

HB

170

<TARGET><BILL>HB 170</BILL><SUBJECT>HB
170</SUBJECT><COMM>SJUD30</COMM></TARGET>



Representative Sam Kito

Alaska State Legislature

Sponsor Statement

CS House Bill 170 (JUD)

"AK Securities Act; Penalties; Crt. Rules"

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House Health &
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House Rules

Contact

Rep. Sam Kito
Alaska State Capitol 403
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Rep.Sam.Kito@akleg.gov

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 The proposed updates would modernize and streamline the state's outdated securities laws to recognize industry changes and to support new means of raising capital, while enhancing investor protections and remedies.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 Moreover, the updates would eliminate redundant or outdated references and practices.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venture funding up to \$1,000,000 but otherwise left the majority of the Alaska Securities Act unchanged; it remains outdated.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.



ANCSA REGIONAL ASSOCIATION
Bringing Together Regional Corporation Presidents and CEOs

PO Box 240766 • Anchorage, AK 99524 • 907 339 6052

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Natives

March 27, 2017

The Honorable Sam Kito
Chairman, House Labor and Commerce Committee
State Capitol
Juneau, Alaska 99801

Re: House Bill 170 – Alaska Securities Act

Dear Chairman Kito:

On behalf of the ANCSA Regional Association (the Association), we submit this letter regarding the House Labor and Commerce Committee bill HB 170- Alaska Securities Act. We appreciate the hard work your committee is engaged in as it seeks to both keep up with the wide range of issues before it while also contributing to resolving Alaska's core issue of a sustainable fiscal solution. The ANCSA Regional Association represents the Chief Executive Officers of the twelve land-based regional Alaska Native Corporations (ANCs), as well as the President of the Alaska Federation of Natives. Our corporations are owned by over 121,000 Alaska Native people and were formed under the Alaska Native Claims Settlement Act of 1971, 43 U.S.C. § 1601, et. seq. (ANCSA). Our mission is to promote and foster the continued growth and economic strength of the Alaska Native Regional Corporations on behalf of our shareholders. When measured against the top 49 Alaska-owned companies, ANCs account for 75 percent of the revenue earned, 69 percent of Alaskan jobs, and 86 percent of the global employment. Making up 20 of the top 49 Alaska-owned companies, Alaska Native Corporations have become an economic engine of Alaska.

After review of this legislation, we conclude that we do not oppose the bill as currently drafted and introduced, with respect to the statutory renumbering, wherein the ANCSA-specific provisions remain housed in AS 45.55, and the other securities provisions are placed into a new chapter, AS 45.56. We appreciate that the bill separates securities issues from other provisions regarding Alaska Native Claims Settlement Act Corporations Proxy Solicitations and Initial Issuance of Stock provisions in Alaska Statutes 45.55. We do not take a position at this time as to any other substantive provisions of the bill.

As your committee works the bill, please know that we remain available to answer questions on any provision of interest to our members that the committee encounters.

Thank you for your hard work!

Sincerely,
ANCSA REGIONAL ASSOCIATION



Kim Reitmeier
Executive Director

cc: ANCSA Regional Association, Board of Directors
House Labor and Commerce Committee Members
The Honorable Mia Costello, Senator



NASAA

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March 22, 2017

Representative Sam Kito Chairman Committee on Labor & Commerce Alaska House of Representatives State Capitol, 120 4th St. Juneau, AK 99801	Representative Adam Woll Vice-Chairman Committee on Labor & Commerce Alaska House of Representatives State Capitol, 120 4th St. Juneau, AK 99801
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Re: H.B. 170 (The Alaska Securities Act)

Dear Mr. Chairman and Mr. Vice-Chairman:

On behalf of the North American Securities Administrators Association (“NASAA”),¹ I write to express support for H.B. 170, which would enact a number of changes to the Alaska Securities Act. If enacted, H.B. 170 would modernize Alaska’s securities laws in important ways, benefitting Alaskan investors and businesses.

H.B. 170 would amend the Alaska Securities Act (“ASA”)² to enact elements of the Uniform Securities Act of 2002 (“Uniform Act”), updating Alaska’s securities laws to incorporate provisions that have proven successful in many other states. It would also make operational and technical improvements to Alaska’s securities laws – updating it to reflect technological advances such as the internet; and revising the law to eliminate redundant and outdated language, such as references to communications by telegraph and to stock exchanges that no longer exist. Streamlining Alaska’s securities laws will make it more consistent with those of other states, and help Alaska’s securities marketplace become more efficient and accessible to issuers, investors, and other participants.

In addition to updating the ASA, Alaskans stand to benefit from a variety of specific and innovative provisions in the legislation that strengthen protections for Alaskan investors. In short, the legislation will improve the state’s securities laws and strengthen protection for investors.

While H.B. 170 contains provisions that will aid Alaska businesses and innovators, these measures would also take significant steps to strengthen protections for Alaska’s retail investors. The legislation would permit the Alaska Securities Division (“Division”) to impose a bar upon registration, which is currently not allowed under the ASA, even for the most egregious conduct.

¹ The oldest international organization devoted to investor protection, the North American Securities Administrators, Inc. was organized in 1919. Its membership consists of the securities administrators in the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico and the U.S. Virgin Islands. NASAA is the voice of securities agencies responsible for grass-roots investor protection and efficient capital formation.

