could not have known of the existence of conduct by reason of which liability is alleged to exist.</p> <p>(h) A person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.</p> <p>(i) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.</p>			
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<p>(j) A person may not obtain relief under (b) of this section for a violation of AS 45.56.105, or under (d) or (e) of this section, unless the action is instituted within three years after the violation occurred; or other than for violation of AS 45.56.105, or under (c) or (f) of this section, unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.</p> <p>(k) A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a regulation adopted or order issued under this chapter or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter may not base an action on the contract.</p> <p>(l) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a regulation adopted or order issued under this chapter is void.</p> <p>(m) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or AS 45.56.475(e).</p>			
<p>Sec. 45.56.665. Rescission offers. (a) A purchaser, seller, or recipient of investment advice may not maintain an action under AS 45.56.660 if</p> <p>(1) the purchaser, seller, or recipient of investment advice receives, in a record, before the action is instituted</p> <p>(A) an offer stating the respect in which liability under AS 45.56.660 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was</p>	<p>See generally 45.55.930, 45.55.900(b)(19)</p>	<p>Rescission offers and general civil liability to buyers, formerly within the same provision at AS 45.55.930, are now separate.</p> <p>Rescission is not concurrently available with the civil liability provisions in AS 45.56.660 (i.e. you must choose one or the other if you are a plaintiff in a civil case).</p> <p>Subsection (a)(1) is the same as 45.55.930(f) (A)-(F) is new and explains what type of offer</p>	<p>86</p>

<p>required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice;</p> <p>(B) if the basis for relief under this section may have been a violation of AS 45.56.660(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser, upon acceptance of the offer, damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of the purchase in cash equal to the damages computed in the manner provided in this subparagraph;</p> <p>(C) if the basis for relief under this section may have been a violation of AS 45.56.660(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of the sale, or, if the purchaser no longer owns the security, an offer to pay the seller, upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest in AS 09.30.070, or eight percent, whichever is greater, from the date of the sale;</p> <p>(D) if the basis for relief under this section may have been a violation of AS 45.56.660(d); and if the customer is a</p>		<p>would constitute a valid rescission based upon the type of violation. This tracks the violation types in 45.56.660(b)-(f).</p> <p>Subsection (a)(2) New. The aggrieved party has 30 days to accept the recession offer made under (a)(1). 45.55.930 refers to a 30 day time frame in a few places but did not clearly state that offers must be accepted or rejected within 30 days.</p> <p>Subsection (a)(3) New. The offeror must demonstrate his or her ability to pay.</p> <p>Subsection (a)(4) New. The rescission offer must be delivered in a way that ensures receipt by the other party.</p> <p>Subsection (a)(5) New. The offeror must actually pay as promised.</p> <p>Subsection (b) Same as 45.55.930(k).</p> <p>The rescission amount is calculated the same as actual damages in a civil case: the consideration paid plus interest at the rate calculated in 09.30.070, or eight percent, whichever is greater, less any income received from the security.</p> <p>09.30.070 sets the interest rate at three points above the 12th Federal Reserve District discount rate in effect on January 2 of the year the judgment is entered.</p> <p>The offeror must have the capacity to pay; this is</p>	
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<p>purchaser, an offer to pay as specified in (B) of this paragraph; or, if the customer is a seller, an offer to tender or to pay as specified in (C) of this paragraph;</p> <p>(E) if the basis for relief under this section may have been a violation of AS 45.56.660(e), an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest under AS 09.30.070, or eight percent, whichever is greater, from the date of payment; or</p> <p>(F) if the basis for relief under this section may have been a violation of AS 45.56.660(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest under AS 09.30.070 from the date of the violation causing the loss;</p> <p>(2) the offer under (1) of this section states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period of not less than three days that the administrator, by order, specifies;</p> <p>(3) the offeror has the present ability to pay the amount offered or to tender the security under (1) of this section;</p> <p>(4) the offer under (1) of this section is delivered to the purchaser, seller, or recipient of investment advice or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and</p> <p>(5) the purchaser, seller, or recipient of investment advice that accepts the offer under (1) of this section, in a record, within the period specified under (2) of this section, is paid in accordance with the terms of the offer.</p> <p>(b) The offer under this section must be filed with the administrator 10 business days before the offering and conform in form and content with a regulation adopted under this chapter.</p>		<p>currently found in our regulations at 3 AAC 08.915.</p> <p>The offer must be filed with the administrator 10 business days before the offering is made. The offer is an exempt securities transaction under 45.56.210(19).</p>	
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<p>Sec. 45.56.670. Criminal enforcement. (a) A person who knowingly violates this chapter, a regulation adopted under this chapter, or an order issued under this chapter, except AS 45.56.550 or the notice filing requirements of AS 45.56.330 or 45.56.445, or that willfully violates AS 45.56.520 knowing the statement made to be false or misleading in a material respect is guilty of a class C felony punishable by imprisonment under AS 12.55.125(e) or punishable by a fine of not more than \$100,000, or both. A person convicted of violating a regulation or order issued under this chapter may be fined, but may not be imprisoned, if the person did not know of the regulation or order.</p> <p>(b) A person who violates a regulation under this chapter or an order issued under this chapter without knowledge of the regulation or order commits a class A misdemeanor.</p> <p>(c) A person who knowingly alters, destroys, shreds, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to alter or impair the record, document, or object for use in an official proceeding under this chapter, is guilty of a class C felony. A person convicted of violating (a) of this section is punishable by imprisonment as provided in AS 12.55.125(e).</p> <p>(d) The attorney general, with or without a reference from the administrator, may institute criminal proceedings under this chapter.</p> <p>(e) This chapter does not limit the power of the state to punish a person for conduct that constitutes a crime under other laws of the state.</p>	<p>45.55.925</p>	<p>(a): Similar to 45.55.925(a) with important changes:</p> <p>Willfully was changed to knowingly; individuals who violate the chapter, or a regulation under the chapter, are guilty of a class C felony under 12.55.125. (Previously, it was unclear if it was a misdemeanor or felony or even what class it was)</p> <p>The criminal penalty is increased from \$5,000 to \$100,000. Imprisonment of 1-5 years in the current statute is changed in the new statute to the requirements under 12.55.125(e) that states:</p> <p>“(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in 12.55.155 - 12.55.175:</p> <p>(1) if the offense is a first felony conviction and does not involve circumstances described in (4) of this subsection, zero to two years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085, and the court may, as a condition of probation under AS 12.55.086, require the defendant to serve an active term of imprisonment within the range specified in this paragraph;</p> <p>(2) if the offense is a second felony conviction, two to four years;</p> <p>(3) if the offense is a third felony conviction, three</p>	<p>88</p>
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		<p>to five years; (4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one to two years.”</p> <p>Individuals can't be imprisoned if they had no knowledge of the violation or order. (This is the same as in 45.55).</p> <p>(b): New. Individuals who violate regulations or orders under the chapter without knowledge that they have violated them commits a class A misdemeanor. The fine is not more than \$100,000.</p> <p>(c): New. Individuals who alter or destroy evidence are guilty of a class C felony under 12.55.125. Violators under this provision are subject to imprisonment under 12.55 and a fine of not more than \$500,000, or both.</p> <p>(d): Same as 45.55.925(b).</p>	
<p>Sec. 45.56.675. Judicial review. (a) Judicial review by the superior court of a final order issued by the administrator under this chapter may be had by filing a notice of appeal in accordance with the applicable rules of court governing appeals in civil matters. The notice of appeal shall be filed within 30 days after the order becomes final under AS 44.64.060.</p> <p>(b) A regulation adopted under this chapter is subject to judicial review under AS 44.62.300.</p>	45.55.940	<p>Same as existing law, with language updated. Appellants have 30 days to obtain judicial review of a final order.</p>	89
<p>Article 7. Miscellaneous and Additional General Provisions.</p>			
<p>Sec. 45.56.710. Reimbursement of expenses incident to examination or investigation. (a) The administrator may require an issuer, broker-dealer, agent, investment adviser</p>	45.55.915	<p>Same as 45.55.</p>	89

