

HB

170

<TARGET><BILL>HB 170</BILL><SUBJECT>HB
170</SUBJECT><COMM>HL&C30</COMM></TARGET>



Representative Sam Kito

Alaska State Legislature

Sponsor Statement

House Bill 170

"AK Securities Act; Penalties; Cr. Rules"

House District 33

Downtown Juneau
Douglas
Haines
Klukwan
Skagway
Gustavus
Excursion Inlet

Chair
House Labor &
Commerce

Chair
Legislative Council

Member
House Health &
Social Services

Member
House Rules

Contact

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House Bill 170 modifies 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 The proposed updates would modernize and streamline the state's outdated securities laws to recognize industry changes and to support new means of raising capital, while enhancing investor protections and remedies.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 Moreover, the updates would eliminate redundant or outdated references and practices.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 three 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, ch. 46, SLA 2014 eliminated several filing requirements for certain securities exemptions. In 2016, SB 126 opened 'crowdfunding' to Alaskans for in-state business venture funding up to \$1,000,000 but otherwise left the majority of the Alaska Securities Act unchanged; it remains outdated.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. With the Uniform Securities Act as the basic framework also provides familiarity to many industry professionals that are familiar with the Alaska Securities Act. Using the Uniform Securities Act as the starting point, the bill incorporates several Alaska-specific provisions aimed at protecting and supporting the public and industry.

HB 170 updates enforcement provisions by increasing penalties for those who violate the Alaska Securities Act, allowing restitution to be ordered to compensate victims for their losses, protecting vulnerable Alaskans by providing a safe harbor for those who would financial exploit them as well as providing for enhanced civil penalties against violators who financially harm them. Further, the bill directs that a small portion of civil penalties may be used to provide investor education to Alaskans.

The bill also modifies existing provisions related to the treatment of Alaska Native Claims Settlement Act (ANCSA) proxy solicitations in the existing chapter, AS 45.55. These limited modifications do not change any substantive law, but instead leave the existing laws regulating ANCSA proxy solicitations in its own chapter.

Thank you for your consideration of this legislation.



Representative Sam Kito

Alaska State Legislature

Sectional Analysis

House Bill 170

“AK Securities Act; Penalties; Crt. Rules”

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. 11-14) 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. 15) proposed new Chapter AS 45.56.

Article 1. General Provisions (p. 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 exempt.

Article 2. Exemptions from Registration of Securities (pp. 15-30)

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 for offerings within Alaska of up to \$1,000,000 with a maximum single investment of \$10,000, incorporated into the Alaska Securities Act by SB 126 (2016).

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. 30-42)

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

Sec. 45.56.305. Securities registration by coordination – registration statement must be on file with the Administrator for 20 days (may be reduced by regulation). 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 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 – the administrator’s 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. 42-70)

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 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 – changes 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 merger and acquisition 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, otherwise represents an issuer or public shell company, or is subject to an SEC 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 per client exemption similar to 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. Protecting older and vulnerable adults from financial exploitation – adds a new provision adopting model legislation to protect vulnerable adults from financial exploitation that requires certain individuals to report financial exploitation of an older Alaskan or vulnerable adult to Adult Protective Services and the Administrator. Also allows a broker dealer or investment adviser to delay a financial disbursement if it may result in financial exploitation. Provides immunity for good faith reports and financial disbursement delays.

Sec. 45.56.485. Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration – in addition to current provisions, allows the administrator to bar a person or firm from registration including for 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 – similar content to current AS 45.55.900(c) and adds the citation to affirmative defense in criminal law.

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.

Article 6. Administration and Judicial Review. (pp. 72-93)

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 coordination with governmental units, regulatory organizations for collaborative efforts including regulation and enforcement to reduce the burden of raising capital by small business.

Sec. 45.56.625. Securities investor education and training fund – creates an investor education and training fund within the general fund. 33% of the money received from civil penalties may be used for investor education and training 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 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) or a “vulnerable adult,” 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) or “vulnerable adult.”

