

1794 SLC SB 280 - SB 286 1794

§ 06.45.040

§ 06.45.050

BANKS AND FINANCIAL INSTITUTIONS

§ 06.45.060

(4) for an examination under AS 06.45.050.

(b) Failure of a credit union to pay a fee required by (a)(2), (3), or (4) of this section within 30 days of receipt of billing from the commissioner is grounds for the revocation of the certificate of authority of the credit union. (§ 2 ch 47 SLA 1980)

Sec. 06.45.050. Reports and examinations. A credit union organized under this chapter is under the supervision of the commissioner and shall make an annual financial report to the commissioner and shall make other financial reports required by regulations adopted by the commissioner. A credit union is subject to examination by the commissioner. (§ 2 ch 47 SLA 1980)

Sec. 06.45.060. Powers of a credit union. A credit union has succession in its corporate name during its existence and may

- (1) enter into a contract;
- (2) sue and be sued;
- (3) adopt, use, and alter a common seal;
- (4) purchase, hold, and dispose of property;
- (5) make loans, the maturities of which may not exceed 12 years except as provided in this chapter, and extend lines of credit to its members, to other credit unions, and to credit union organizations and participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) loans to members shall be made in conformity with regulations adopted by the commissioner, except that

(i) a residential real estate loan which is made to finance the acquisition of a one-to-four-family dwelling for the principal residence of a credit union member which is secured by a first lien on the dwelling may have a maturity not exceeding 30 years;

(ii) a loan to finance the purchase of a mobile home, which is secured by a first lien on the mobile home, to be used as the residence of a credit union member, or for the repair, alteration, or improvement of a residential dwelling which is the residence of a credit union member shall have a maturity not to exceed 15 years unless the loan is insured or guaranteed under (iii) of this subparagraph;

(iii) a loan secured by the insurance or guarantee of the federal government, of a state government, or an agency of either may be made for the maturity and under the terms and conditions specified in the law under which the insurance or guarantee is provided;

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan which exceeds \$5,000 plus pledged shares shall be approved by the board of directors;

(v) loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser shall be

approved by the board of directors when the loans standing alone or when added to an outstanding loan or loans of the guarantor or endorser exceed \$5,000;

(vi) the rate of interest may not exceed one percent a month on the unpaid balance inclusive of all service charges;

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this subsection, when knowingly done, is considered a forfeiture of the entire interest which the note, bill, or other evidence of debt carries with it, or which has been agreed to be paid on the note, bill, or other evidence of debt; if a greater rate of interest has been paid, the person by whom it has been paid or his legal representatives may recover back from the credit union taking or receiving it the entire amount of interest paid, but the action must be commenced within two years from the time the usurious collection was made;

(viii) a borrower may repay a loan before maturity in whole or in part on any business day without penalty;

(ix) loans shall be paid or amortized under regulations adopted by the commissioner which consider the needs or conditions of the borrowers, the amounts and duration of the loans, the interests of the members and the credit union, and other factors established in regulations adopted by the commissioner;

(x) the total dollar amount of real estate loans and mobile home loans outstanding may not exceed 25 percent of the paid-in and unimpaired capital and surplus of the credit union without the written approval of the commissioner;

(xi) a credit union with a paid-in and unimpaired capital and surplus of less than \$3,000,000 may make real estate loans with maturities in excess of 15 years only with the approval of the commissioner;

(B) a self-replenishing line of credit to a borrower may be established to a stated maximum amount on terms and conditions which may be different from terms and conditions established for another borrower;

(C) loans to other credit unions require the approval of the board of directors of the loaning credit union;

(D) loans to credit union associations require the approval of the board of directors of the credit union and may not exceed one percent of the paid-in and unimpaired capital and surplus of the credit union;

(E) participation loans with other credit unions, credit union associations, or financial organizations shall be made in accordance with written policies of the board of directors of the credit union, except that a credit union which originates a loan for which participation arrangements are made in accordance with this section shall retain an interest not less than 10 percent of the face amount of the loan;

(6) receive from its members and from others payments on shares which may be issued at varying dividend rates, and payments on share

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§ 06.45.060 BANKS AND FINANCIAL INSTITUTIONS § 06.45.060

certificates which may be issued at varying dividend rates and maturities, subject to terms, rates, and conditions as may be established by the board of directors of the credit union, within limitations prescribed by the commissioner;

(7) invest its funds

(A) in loans exclusively to members;

(B) in obligations of the United States or securities fully guaranteed as to principal and interest by the United States;

(C) in loans to other credit unions in the total amount not exceeding 25 percent of its paid-in and unimpaired capital and surplus in accordance with regulations adopted by the commissioner;