<p>representative, federal covered adviser, or investment adviser to reimburse the administrator for actual travel expenses and per diem incurred in connection with an examination or investigation under this chapter.</p> <p>(b) The administrator may by regulation or order adopt a schedule of charges for annual examination and investigation of issuers, broker-dealers, agents, investment adviser representatives, federal covered advisers, and investment advisers.</p> <p>(c) If an issuer, broker-dealer, agent, investment adviser representative, federal covered adviser, or investment adviser fails to pay the fees and expenses provided for in this section, the fees and expenses shall be paid out of funds of the administrator in the same manner as other disbursements made by the administrator. The amounts paid from the funds of the administrator are a lien on all of the assets and property in this state of the an issuer, broker-dealer, agent, investment adviser representative, federal covered adviser, or investment adviser, and the amount may be recovered by the attorney general on behalf of the state.</p> <p>(d) Failure of the an issuer, broker-dealer, agent, investment adviser representative, federal covered adviser, or investment adviser to pay fees and expenses under this section is a willful violation of this chapter, and the violation falls within the provisions of AS 45.56.350, AS 45.56.440, and AS 45.56.615.</p>			
<p>Sec. 45.56.720. Electronic records and signatures. This chapter modifies, limits, and supersedes 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act), but does not modify, limit, or supersede 15 U.S.C. 7001(c) or authorize electronic delivery of any of the notices described in 15 U.S.C. 7003(b). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a regulation adopted or order issued under this chapter, in a manner consistent with</p>	<p>None</p>	<p>Facilitates the filing of electronic records and signatures as permitted by regulation or order and consistent with federal law. The law cited, the Electronic Signatures in Global and National Commerce Act, encourages the use of electronic records, but for the purposes of consumer disclosures the consumer must consent to the use of electronic records and have the option to withdraw such consent. Further, certain notices</p>	<p>90</p>

15 U.S.C. 7004(a).		listed in the act (none of which are related to securities, but include things like notice of utility cancellation) cannot be delivered to consumers electronically. 45.56.720 does not modify those basic requirements.	
<p>Sec. 45.56.730. References to federal statutes. In this chapter, a reference to the following federal statutes, including a statute within a spanned reference, means those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter, or as later amended:</p> <p>(1) 7 U.S.C. 1 - 27 (Commodity Exchange Act);</p> <p>(2) 15 U.S.C. 77a - 77aa (Securities Act of 1933);</p> <p>(3) 15 U.S.C. 77b, 77k, 77m, 77p, 77r, 77v, 77z-1 - 77z-3, 77aa, 77ccc - 77ddd, 77mmm, 77sss, 78a, 78c - 78d, 78g, 78n, 78o, 78o-4 - 78o-5, 78s, 78t - 78u, 78u-4, 78z, 78bb, 78ee, 78kk, 78ll, 80a-2 - 80a-3, 80a-12, 80a-18, 80a-29 - 80a-30, 80b-3, 80b-18a, (Securities Litigation Uniform Standards Act of 1998);</p> <p>(4) 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934);</p> <p>(5) 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940);</p> <p>(6) 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);</p> <p>(7) 15 U.S.C. 661 - 697g (Small Business Investment Act of 1958);</p> <p>(8) 15 U.S.C. 7001 - 7031 (Electronic Signatures in Global and National Commerce Act);</p> <p>(9) 26 U.S.C. (Internal Revenue Code);</p> <p>(10) 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security Act of 1974);</p> <p>(11) 42 U.S.C. 16451 et seq. (Energy Policy Act of 2005).</p>	None	This is a list of all federal statutes referred to in the Act.	90
<p>Sec. 45.56.740. References to federal agencies. A reference in this chapter to an agency or department of the</p>	None		91