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 – intentional violations of the Act and fraud are generally punishable as class C felonies punishable by imprisonment under AS 12.55.125, or a fine of up to \$100,000, or both. A person convicted of violation a regulator order may be fined but not imprisoned if the person did not know of the regulation or order. Individuals who intentionally alter or destroy evidence are guilty of a class C felony and may be imprisoned as provided in AS 12.55.125, assessed 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. 93-104)

Sec. 45.56.710. Reimbursement of expenses incident to examination or investigation – expands recovery of expenses from current AS 45.55.915 to cover all examination expenses including staff time, travel and per diem.

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:

- Disqualifier
- Filing
- Institutional investor (reflects federal law)
- Insurance company
- Insured
- International Banking Institution
- Offer to purchase
- Older person – a person that is age 60 or older (from AS 47.65.290(6))
- Price amendment
- Record
- Self-regulatory organization
- Sign
- Vulnerable adult (from AS 47.24.900(21))

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

SECTIONS 26 – 28 (pp. 104-109). Citations are modified to reflect Chapter 45.56 in place of Chapter 45.55 references; federal law citations are updated.

SECTION 29 (p. 109) – 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. 109) – Amends indirect Court Rules relating to changes in AS 45.56.

SECTION 31 (p. 110) – Allows the department to adopt transition regulations.

SECTION 32 (p. 110) – Amends the law to effect transition and application of AS 45.55 for existing proceedings, existing rights and duties.

SECTION 33 (p. 110-111) – 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. 111) – Conditional effect of certain provisions upon constitutionally required vote of each house.

SECTION 35-36 – January 1, 2018 effective date, except for section 31.



Representative Sam Kito

Alaska State Legislature

Repealer List House Bill 170

"AK Securities Act; Penalties; Crt. Rules"

HB 170 retains statutes applying to ANCSA in AS 45.55 including reporting provisions, investigations, enforcement, penalties, administration, and definitions. All non-ANCSA statutes are repealed and either reenacted or amended under AS 45.56. The list of repealed sections from AS 45.55 is included below for reference. Details of the reenacted and amended language under AS 45.56 is included in the brief sectional analysis.

- 45.55.010:** Sales and Purchases
- 45.55.020:** Advisory Activities
- 45.55.023:** Unethical business practices of state investments advisers, investment adviser representatives, and federal covered advisers
- 45.55.025:** Fraudulent, dishonest, and unethical business practices of broker-dealers and agents
- 45.55.027:** Additional fraudulent, dishonest, and unethical business practices of agents
- 45.55.028:** Practices of broker-dealers and agents considered fraudulent or deceitful
- 45.55.030:** Registration requirements; referrals
- 45.55.035:** Limited registration of Canadian broker-dealers and agents
- 45.55.040:** Registration procedure; notice filings
- 45.55.050:** Post-registration provisions
- 45.55.060:** Denial, revocation, suspension, cancellation, and withdrawal of registration
- 45.55.070:** Registration requirements
- 45.55.075:** Federal covered securities
- 45.55.080:** Registration by notification
- 45.55.090:** Registration by coordination
- 45.55.100:** Registration by qualification
- 45.55.110:** Provisions applicable to registration and notice filings
- 45.55.120:** Denial; suspension; and revocation of registration
- 45.55.150:** Sales and advertising literature
- 45.55.155:** Viatical settlement interests
- 45.55.170:** Unlawful representations concerning registration or exemption
- 45.55.175:** Exemptions for certain security sales and offerings
- 45.55.900:** Exemptions
- 45.55.905(c):** Administration of chapter – Regulation of transactions between viatical settlement providers and subsequent investor
- 45.55.915:** Reimbursement of expenses incident to examination or investigation
- 45.55.930:** Civil liability to buyers
- 45.55.935(b):** Hearings – Administrative law judge may issue a subpoena to compel attendance of any party
- 45.55.970:** Administrative files and opinions
- 45.55.980:** Applicability of chapter; service of process
- 45.55.990:** Definitions
- 45.55.995:** Short title

