

SB

108

**<TARGET><BILL>SB 108</BILL><SUBJECT>SB
108</SUBJECT><COMM>SJUD29</COMM></TARGET>**

SENATE COMMITTEE REPORT

DATE: 3/4/16

FURTHER: Finance

DATE TURNED IN TO OFFICE: 4/1/16

Judiciary Committee considered SENATE BILL NO. 108

SB 108-AK SECURITIES ACT; PENALTIES; CRT. RULES

"An Act repealing and reenacting the Alaska Securities Act, including provisions relating to exempt securities and transactions; relating to registration of securities, firms, and agents that offer or sell securities and investment advice; relating to administrative, civil, and criminal enforcement provisions, including restitution and civil penalties for violations; allowing certain civil penalties to be used for an investor training fund; establishing increased civil penalties for harming older Alaskans; retaining provisions concerning corporations organized under the Alaska Native Claims Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure; and providing for an effective date."

and recommends:

be replaced with CS _____ (_____) Same Title New Title

adopt previous CS SB 108 (LTC) Same Title New Title

attached amendment(s)

adopt _____ Letter of Intent

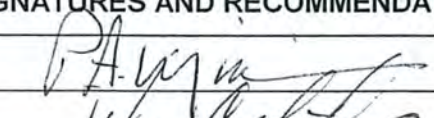
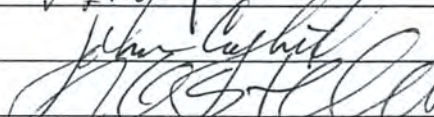
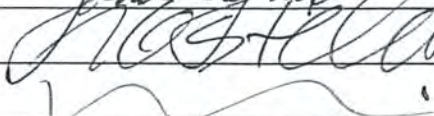
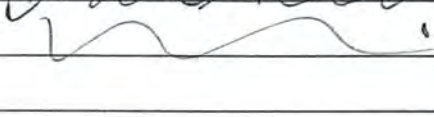
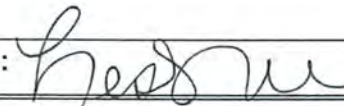
further referral to _____ Committee

Dept Abbr.	
ADM	LWF
CED	LAW
COR	LEG
EED	MVA
DEC	DNR
DFG	DPS
GOV	REV
DHS	DOT
AJS	UA

NEW FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #

PREVIOUS FISCAL NOTE(S)				
Dept.	Fiscal	Indet.	Zero	FN #
CED		✓		3
ADM			✓	2

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	MICHELE			✓	
	COGHILL				
	POSTELLO	✓			
	WILKCHOWSKI			✓	
CHAIR: 	McGUIRE				✓

STATE CAPITOL
P.O. Box 110001
Juneau, AK 99811-0001
907-465-3500
fax: 907-465-3532



550 West Seventh Avenue, Suite 1700
Anchorage, AK 99501
907-269-7450
fax 907-269-7461
www.Gov.Alaska.Gov
Governor@Alaska.Gov

Governor Bill Walker
STATE OF ALASKA

April 11, 2015

The Honorable Kevin Meyer
President of the Senate
Alaska State Legislature
State Capitol, Room 111
Juneau, AK 99801-1182

Dear President Meyer:

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.

The Honorable Kevin Meyer
Alaska Securities Act Transmittal
April 11, 2015
Page 2

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,

A handwritten signature in blue ink that reads "Bill Walker". The signature is written in a cursive, flowing style.

Bill Walker
Governor

Enclosure



Senate Bill 108 Version W
AK Securities Act; Penalties; Crt. Rules
Brief Sectional Analysis

This analysis focuses on the major changes proposed under the new Act. A detailed analysis is also available upon request.

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. 15-27)

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

Sec. 45.56.230. Waiver and modification – broadens the administrator's authority to waive or change requirements or conditions for exemptions.

Sec. 45.56.240. Denial, suspension, revocation, condition, or limitation of exemptions – same, 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. 27-39) Note: 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 filers disclose pending litigation that materially affects the issuer or litigation that is known to be contemplated by governmental authorities.

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 – allows imposition of late fees.

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 interest by the Securities and Insurance statutes.

Sec. 45.56.350. Waiver and modification – administrator allowed waiver authorities consolidated from other sections.

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. 39-64)

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.

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 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 matches 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 agents 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 – allows establishing 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. 64-66)

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. 66-86)

Sec. 45.56.605. Administration – allows 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 in civil penalties may go into such a fund if 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 for a respondent to make a request for 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 generally); 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 his or her 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. 87-98)

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 47.45.290, 47.62.090, and 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. 98-102). Citations are modified to reflect Chapter 45.56 in place of Chapter 45.55 references; federal law citations are updated.

SECTION 29 (pp. 102-103) – 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. 103) – Amends indirect Court Rules relating to changes in AS 45.56.

SECTION 31 (p. 103)– Allows the department to adopt transition regulations to implement the Act.

SECTION 32 (pp. 103- 104) – Amends the law to effect transition and application of AS 45.55 for existing proceedings, existing rights and duties.

SECTION 33 (p. 104) – 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.104) – Conditional Effect. Certain of the changes to the Securities Act will only take effect if Court Rule changes in Section 24 are passed by two-thirds majority vote of each the House and Senate.

SECTION 35 – July 1, 2016 effective date.



Senate Bill 108 Version W
AK Securities Act; Penalties; Crt. Rules
Summary of Changes

Structural Changes. The order of the sections has been reorganized. SB 108A 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. SB 108 CS W 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 SB108A and moved to the front of the bill. SB 108 A, Sec. 7. AS 21.42.315(k) is deleted because 'variable annuity' is 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. Small intrastate securities offerings (referred to as "Crowdfunding") was removed at the request of Senate Labor and Commerce (SB 126 contains similar provisions)

Article 3. Registration of Securities and Notice Filing of Federal Covered Securities. No 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.**

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- 35. No substantive changes.

Fiscal Note

State of Alaska
2016 Legislative Session

Bill Version:	CSSB 108(L&C)
Fiscal Note Number:	3
(S) Publish Date:	3/4/2016

Identifier: SB108-DCCED-DBS-01-25-16
 Title: AK SECURITIES ACT; PENALTIES; CRT. RULES
 Sponsor: RLS BY REQUEST OF THE GOVERNOR
 Requester: (S) 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	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2017 Request	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
OPERATING EXPENDITURES	FY 2017	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
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

Fund Source (Operating Only)

None							
Total	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? 09/01/16

Why this fiscal note differs from previous version:

Updated for current fiscal year.

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, DCCED		

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.



Financial Security...for Life.

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).

Keep to
read.

Alaska Securities Act CSSB 108\W
Senate Judiciary Committee
April 4, 2016

OVERVIEW: SB 108 repeals and reenacts the Alaska Securities Act. This Act provides the legal framework for offering or selling securities from Alaska or to Alaskans, including state 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
- Eliminates filings for all exemptions from registration
- 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
 - Fine increased from \$5,000 to \$100,000
- An unknowing violations 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.