United States is also a reference to a successor agency or department.			
Sec. 45.56.900. Definitions. In this chapter, unless the context otherwise requires,	See generally 45.55.990	Note: a number of definitions are not carried over simply because they are not used in the Act.	
(1) "administrator" means the commissioner of commerce, community, and economic development or a designee of the commissioner;	45.55.990(1)	Same as 45.55.	91
(2) "agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities; however, a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term; "agent" does not include an individual excluded by regulation adopted or order issued under this chapter;	45.55.990(5)	Same lead-in language as current definition of agent. 45.55 contains a list of what is excluded from the definition of agent. This is now covered in 45.56.404.	91
(3) "bank" means (A) a banking institution organized under the laws of the United States; (B) a member bank of the Federal Reserve System; (C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the United States Comptroller of the Currency under 12 U.S.C. 92a, that is supervised and examined by a state or federal agency having supervision over banks, and that is not operated for the purpose of evading this chapter; and (D) a receiver, conservator, or other liquidating agent of any institution or firm included in (A), (B), or (C) of this paragraph;	None	Taken from Subsection 3(a)(6) of the Securities Exchange Act of 1934.	91

<p>(4) "broker-dealer" means a person engaged in the business of effecting transactions in securities for the accounts of others or for the person's own account; the term does not include</p> <p>(A) an agent;</p> <p>(B) an issuer;</p> <p>(C) a bank, trust company organized or chartered under the laws of the state, or savings institution if its activities as a broker-dealer are limited to those specified in 15 U.S.C. 78c(a)(4)(B)(i) - (vi), (viii) - (x), and (xi) if limited to unsolicited transactions, or 15 U.S.C. 78c(a)(5)(B) and (C), or a bank that satisfies the conditions described in 15 U.S.C. 78c(a)(4);</p> <p>(D) an international banking institution; or</p> <p>(E) a person excluded by a regulation adopted or order issued under this chapter;</p>	45.55.990(7)	Generally similar to the definition in 45.55, except that 45.55 included the de minimis exemption for broker-dealers, which has been moved to 45.56.401.	92
<p>(5) "defraud" includes engaging in common law deceit;</p>	45.55.990(12)	Definition separated out at the suggestion of legislative legal – in 45.55, definition covers "fraud," "deceit" and "defraud"	92
<p>(6) "department " means the Department of Commerce, Community, and Economic Development;</p>	None		92
<p>(7) "depository institution" means</p> <p>(A) a bank; or</p> <p>(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law; the term does not include</p> <p>(i) an insurance company or other organization primarily engaged in the business of insurance;</p>	None	<p>This definition is more inclusive than the definition of bank, and includes credit unions, trust companies, and insurance companies.</p> <p>A Morris Plan Bank is a type of bank first established in 1910 to lend money to individuals who couldn't obtain loans from mainstream banks. Morris Plan banks had a unique lending strategy. They did not require collateral for loans, but instead considered the character and community standing of applicants by requiring two endorsers. All three were required to fill out an application covering character, financial history,</p>	92

(ii) a Morris Plan bank; or (iii) an industrial loan company that is not an "insured depository institution" as defined in 12 U.S.C. 1813(c)(2), or any successor federal statute;		employment and wages. If the loan was granted, the borrower ended up paying a relatively high rate of interest.	
(8) "federal covered investment adviser" means a person registered under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940);	45.55.990(9)	Previously: "federal covered adviser"	93
(9) "federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under 15 U.S.C. 77r(b) or rules or regulations adopted under that provision;	45.55.990(10)	Same as 45.55.	93
(10) "filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator;	None	The definition recognizes that records may be filed in paper form or electronically with the administrator, or CRD, IARD, or EDGAR.	93
(11) "former AS 45.55" means AS 45.55 as it existed immediately before July 1, 2016;	None		93
(12) "fraud" and "deceit" include common law deceit;	45.55.990(12)	Definition separated out at the suggestion of legislative legal – in 45.55, definition covers "fraud," "deceit" and "defraud"	93
(13) "guaranteed" means guaranteed as to payment of all principal and all interest;	45.55.990(13)	Same as 45.55	93
(14) "institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity: (A) a depository institution, a trust company organized or chartered under the laws of this state, or international banking institution; (B) an insurance company; (C) a separate account of an insurance company; (D) an investment company as defined in 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940); (E) a broker-dealer registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934); (F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000 or its	None		93

<p>investment decisions are made by a named fiduciary, as defined in 29 U.S.C. 1102(a)(2) (Employee Retirement Income Security Act of 1974), that is a broker-dealer registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934), an investment adviser registered or exempt from registration under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), an investment adviser registered under this chapter, a depository institution, or an insurance company;</p> <p>(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a legally designated public official or by a named fiduciary, as defined in 29 U.S.C. 1102(a)(2), that is a broker-dealer registered under 15 U.S.C. 78a – 78pp (Securities Exchange Act of 1934), an investment adviser registered or exempt from registration under 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940), an investment adviser registered under this chapter, a depository institution, or an insurance company;</p> <p>(H) a trust if that trust has total assets in excess of \$10,000,000, the trustee of the trust is a depository institution, and the participants in the trust are exclusively plans of the types identified in (F) or (G) of this paragraph, regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;</p> <p>(I) an organization described in 26 U.S.C. 501(c)(3), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;</p> <p>(J) a small business investment company licensed by the</p>			
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<p>United States Small Business Administration under 15 U.S.C. 681(c) with total assets in excess of \$10,000,000;</p> <p>(K) a private business development company as defined in 15 U.S.C. 80b-2(a)(22) with total assets in excess of \$10,000,000;</p> <p>(L) a federal covered investment adviser acting for its own account;</p> <p>(M) a qualified institutional buyer, as defined in 17 C.F.R. 230.144A, other than 17 C.F.R. 230.144A(a)(1)(i)(H), adopted under 15 U.S.C. 77a - 77aa (Securities Act of 1933);</p> <p>(N) a major United States institutional investor, as defined in 17 C.F.R. 240.15a-6(b)(4)(i), adopted under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934);</p> <p>(O) any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000 not organized for the specific purpose of evading this chapter; or</p> <p>(P) any other person specified by regulation adopted or order issued under this chapter;</p>			
<p>(15) "insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and that is subject to supervision by the insurance commissioner or a similar official or agency of a state;</p>	None	Based on Section 2(a)(13) of the Securities Act of 1933.	95
<p>(16) "insured" means insured as to payment of all principal and all interest;</p>	None		95
<p>(17) "international banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under 15 U.S.C. 77a - 77aa (Securities Act of 1933);</p>	None	Per USA: Securities issued or guaranteed by the International Bank for Reconstruction and Development, 22 U.S.C. 286k-1(a); the Inter-American Development Bank, 22 U.S.C. 283h(a); the Asian Development Bank, 22 U.S.C. 285h(a); the African Development Bank, 22 U.S.C. 290i-9; and the International Finance Corporation, see 22 U.S.C. 282k; are treated as exempt securities under Section 3(a)(2) of the 33 Act, and are within this	95