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 170
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB170-DHSS-SDSA-03-17-17
Title: AK SECURITIES ACT; PENALTIES; CRT. RULES
Sponsor: LABOR & COMMERCE
Requester: House Labor and Commerce

Department: Department of Health and Social Services
Appropriation: Senior and Disabilities Services
Allocation: Senior and Disabilities Services Administration
OMB Component Number: 2663

Expenditures/Revenues

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

	FY2018 Appropriation Requested	Included in Governor's FY2018 Request	Out-Year Cost Estimates				
	FY 2018	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
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

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

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

Estimated CAPITAL (FY2018) 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? n/a

Why this fiscal note differs from previous version:

Not applicable; initial version.

Prepared By: Duane Mayes, Director	Phone: (907)269-2083
Division: Senior and Disabilities Services	Date: 03/17/2017 12:00 PM
Approved By: Shawnda O'Brien, Asst. Commissioner	Date: 03/17/17
Agency: Health and Social Services	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB170

Analysis

This proposed legislation includes new AS 45.56.480, *Protecting vulnerable adults from financial exploitation*. This legislation establishes a definition of both vulnerable adults and those who are required to report on alleged financial exploitation, and lays out the criteria for when reporting is required. The Division of Senior and Disabilities Services has oversight of the Adult Protection Program, to which all such reports of alleged financial exploitation would be made. This new mandatory reporting requirement to the Adult Protection Program may increase the total number of reports received and forwarded to staff for investigation. However, Sec. 45.56.480(e)(2)(C), mandating the reporting of an internal review of the suspected or attempted financial exploitation of the eligible adult to Adult Protective Services, alleviates some burden from Adult Protective Service investigators and provides the evidence necessary for Adult Protection to make a determination if financial exploitation did or did not occur.

Therefore, the division anticipates this legislation will be cost neutral.

Fiscal Note

State of Alaska
2017 Legislative Session

Bill Version: HB 170
Fiscal Note Number: _____
() Publish Date: _____

Identifier: HB170-DCCED-DBS-03-13-17
Title: AK SECURITIES ACT; PENALTIES; CRT. RULES
Sponsor: LABOR & COMMERCE
Requester: (H) Labor and 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)

	FY2018	Included in	Out-Year Cost Estimates				
	Appropriation Requested	Governor's FY2018 Request	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
OPERATING EXPENDITURES	FY 2018	FY 2018					
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

None							
Total	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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

Estimated CAPITAL (FY2018) 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? 01/01/18

Why this fiscal note differs from previous version:

Not applicable, initial version.

Prepared By: Kevin Anselm, Director	Phone: (907)269-4157
Division: Banking and Securities	Date: 03/13/2017 12:00 PM
Approved By: Catherine Reardon, Director	Date: 03/17/17
Agency: Division of Administrative Services, DCCED	

FISCAL NOTE ANALYSIS

STATE OF ALASKA
2017 LEGISLATIVE SESSION

BILL NO. HB170

Analysis

This bill modifies the Alaska Statutes to create a new chapter, AS 45.56, as the new Alaska Securities Act. The legislation will 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 the January 1, 2018 effective date.

While some of the securities and licensing filing types eliminated in this legislation required fees, there have been few such filings in the last number of years so the changes will result in little or no revenue decrease. Several new filing types give the division the authority to assess fees by regulation and may result in a very small future revenue increase.

The bill increases the monetary limit for civil penalties. Since civil penalties are not predictable and are not used to fund division operations, there is no fiscal impact to the division.

The Division of Banking and Securities (division) does not anticipate fiscal impact from this legislation.