² The Alaska Securities Act provides the legal framework for the offering or selling of securities within Alaska.

President: Mike Rothman (Minnesota)
President-Elect: Joseph Borg (Alabama)
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Pamela Epting (Florida)
Melanie Senter Lubin (Maryland)

In addition, H.B. 170 would increase the maximum civil penalty for registrants from its current \$2,500-\$10,000 per violation to up to \$100,000 per violation, the maximum administrative penalty from \$25,000 to \$100,000 per violation, and allow for even greater sanctions in cases where the victim is an “older Alaskan” (a person over 60 years old). Further, the legislation would allow the Division to impose restitution costs, assessments to recover the actual costs of an investigation, and would authorize the Division to deny the use of securities exemptions under Article 2 and registration (licensing) exemptions under Article 4 if a person violates the Act. Finally, the legislation would establish a fund for investor education and training, which would be financed using a portion of civil penalties received by the state.

Importantly, the legislation also includes provisions based directly on the NASAA Model Act to Protect Vulnerable Adults from Financial Exploitation (“Model Act” or “Act”).³ The NASAA Model Act gives industry participants and state regulators new tools to help detect and prevent financial exploitation of vulnerable adults. The Act mandates reporting to a state securities regulator and state adult protective services agency when a qualified individual has a reasonable belief that financial exploitation of an eligible adult has been attempted or has occurred. The Act also authorizes disclosure to third parties only in instances where an eligible adult has previously designated the third party to whom disclosure may be made. Finally, the Act directs that disclosures may not be made to the third party if the qualified individual suspects the third party of the financial exploitation.

The Model Act is the culmination of well over a year of work by NASAA, including extensive public and internal comment. The Model Act originated as an initiative of NASAA’s Committee on Senior Issues and Diminished Capacity (“Seniors Committee” or “Committee”), formed in 2014. On September 29, 2015, a draft of the proposed Model Act was released for a 30-day public comment period.⁴ The Committee received and considered comments from various interested parties and considered a similar proposal contained in Regulatory Notice 15-37 issued by the Financial Industry Regulatory Authority (“FINRA”). Furthermore, in light of federal legislation proposed in October 2015, the Committee conducted further internal review in late 2015 and revised several elements of the Model Act. On December 22, 2015, NASAA’s Board of Directors approved the Committee’s request to submit the proposed Model Act to the NASAA membership for consideration. In January, 2016, NASAA members voted to approve the Model Act.

The NASAA Model Act was finalized on January 22, 2016 and four U.S. states enacted the Model Act or similar legislation later that year.⁵ In 2017, as of March 20, the legislation has been introduced and is being actively considered by at least 14 U.S. states, including Alaska.⁶ In

³ Additional information about the NASAA Model Act to Protect Seniors and Vulnerable Adults is available at serveourseniors.org/about/policy-makers/nasaa-model-act/commentary/.

⁴ See Notice of Request for Comments Regarding NASAA’s Proposed Model Legislation or Regulation to Protect Vulnerable Adults from Financial Exploitation (Sept. 29, 2015), available at nasaa.org/37301/notice-of-request-for-comments-regarding-nasaas-proposed-model-legislation-of-regulation-to-protect-vulnerable-adults-from-financial-exploitation/.

⁵ The four states are Vermont, Indiana, Alabama, and Louisiana.

⁶ The fourteen states are Alaska, Arkansas, Colorado, Indiana, Kentucky, Maryland, Minnesota, Mississippi, Montana, New Mexico, New York, Oregon, North Dakota, and Texas.

a large majority of states, the legislation has already been approved by legislative committees, and several states have recently passed the bill through one or another body of their legislatures.⁷

In conclusion, NASAA supports H.B. 170. We appreciate the opportunity to comment on the bill, and would be pleased to assist the Committee in any way possible.

Sincerely,

A handwritten signature in cursive script that reads "Mike Rothman".

Mike Rothman

NASAA President and Minnesota Commissioner of Commerce

⁷ Passage by single body: Indiana, North Dakota; Passage by both bodies: Arkansas, Maryland, Mississippi, Montana, and New Mexico.



Representative Sam Kito

Alaska State Legislature

Repealer List

CS House Bill 170 (JUD)

"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

Alaska State Senate

Sen. Mia Costello, Chair
Alaska State Capitol, Room 504
Juneau, AK 99801
Phone: (907) 465-4968



Members:
Sen. Kevin Meyer
Sen. Peter Micciche
Sen. Gary Stevens
Sen. Berta Gardner

Senate Labor & Commerce Committee

SCS CSHB170(L&C)

Alaska Securities Act

Explanation of Changes (Version O to R)

- Page 15, line 6

A definition for “person” (located in AS 45.56.900) was added to AS 45.55.990

- Page 48, lines 17-19

Sec. 45.56.420(c)(3) has been rewritten for clarification that the provision references rules adopted by the United States Securities and Exchange Commission under the Dodd-Frank Wall Street Reform and Consumer Protection Act.

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State securities laws are intricately related to federal laws on securities but making provisions of the bill subject to the adoption of future amendments to the federal statutes raised the issue of improper delegation of legislative authority to the federal government. This version removes language “or as later amended” in Sec. 45.56.730.