		term.	
(18) "investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or produces analyses or reports concerning securities; the term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation; the term does not include (A) an investment adviser representative; (B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession; (C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice; (D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation; (E) a federal covered investment adviser; (F) a bank, a trust company organized or chartered under the laws of this state, or savings institution; (G) any other person that is excluded by 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940) from the definition of investment adviser; or (H) any other person excluded by a regulation adopted or order issued under this chapter;	45.55.990(34)	Similar to definition of state investment adviser in 45.55 (note: "state investment adviser" is not used in 45.56), this definition generally follows the definition of investment adviser in section 202(a)(11) of the Investment Advisers Act of 1940, but has been updated to account for new media such as the internet.	95
(19) "investment adviser representative" means an individual employed by or associated with an investment adviser or	45.55.990(15)	Reworded for clarity, covers the same people and conduct as 45.55.	95

<p>federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or offers to provide investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing; the term does not include an individual who</p> <p>(A) performs only clerical or ministerial acts;</p> <p>(B) is an agent whose performance of investment advice is solely incidental to the individual's acting as an agent and who does not receive special compensation for investment advisory services;</p> <p>(C) is employed by or associated with a federal covered investment adviser, unless the individual has a place of business in this state, as that term is defined by rule adopted under 15 U.S.C. 80b-3a and is</p> <p>(i) an investment adviser representative, as that term is defined by rule adopted under 15 U.S.C. 80b-3a; or</p> <p>(ii) not a supervised person, as that term is defined in 15 U.S.C. 80b-2(a) (25); or</p> <p>(D) is excluded by a regulation adopted or order issued under this chapter;</p>			
<p>(94) "issuer" means a person that issues or proposes to issue a security, subject to the following:</p> <p>(A) the issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager under the trust or other agreement or instrument under which the security is issued;</p>	<p>45.55.990(20)</p>	<p>Generally the same, but updated language and expanded to clarify that the owner of a lease that creates fractional interest in oil, gas or other mineral leases, is the issuer of those interests.</p>	<p>97</p>

(B) the issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for ensuring payment of the certificate; (C) the issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale;			
(21) "nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer;	45.55.990(23)	Same as 45.55.	97
(22) "offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value; the term does not include a tender offer that is subject to 15 U.S.C. 78n(d);	None	A rescission offer under 45.56.665 would be an offer to purchase with respect to a security that earlier had been sold.	97
(23) "older person" means a natural person who is 60 years of age or older;	None		97
(24) "person" means an individual, a corporation, a partnership, a limited liability company, a limited partnership, a limited liability partnership, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;	45.55.990(25)	Same as 45.55.	98
(25) "place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means (A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or (B) any other location that is held out to the general public as	45.55.990(26)	Same as 45.55.	98

a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients;			
(26) "price amendment" means the amendment to a registration statement filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) or, if an amendment is not filed, the prospectus or prospectus supplement filed under 15 U.S.C. 77a - 77aa (Securities Act of 1933) that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price;	None	A price amendment may be used in a registration coordinated with the SEC procedure in Section 303(d). In the case of noncash offerings, required information concerning such matters as the offering price and underwriting arrangements is normally filed in a "price" amendment after the rest of the registration statement has been reviewed by the SEC staff.	98
(27) "principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser;	45.55.990(27)	Same as 45.55.	98
(28) "record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;	None	Taken from Uniform Electronic Transaction Act Section 2(13). From the USA comments: This is a standard definition designed to embrace all means of communicating or storing information except human memory. It includes any method for storing or communicating information, including "writings." A record need not be indestructible or permanent, but the term does not include oral or other communications which are not stored or preserved by some means.	98
(29) "sale" includes every contract of sale, contract to sell, or disposition of a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value; both terms include (A) a security given or delivered with, or as a bonus on	45.55.990(28)	Very similar to 45.55; modeled after Section 2(a)(3) of the Securities Act of 1933.	98

<p>account of, a purchase of securities or any other thing constituting part of the subject of the purchase and having been offered and sold for value;</p> <p>(B) a gift of assessable stock involving an offer and sale; and</p> <p>(C) a sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security;</p>			
<p>(30) "Securities and Exchange Commission" means the United States Securities and Exchange Commission;</p>	None		99
<p>(31) "securities business" means a business that provides the services provided by</p> <p>(A) investment advisers, federal covered investment advisers, or investment adviser representatives; or</p> <p>(B) broker-dealers, issuers, or agents of broker-dealers or issuers;</p>	45.55.990(30)	Same as 45.55.	99
<p>(32) "security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; viatical settlement; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest or based on the value of a put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim</p>	45.55.990(32)	The definition is substantially similar to 45.55.	99

<p>certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing; the term (A) includes both a certificated and an uncertificated security; (B) does not include a participation agreement entered under AS 14.40.802 or an insurance policy subject to AS 21; (C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to 29 U.S.C. 1001 - 1461 (Employee Retirement Income Security Act of 1974); (D) includes an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor; in this subparagraph, "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors; (E) includes as an investment contract, among other contracts, an interest in a limited partnership and a limited liability company, and an investment in a viatical settlement or similar agreement; and (F) includes a viatical settlement interest;</p>			
<p>(33) "self-regulatory organization" means a national securities exchange registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), a national securities association of broker-dealers registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), a clearing agency registered under 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), or the Municipal Securities Rulemaking Board established under 15 U.S.C. 78o-4;</p>	None		100
<p>(34) "sign" means, with present intent to authenticate or adopt a record, (A) to execute or adopt a tangible symbol; or (B) to attach or logically associate with the record an electronic symbol, sound, or process;</p>	None	Intended to facilitate the use of electronic signatures.	100