THE STATE
of **ALASKA**
GOVERNOR BILL WALKER

ALASKA SECURITIES ACT HB 170

Presented to
House Labor and Commerce

March 24, 2017

Kevin Anselm
Director

Division of Banking & Securities
Department of Commerce, Community and Economic Development



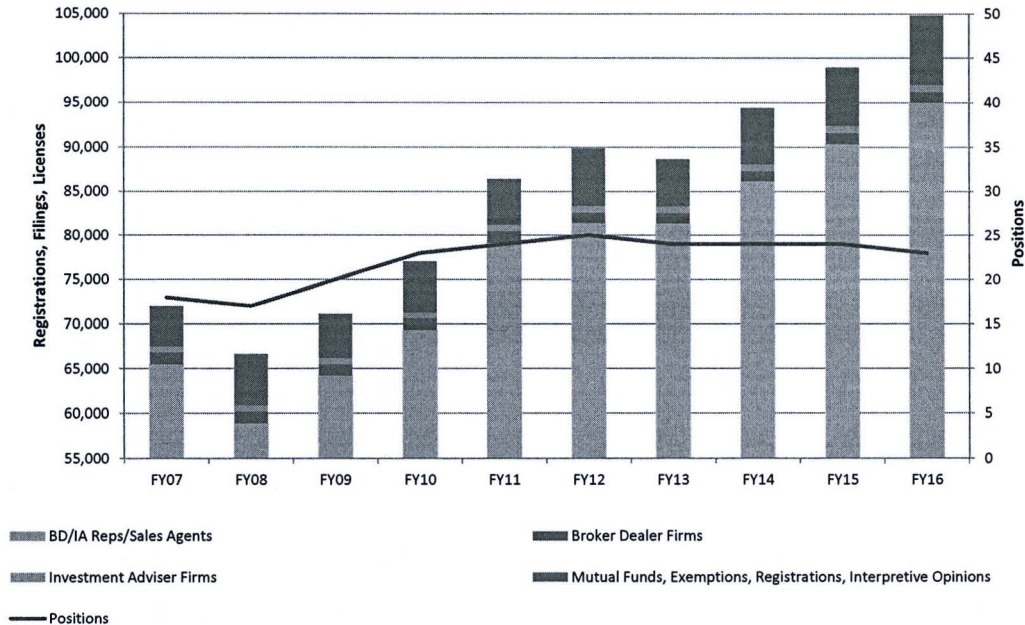
What does the Alaska Securities Act include now?

- Securities broker-dealers, investment advisers, sales agents
- Securities issuers and agents
- Mutual funds, federal covered securities
- Enforcement provisions
- Alaska Native Claims Settlement Act (ANCSA) Corporation and shareholder proxy filings



Securities Registrations, Filings and Licenses

Registrations, Filings, Licenses, and Positions
(Securities)



What will HB 170 do?

- Simplify and bring Alaska's securities laws current with similar provisions as other states' laws to encourage companies, entrepreneurs and investors to do business in Alaska.
- Separate the Securities Act from the Alaska Native Claims Settlement Act.
- Protect older and vulnerable adults from financial exploitation by requiring financial professional to report suspected exploitation and giving the reporting professionals immunity.
- Enhance enforcement provisions, allowing for restitution and increased civil penalties to protect Alaskans, including additional penalties for victimizing vulnerable and older Alaskans.
- Create an Investor Education Fund that allows the Legislature to direct a portion of the civil penalties collected for consumer, investor and marketplace education.
- Allow the Division to require continuing education for investment professionals.



Alaska Native Claims Settlement Act Provisions

- ANCSA provisions remain unchanged in AS 45.55, including the enforcement and administration of related securities laws
- References to exempt ANCSA securities transactions are included in the new Act at AS 45.56.210 (27)



Highlights

- Eliminates filings for all exemptions from registration, *except* crowdfunding
- Updates entity and law references (i.e., no longer includes notice by telegram)
- Includes 'bad actor' disqualifiers
- Improves enforcement and investor protection and education provisions



HB 170

- Article 1. General Provisions - p. 15
- Article 2. Exemptions from the Registration of Securities – p. 15
- Article 3. Registration of Securities and Notice Filing of Federal Covered Securities – p. 30
- Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives and Federal Covered Investment Advisers – p. 42
- Article 5. Fraud and Liabilities – p. 70
- Article 6. Administration and Judicial Review – p. 72
- Article 7. Miscellaneous and Additional General Provisions (includes definitions) –p. 93



FY 2016 Securities Enforcement Actions

- In FY 2016, the division issued – 36 final orders
 - 17 – Securities related

The screenshot shows the website for the Department of Banking and Securities. At the top, there is a navigation bar with links for 'myAlaska', 'My Government', 'Resident', 'Business in Alaska', 'Visiting Alaska', and 'State Employees'. Below this is the department's name and a search bar. The main content area is titled 'DIVISION OF BANKING AND SECURITIES ENFORCEMENT ORDERS' and includes a 'Welcome to the Enforcement Orders webpage' section. A table of enforcement orders is visible, listing various entities and their associated values and changes.

Entity	Value	Change
NYSE Black Card	200.44	+28.7
NYSE Am 1100	095.66	+10.52
NYSE Multi-Tel	994.35	+27.7
NYSE LS 100	170.53	+28.7

commerce.alaska.gov/web/dbs/enforcementorders



Recent Securities Scams in Alaska

Michael Scow – Arizona-based insurance agent convinced an elderly Alaskan to invest \$12,000 in building his business.

Fortune Oil and Gas, LLC – Texas-based oil and gas scam that resulted in a \$3.1 million loss to Alaskans. Alaska courts just awarded the \$25,000 maximum civil penalty in that case.

SOS Disasterplan.com – Alaska business that touted investments in an online disaster preparedness website – issued \$540,000 in unregistered/worthless shares

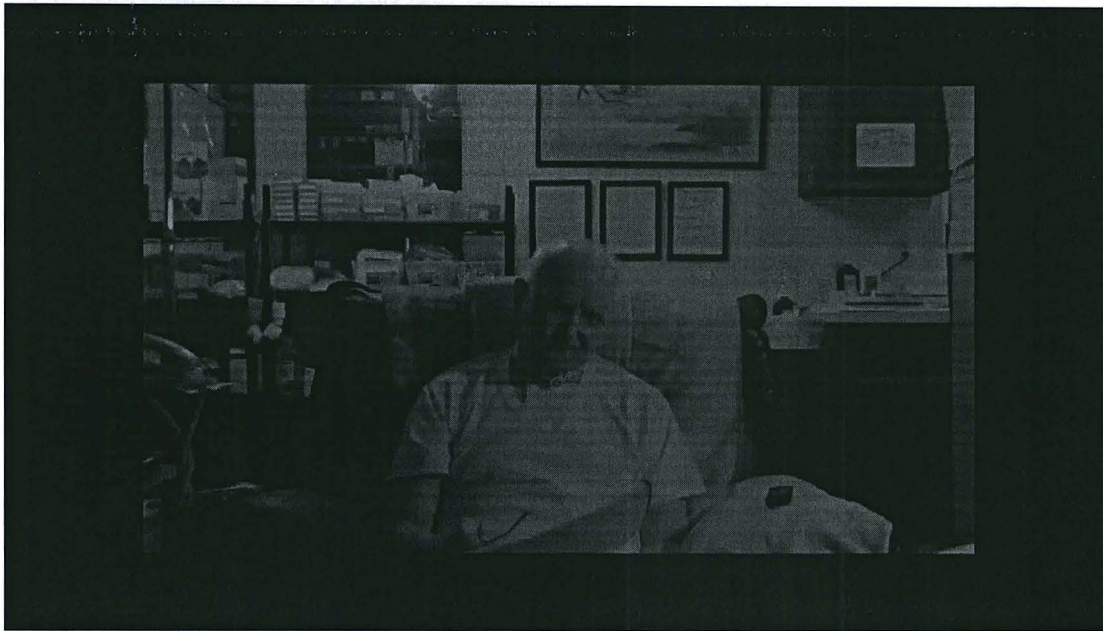
Troy Stafford and Patrick Williams – Alaskans that sold an Alaskan a \$40,000 investment with an employment opportunity in bogus AK companies, then reneged on a rescission offer.