(35) "state" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States;	45.55.990(33)	Same as 45.55.	100
Sec. 45.56.995 Short title. This chapter may be cited as the Alaska Securities Act.	45.55.995	Same as 45.55.	100
Sections 26-28: Substantive Additions to Other Chapters in the Alaska Statutes		Most of the changes are numbering updates with the Securities Act moving to 45.56.	101
Sec. 29: Repeal of statutes that are not needed in AS 45.55.		These statutes referred to securities and not to the ANCSA related statutes remaining in AS 45.55.	105
Sec. 30. The uncodified law of the State of Alaska is amended by adding a new section to read: INDIRECT COURT RULE AMENDMENTS. (a) The provisions of AS 45.56.630(c)-(e), enacted by sec. 25 of this Act, have the effect of changing Rules 4 and 5, Alaska Rules of Civil Procedure, by allowing service on the administrator in certain cases. (b) The provisions of AS 45.56.650(f), enacted by sec. 25 of this Act, have the effect of changing Rule 54, Alaska Rules of Civil Procedure, by expanding the definition of judgments to include final judgments of the administrator issued under AS 45.56.650, enacted by sec. 25 of this Act. (c) The provisions of AS 45.56.650(g), enacted by sec. 25 of this Act, have the effect of changing Rule 90, Alaska Rules of Civil Procedure, by changing the contempt procedure in certain cases. (d) The provisions of AS 45.56.655(c), enacted by sec. 25 of this Act, have the effect of changing Rule 65, Alaska Rules of Civil Procedure, by changing the procedure for injunctions in certain cases by prohibiting requiring the administrator to post a bond. (e) The provisions of AS 45.56.675(a), enacted by sec. 25 of this Act, have the effect of changing Rule 602, Alaska Rules of Appellate Procedure, by changing the time for filing a		Select Alaska court rules are amended as a result of the bill. (a)-(d) relate to the Rules of Civil Procedure which are amended to allow service on the administrator in some cases, expand the definition of judgments to include final judgments of the administrator, change the contempt procedure in limited circumstances, and prohibiting requiring the administrator to post a bond in certain injunction cases. (e) changes Rule 602 of the Rules of Appellate Procedure by changing the time for filing a notice of appeal in cases covered by the Securities Act.	105

notice of appeal.			
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Sections 31-34 Transitional provisions		The bill provides for a transitional period during which AS 45.55 continues to apply, primarily for enforcement of actions pending as of the effective date of the act and relating to conduct occurring before the effective date. All previously-issued registrations, regulations, statements of policy, opinions, etc. that were issued under 45.55. remain in effect until officially replaced or rescinded by the administrator.	106
Sec. 35. This Act takes effect July 1, 2016		Effective date	107



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

Department of Commerce, Community,
and Economic Development

DIVISION OF BANKING AND SECURITIES

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Senate Bill 194
AK Securities Act; Penalties; Crt. Rules
Summary of Changes

Structural Changes. The order of the sections has been reorganized. HB 194A was drafted with the new AS 45.56 Alaska Securities Act at the beginning of the bill with other statutes amended in numerical order at the end. HB 194 CS N now follows the order of the statutes amended beginning with Title 06.

Drafting. Legislative Counsel made conforming drafting and legal improvements throughout the bill including consolidating definitions into Article 7, Sec 45.56.740 or citing to existing definitions in other statutes.

Summary of Changes

Sec. 1 – 24. Renumbered from HB 194A and moved to the front of the bill. HB 194 A, Sec. 6 AS 21.42.315(k) was deleted because 'variable annuity' was removed from the definition of security (see Article 7 Definitions)

Sec. 25. Chapter 56. Alaska Securities Act (pg. 14)

Article 1. General Provisions. No changes.

Article 2. Exemptions from Registration of Securities. No changes.

Article 3. Registration of Securities and Notice Filing of Federal Covered Securities. The words "by governmental authorities" was deleted at the end of Sec. 45.56.310(12) by committee amendment. No other substantive changes.

Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives, and Federal Covered Investment Advisers. No substantive changes.

Article 5. Fraud and Liabilities. No substantive changes.

Article 6. Administration and Judicial Review. (pp. 66-86)

Sec. 45.56.605(e) relating to the securities education and training fund was moved to a new Sec. 45.56.625 Securities investor education and training fund. Section 45.56.635(f) was deleted from the bill because variable annuity was removed from the definition of security.

Sec. 45.56.625 Jurisdiction contents were combined with **Sec. 45.56.635 Applicability of the chapter.**

Sec. 45.56.660. Civil liability and Sec 45.56.665 Rescission Offers. The legal rate of interest for rescission and civil enforcement is the legal rate of interest under AS 09.30.970 **or eight percent a year, whichever is greater.** (Bold is new)

Article 7. Miscellaneous and Additional General Provisions.

Sec. 45.56.900. Definitions.

(23) Older Person (formerly Older Alaskan) – a natural person that is age 60 or older
(adapted from AS 47.26.290(6))

(32) Security – “variable annuity” is deleted from the definition

Sections 26-28. No substantive changes.

Section 29. “45.55.960” was deleted because it was included as part of statutes repealed, and should not be repealed.

Sections 30-35. No substantive changes.



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House Bill 194
AK Securities Act; Penalties; Crt. Rules
"Snowbird" Exemption Scenarios – Broker-Dealer Firms

Fact Scenario One:

John, a resident of Arizona, has a broker-dealer firm, AZ Trade, which he works with in Arizona. AZ Trade is currently licensed in Arizona, according to all requirements of Arizona law, but not licensed in Alaska. John travels to Alaska for the summer where he has a second residence and wants to continue doing business with AZ Trade while he is in Alaska.

CURRENT LAW:

When John comes to Alaska, AZ Trade must become licensed in Alaska to maintain the full broker-client business relationship throughout the time that John resides in Alaska.

Currently there is something called a "de minimis" exemption that allows some limited relationship to continue, but under that exemption, all contact must be initiated by John and the work cannot exceed 15 transactions across all of Alaska in a 12 month period. This exemption is a source of many questions by broker-dealers and many licensees find it confusing.

PROPOSED LAW:

As long as AZ Trade maintains its licensure in Arizona (where John has his principal residence), AZ Trade does not have to get any additional license to keep John as a customer while he is temporarily living in Alaska.