Global Arena Capital Corp – Unregistered NY firm and six employees cited for soliciting then selling junk bonds to a retired and ailing Alaskan halibut fisherman



Examiner: *At no time during the first or the second call when they talked to you did they discuss with you the fact that the 16 percent return they were talking about was based on this particular corporate bond and that that bond was rated triple C minus which is one step above default.*

Bill Burk: No. The only thing I can remember is they said I would get 16 to 18 percent interest.



Examiner: *Did they ask you where this money had come from that you were investing?*

Bill Burk: No.

Examiner: *The next question is not really a question. It talks about the account source. And this was a cold call. You had never heard of them before they called you on the telephone.*

Bill Burk: No.

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Examiner: *And so those bonds were supposed to mature in 2054.*

Bill Burk: I didn't, I didn't....

Examiner: *That's what it says on the paperwork there.*

Bill Burk: That's all I know.

Examiner : *What's your current age?*

Bill Burk: 79.

Examiner: 79. Okay.



Questions?

Kevin Anselm, Director
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Division of Banking and Securities' mission:

Protect consumers of financial services and promote safe and sound financial systems

Supporting the Department's mission to:

Promote a healthy economy, support strong communities, and protect consumers in Alaska

Alaska Securities Act - HB 170

The Division of Banking and Securities (DCCED)

OVERVIEW: HB 170 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.
- Synthesizes 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.
- Includes the Innovating Alaska Act (SB 126) passed during the 29th Legislative Session that allows Alaskans to invest up to \$10,000 in Alaskan businesses (crowdfunding).
- Eliminates filings for all in-state exemptions except crowdfunding.
- Deters investment scams using Alaska entities or harming Alaskans through:
 - Increased penalties against those who break the law and scam Alaskans.
 - Trebles penalties against those who harm an older or vulnerable person.
- Requires brokers and advisers to report financial exploitation and provides immunity for good faith reports and financial disbursement delays.
- Facilitates 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.
- Recognizes and incorporates current industry terms and standards, as well as updates 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 increase 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 or a vulnerable adult.
- 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 a potential \$100,000 fine per violation.

Significant Changes to Civil Enforcement:

- Provides guidance regarding remedies available including injunctions, asset freezes and receivership.
- Allows for treble penalties where victim is 60 years of age or older or is a vulnerable adult.
- Allows for rescission, disgorgement and restitution.
- Allows for repayment of prejudgment or post judgment interest.
- Separates civil liability from rescission.
- Describes circumstances and remedies where sellers/issuers and purchasers are liable.
- Provides that 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 and the offeror must actually pay as promised.
- Offeror must demonstrate ability to pay and deliver the rescission offer in a way that ensures receipt.

Criminal Enforcement:

- Five year statute of limitations.
- “Willful violation” is changed to “intentional violation.”
- Intentional violation is a Class C felony under AS 12.55.125 and fines up to \$100,000.
- 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 current MAXIMUM civil penalty of \$25,000 against Respondents for selling nearly \$3.1 million in unregistered limited partnership interests in Texas oil and gas ventures to Alaskan investors. Dr. Bailey requested a hearing. The hearing was held in a Juneau court in May 2016. On March 14, 2017, the Courts issued an order finding that Mr. Bailey knowingly engaged in the offer and sale of unregistered securities and entered judgment against him for the *maximum amount of \$25,000*. That civil penalty, if paid, will go into the General Fund. Under HB 170, Dr. Bailey’s civil liability could be \$300,000 plus over \$3 million in restitution to the victims.

14-1442-S, Global Arena Capital Corp.: On October 23, 2015, the Division issued a Final Cease and Desist Order that included a total civil penalty of \$150,000 against Global Arena and six of its employees for violating the Alaska Securities Act. A Global Arena employee 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 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. 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 \$82,000 of a risky biotechnology stock. 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 a Final Cease and Desist Order assessing James a \$25,000 civil penalty.

12-85-S, Troy Stafford and Patrick Williams: Stafford and Williams formed two Alaska LLCs, GS Capital and WS Seafood. Stafford offered an Alaska resident an opportunity to invest \$40,000 in WS Seafood, promising him a management position at the company. 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 order and sought a court order to enforce it.