Fact Scenario Two:

John moves his principal residence to Washington from Arizona, but wants to keep working with AZ Trade.

CURRENT LAW:

AZ Trade is required to become licensed in Washington according to Washington law.

PROPOSED LAW:

AZ Trade is required to become licensed in Washington. The proposed law does not change this requirement, as Washington's law controls here. As long as AZ Trade maintains its license in Washington, it can benefit from the snowbird exemption anytime John visits Alaska.

Fact Scenario Three:

John decides to move permanently to Alaska and wants to keep working with AZ Trade.

CURRENT LAW:

AZ Trade must become licensed in Alaska if it exceeds 15 transactions within a 12 month period with Alaskan residents.

PROPOSED LAW:

Under the new “de minimis” exemption (45.56.405(b)(1)(G)), AZ Trade only has to become licensed in Alaska if it has more than three customers in Alaska in a 12 month period. If John remains AZ Trade’s only Alaska customer, it does not have to become registered to do business here.

Notes about the exemption:

- The exemption applies to the broker-dealer FIRM, not the individual agents. As a general rule, agent registration always flows from the firm’s (i.e. if the firm has to be registered, so do its agents who conduct business in Alaska or with Alaskan residents. If the firm does not have to be registered, neither do its agents).
- The firm is always required to maintain its registration where the customer has his or her principal place of residence.
- 23 other states currently have this exemption, which is taken directly from the model language of the 2002 Uniform Securities Act.
- As long as the firm is registered in the state where the client has his or her principal place of residence, and the client has a second residence in Alaska, the firm can use the exemption in Alaska.
- The responsibility to be properly licensed lies with the firm and its agents (salespeople).

There is a similar exemption for Investment Advisers at Sec.45.56.435(b)(1)(C).



Carl B. Wilkerson
Vice President & Chief Counsel, Securities & Litigation

April 1, 2016

Statement of the American Council of Life Insurers on Senate Bill 108 and House Bill 194
in the Alaska Legislature

The American Council of Life Insurers¹ strongly supports the enactment of Senate Bill 108 and House Bill 194, as amended.² This legislation will enhance the Alaska securities laws and will implement commendable uniformity with other states throughout the nation. The amended bills reflect important modifications that ensure investor protection and an efficient securities marketplace. The legislation is consistent with the Uniform Securities Act of 2002³ and compliments a comprehensive network of state and federal securities and insurance regulation.

Importantly, the amendments to Senate Bill 108 and House Bill 194 exclude variable annuities from the definition of the term "security." This dovetails prudently with the Alaska insurance laws that grant the insurance director the exclusive authority to regulate the issuance and sale of variable annuities.⁴ This aspect of the bills promotes sensible and functional regulation, reflects the practices in the majority of states, and prevents duplicate layers of regulation. The significant laws and regulations enforced by the Alaska Insurance Director, together with those of the U.S. Securities and Exchange Commission and the Financial Institutions Regulatory Authority (FINRA), provide effective and efficient consumer protection.

Life insurers greatly appreciate the accessibility and responsiveness of Division of Banking and Securities Director Kevin Anselm and Insurance Director Lori Wing-Heier who worked diligently and constructively together with the life insurance industry as the bills evolved through the legislative process. Their substantive expertise helped inform the legislative process in an exemplary fashion.

Thank you for the opportunity to share the views of the life insurance industry on this important legislation. Please let us know if you have any questions.

¹ The American Council of Life Insurers (ACLI) is a national trade association with approximately 300 member companies operating in the United States and abroad. 215 member companies serve Alaska consumers. ACLI advocates in federal, state, and international forums for public policy that supports the industry marketplace and the 75 million American families that rely on life insurers' products for financial and retirement security. ACLI members offer life insurance, annuities, retirement plans, long-term care and disability income insurance, and reinsurance, representing more than 90 percent of industry assets and premiums in Alaska. Learn more at www.acli.com.

² The amendments appear in the [CS for Senate Bill 108 \(L & C\)](#) (March 3, 2016) and in the [CS for House Bill 194 \(L & C\)](#) (March 24, 2016).

³ The Uniform Securities Act of 2002 was promulgated by the National Conference of Commissioners on Uniform State Laws. This model law implements the National Securities Markets Improvements Act of 1996 which was enacted to harmonize and modernize state and federal securities regulation.

⁴ Banking and Securities Director Kevin Anselm helpfully clarified during her testimony on the amended legislation that variable annuities were excluded from the definition of security so that "variable annuities will remain under the sole regulation of the Division of Insurance under Title 21." See [House Labor & Commerce Hearing](#) (March 14, 2016).

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version:	CSHB 194(L&C)
Fiscal Note Number:	3
(H) Publish Date:	3/24/2016

Identifier: HB194-DCCED-DBS-01-25-16
 Title: AK SECURITIES ACT; PENALTIES; CRT. RULES
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: (H) Labor & Commerce

Department: Department of Commerce, Community and
 Economic Development
 Appropriation: Banking and Securities
 Allocation: Banking and Securities
 OMB Component Number: 2808

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues		***	***	***	***	***	***
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Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? Yes
 If yes, by what date are the regulations to be adopted, amended or repealed? 07/15/15

Why this fiscal note differs from previous version:

Prepared By:	Kevin Anselm, Director	Phone:	(907)269-4157
Division:	Banking and Securites	Date:	01/20/2016 04:50 PM
Approved By:	Catherine Reardon, Director	Date:	01/25/16
Agency:	Division of Administrative Services		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

Analysis

This bill modifies the Alaska Statutes to create a new chapter, AS 45.56, as a new Alaska Securities Act. Proposed updates modernize and streamline outdated securities laws to reflect industry changes while enhancing investor protections and remedies. The division anticipates filing new regulations as soon as practical to concur with a September 1, 2016 effective date.

The Division of Banking and Securities (DBS) estimates the fiscal impact of this legislation as zero, and the impact on revenue to be indeterminate. Any negative fiscal impact from eliminated filings is expected to be minimal and may be offset by small revenue increases from new filings. Estimating additional revenue from civil penalties is indeterminate since the division cannot predict the outcome of enforcement cases with any certainty.

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version:	CSHB 194(L&C)
Fiscal Note Number:	2
(H) Publish Date:	3/24/2016

Identifier: HB194-DOA-PDA-02-05-16
 Title: AK SECURITIES ACT; PENALTIES; CRT. RULES
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: House Labor & Commerce

Department: Department of Administration
 Appropriation: Legal and Advocacy Services
 Allocation: Public Defender Agency
 OMB Component Number: 1631

Expenditures/Revenues

Note: Amounts do not include inflation unless otherwise noted below. (Thousands of Dollars)

	FY2017 Appropriation Requested	Included in Governor's FY2017 Request	Out-Year Cost Estimates					
			FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants & Benefits								
Miscellaneous								
Total Operating	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Fund Source (Operating Only)

None								
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Positions

Full-time								
Part-time								
Temporary								

Change in Revenues								
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Estimated SUPPLEMENTAL (FY2016) cost: 0.0 *(separate supplemental appropriation required)*
(discuss reasons and fund source(s) in analysis section)

Estimated CAPITAL (FY2017) cost: 0.0 *(separate capital appropriation required)*
(discuss reasons and fund source(s) in analysis section)

ASSOCIATED REGULATIONS

Does the bill direct, or will the bill result in, regulation changes adopted by your agency? No.
 If yes, by what date are the regulations to be adopted, amended or repealed? No.

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By:	Quinlan Steiner	Phone:	(907)334-4414
Division:	Public Defender Agency	Date:	02/05/2016 12:00 AM
Approved By:	Sheldon Fisher, Commissioner	Date:	02/05/16
Agency:	Administration		

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2016 LEGISLATIVE SESSION

Analysis

This bill creates a new chapter titled the Alaska Securities Act. The act makes changes to current law regarding securities, and investor protections. The act creates new crimes and increases some criminal penalties for violations of certain provisions of the act.

The agency does not anticipate a significant fiscal impact from this legislation. Therefore, the agency submits a zero fiscal note.

NASAA MODEL LEGISLATION OR REGULATION TO PROTECT VULNERABLE ADULTS FROM FINANCIAL EXPLOITATION

Adopted January 22, 2016

Prefatory note:

Jurisdictions considering this model legislation or regulation, whether through legislative sessions or rulemaking, may need to consider certain small changes to terms, particularly with regard to certain designated terms. For example, this model refers to the “commissioner of securities” or “state securities commissioner” but in certain jurisdictions, that position may be held by a director of securities, or commissioner of banking and securities, or commissioner of corporations. Furthermore, this model refers to Adult Protective Services, but certain jurisdictions may require a more specific reference to the agency by exact name. Finally, with regard to Section 2 (Definitions), certain jurisdictions may use different defined terms (e.g. salesmen instead of broker-dealer agents); therefore, Section 2 may require certain slight changes to the definitions to align with existing securities statutes.

An Act to Protect Vulnerable Adults from Financial Exploitation.

Section 1. Short title. Sections ___ to ___ may be cited as “An Act to Protect Vulnerable Adults from Financial Exploitation” and in this chapter as this act.

Section 2. Definitions. In this act, unless the context otherwise requires:

- (1) “**Agent**” shall have the same meaning as in [insert state code section].
- (2) “**Broker-dealer**” shall have the same meaning as in [insert state code section].
- (3) “**Eligible adult**” means:
 - (a) a person sixty-five years of age or older; or
 - (b) a person subject to [insert state Adult Protective Services statute]
- (4) “**Financial exploitation**” means:
 - (a) the wrongful or unauthorized taking, withholding, appropriation, or use of money, assets or property of an eligible adult; or
 - (b) any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:
 - i. Obtain control, through deception, intimidation or undue influence, over the eligible adult’s money, assets or property to deprive the eligible adult of the ownership, use, benefit or possession of his or her money, assets or property; or

- ii. Convert money, assets or property of the eligible adult to deprive such eligible adult of the ownership, use, benefit or possession of his or her money, assets or property.

(5) “**Investment Adviser**” shall have the same meaning as in [insert state code section].

(6) “**Investment Adviser Representative**” shall have the same meaning as in [insert state code section].

(7) “**Qualified individual**” means any agent, investment adviser representative or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

Section 3. Governmental Disclosures. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall promptly notify Adult Protective Services and the commissioner of securities (collectively “the Agencies”).

Section 4. Immunity for Governmental Disclosures. A qualified individual that in good faith and exercising reasonable care makes a disclosure of information pursuant to section 3 shall be immune from administrative or civil liability that might otherwise arise from such disclosure or for any failure to notify the customer of the disclosure.

Section 5. Third-Party Disclosures. If a qualified individual reasonably believes that financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual may notify any third party previously designated by the eligible adult. Disclosure may not be made to any designated third party that is suspected of financial exploitation or other abuse of the eligible adult.

Section 6. Immunity for Third-Party Disclosures. A qualified individual that, in good faith and exercising reasonable care, complies with section 5 shall be immune from any administrative or civil liability that might otherwise arise from such disclosure.

Section 7. Delaying Disbursements. (1) A broker-dealer or investment adviser may delay a disbursement from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:

- (a) the broker-dealer, investment adviser, or qualified individual reasonably believes, after initiating an internal review of the requested disbursement and the suspected financial exploitation, that the requested disbursement may result in financial exploitation of an eligible adult; and
- (b) the broker-dealer or investment adviser:

- i. Immediately, but in no event more than two business days after the requested disbursement, provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless any such party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult;
 - ii. Immediately, but in no event more than two business days after the requested disbursement, notifies the Agencies; and
 - iii. Continues its internal review of the suspected or attempted financial exploitation of the eligible adult, as necessary, and reports the investigation's results to the Agencies within seven business days after the requested disbursement.
- (2) Any delay of a disbursement as authorized by this section will expire upon the sooner of:
 - (a) a determination by the broker-dealer or investment adviser that the disbursement will not result in financial exploitation of the eligible adult; or
 - (b) fifteen business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds, unless either of the Agencies requests that the broker-dealer or investment adviser extend the delay, in which case the delay shall expire no more than twenty-five business days after the date on which the broker-dealer or investment adviser first delayed disbursement of the funds unless sooner terminated by either of the agencies or an order of a court of competent jurisdiction.
- (3) A court of competent jurisdiction may enter an order extending the delay of the disbursement of funds or may order other protective relief based on the petition of the commissioner of securities, Adult Protective Services, the broker-dealer or investment adviser that initiated the delay under this Section 7, or other interested party.

Section 8. Immunity for Delaying Disbursements. A broker-dealer or investment adviser that, in good faith and exercising reasonable care, complies with section 7 shall be immune from any administrative or civil liability that might otherwise arise from such delay in a disbursement in accordance with this section.

Section 9. Records. A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to agencies charged with administering state adult protective services laws and to law enforcement, either as part of a referral to the agency or to law enforcement, or upon request of the agency or law enforcement pursuant to an investigation. The records may include historical records as well as records relating to the most recent transaction or transactions that may comprise financial exploitation of an eligible adult. All records made available to agencies under this section shall not be considered a public record as defined in [State public records law]. Nothing in this provision shall limit or otherwise impede the authority of the state securities commissioner to access or examine the books and records of broker-dealers and investment advisers as otherwise provided by law.



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NASAA Members Adopt Model Act to Protect Seniors and Vulnerable Adults

www.nasaa.org/38777/nasaa-members-adopt-model-act-to-protect-seniors-and-vulnerable-adults/

Model Delivered to Jurisdictions to Pursue as Legislation or Regulation

WASHINGTON, D.C. (February 1, 2016) – In a significant step toward providing much needed protection for seniors and vulnerable adults, the North American Securities Administrators Association (NASAA) today announced that its membership has voted to adopt a model act designed to protect vulnerable adults from financial exploitation.

The model, entitled “An Act to Protect Vulnerable Adults from Financial Exploitation,” provides new tools to help detect and prevent financial exploitation of vulnerable adults.

“The NASAA model act will help securities regulators, investment advisers and broker-dealers, as well as Adult Protective Services agencies work in partnership to protect our most vulnerable investors,” said Judith Shaw, NASAA President and Maine Securities Administrator. “I am pleased that the NASAA membership adopted this model act, which now is available for individual jurisdictions throughout the United States to enact as legislation or implement through regulation.”

The model act:

- Mandates reporting to the state securities regulator and state adult protective services agency when a qualified individual such as a securities broker or investment adviser has a reasonable belief that financial exploitation of an eligible adult has been attempted or has occurred.
- Authorizes notification to third parties only in instances where an eligible adult has previously designated the third party to whom the disclosure may be made. Importantly, the model act directs that disclosure may not be made to the third party if the qualified individual suspects the third part of the financial exploitation.
- Enables broker-dealers or investment advisers to impose an initial delay of disbursements from an account of an eligible adult for up to 15 business days if financial exploitation is suspected. The delay can be extended for an additional 10 days at the request of either the state securities regulator or adult protective services.
- Provides immunity from administrative or civil liability for broker-dealers and investment advisers for taking actions including delaying disbursements as permitted under the act.
- Requires qualified individuals such as securities brokers or investment advisers to provide records that are relevant to the suspected or attempted financial exploitation to government authorities.

The model act applies to adults age 65 and older and individuals who qualify for protection under a state adult protective services statute. The model act defines “qualified individual” as broker-dealer agents;

investment adviser representatives; those who serve in a supervisory, compliance, or legal capacity for broker-dealers and investment advisers; and any independent contractors that may be fulfilling any of those roles.

Shaw highlighted the act's mandatory reporting requirement, which, combined with the act's immunity provision, will create incentives to encourage broker-dealers and investment advisers to report potential financial exploitation as early as possible, when their intervention may be able to prevent harm or limit the damage to victims of financial exploitation.

"The ability to have a regulator assess the situation and determine whether additional resources should be brought to bear is a key component of any responsible approach intended to provide meaningful protection to vulnerable investors," Shaw said. "Requiring reporting at the individual agent and adviser level is appropriate because these individuals often have closer relationships with their clients and customers and time is of the essence when fighting elder financial exploitation."

The model act was developed by the Legislation and Regulation Working Group of NASAA's Board-level Committee on Senior Issues and Diminished Capacity. Following a public comment period, the model was submitted to the NASAA membership for consideration in December, 2015.

The full text of the model act, along with background information is available on the [Policymakers section](#) of NASAA's new website, [ServeOurSeniors.org](#), which launched in December 2015 and is designed to provide senior-focused resources to investors, caregivers, industry and policymakers.

For More Information:

[Bob Webster](#) | Director of Communications
202-737-0900

#1

29-GH1060\N.1
Bannister
4/5/16

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE KREISS-TOMKINS

TO: CSHB 194(L&C)

- 1 Page 1, line 7, following "**older persons**":
- 2 Insert "**and vulnerable adults**"
- 3
- 4 Page 79, line 29, following "older person":
- 5 Insert "or a vulnerable adult"
- 6
- 7 Page 79, line 31, following "older person":
- 8 Insert "or a vulnerable adult"
- 9
- 10 Page 80, line 5, following "older person":
- 11 Insert "or a vulnerable adult"
- 12
- 13 Page 80, line 6, following "older person":
- 14 Insert "or a vulnerable adult"
- 15
- 16 Page 81, line 27, following "older person":
- 17 Insert "or a vulnerable adult"
- 18
- 19 Page 81, line 29, following "older person":
- 20 Insert "or a vulnerable adult"
- 21
- 22 Page 82, line 1, following "older person":
- 23 Insert "or a vulnerable adult"

1

2 Page 82, line 3, following "person":

3 Insert "or a vulnerable adult"

4

5 Page 100, line 29, following "States":

6 Insert ";

7 (36) "vulnerable adult" means a person 19 years of age or older who,
8 because of incapacity, mental illness, mental deficiency, physical illness, physical
9 disability, advanced age, chronic use of drugs, chronic intoxication, fraud,
10 confinement, or disappearance, is unable to meet the person's own needs or to seek
11 help without assistance"

#2

29-GH1060\N.2
Bannister
4/5/16

AMENDMENT

OFFERED IN THE HOUSE
TO: CSHB 194(L&C)

BY REPRESENTATIVE CLAMAN

- 1 Page 27, line 12:
- 2 Delete "\$5,000"
- 3 Insert "\$10,000"