(D) in shares or accounts of savings and loan associations or mutual savings banks which are insured by the Federal Savings and Loan Insurance Corporation or the Federal Deposit Insurance Corporation;

(E) in obligations issued by banks for cooperatives, federal land banks, federal intermediate credit banks, federal home loan banks, the Federal Home Loan Bank Board, or a corporation designated in 31 U.S.C., § 846 as a wholly owned federal government corporation; in obligations, participations, or other instruments of or issued by or fully guaranteed as to principal and interest by the Federal National Mortgage Association or the Government National Mortgage Association; in mortgages, obligations, or other securities which are or have been sold by the Federal Home Loan Mortgage Corporation under § 305 or § 306 of the Federal Home Loan Mortgage Corporation Act; or in obligations or other instruments or securities of the Student Loan Marketing Association;

(F) in participation certificates evidencing beneficial interests in obligations, or in the right to receive interest and principal collections from obligations, which have been subjected by one or more federal agencies to a trust or trusts for which an executive department, agency, or instrumentality of the United States or its head has been named to act as trustee;

(G) in shares or deposits of a central credit union in which such investments are authorized by the board of directors of the credit union making the investment;

(H) in shares, share certificates, or share deposits of federally insured credit unions;

(I) in the shares, stocks, or obligations of another organization providing services which are associated with the routine operations of credit unions, up to one percent of the total paid-in and unimpaired capital and surplus of the credit union with the approval of the commissioner; and

(J) in the capital stock of the National Credit Union Central Liquidity Facility;

(8) make deposits in national banks and in state banks, trust companies, and mutual savings banks operating in accordance with the laws of the state;

(9) borrow in accordance with regulations adopted by the commissioner from any source, in an aggregate amount not exceeding 50 percent of its paid-in and unimpaired capital and surplus, except that a credit union may discount with or sell to a federal intermediate credit bank an eligible obligation up to the amount of its paid-in and unimpaired capital;

(10) levy late charges, in accordance with the bylaws, for failure of members to meet promptly their obligations to the credit union;

(11) levy and enforce a lien upon the shares and dividends of a member to the extent of a loan made to, and any dues or charges payable by, the member;

(12) in accordance with regulations adopted by the commissioner, sell to members negotiable checks, travelers checks, and money orders, and cash checks and money orders for members, for a fee which does not exceed the direct and indirect costs incident to providing the service;

(13) in accordance with regulations adopted by the commissioner, purchase, sell, pledge, discount, or otherwise receive or dispose of, in whole or in part, eligible obligations of its members and purchase from a liquidating credit union notes made by individual members of the liquidating credit union at prices agreed upon by the board of directors of the liquidating credit union and the board of directors of the purchasing credit union; a purchase may not be made under authority of this paragraph if, upon the making of the purchase, the aggregate of the unpaid balances of notes purchased under authority of this paragraph exceeds five percent of the unimpaired capital and surplus of the credit union;

(14) sell all or a part of its assets to another credit union, purchase all or part of the assets of another credit union, and assume the liabilities of the selling credit union and those of its members subject to regulations of the commissioner; and

(15) exercise incidental powers as are necessary or required to enable it to carry on effectively the business for which it is incorporated. (§ 2(c), SLA 1980)

Sec. 06.45.04. Membership. Credit union membership consists of the incorporators and other persons and incorporated and unincorporated organizations, to the extent permitted by regulations adopted by the commissioner, elected to membership. Each member shall subscribe to at least one share of the stock of the credit union and pay the initial installment on the stock and a uniform entrance fee if required by the board of directors of the credit union. Credit union membership is limited to groups having a common bond of occupation or association, or to groups within a well-defined neighborhood, community, or rural district. Shares may be issued in joint tenancy with right of survivorship with a person designated by the credit union member. A joint tenant may not be permitted to vote, obtain loans, or

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Sec. 45.45.010. Legal rate of interest.

(a) The rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section.

(b) No interest may be charged by express agreement of the parties in a contract or loan commitment dated after June 4, 1976 which is more than five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District that prevailed on the 25th day of the month preceding the commencement of the calendar quarter during which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds \$100,000 is exempt from the limitation of this subsection.

(c) Repealed by § 3 ch 84 SLA 1973.

(d) Notice of the annual rate charged member banks for advances by the 12th Federal Reserve District prevailing on the 25th day of the month preceding the commencement of each calendar quarter required for the maximum interest rate computation under (b) of this section shall be provided by the Department of Commerce and Economic Development.

(e) Repealed by § 4 ch 146 SLA 1974.

(f) No bank, savings and loan institution, pension fund, insurance company or mortgage company may require or accept any per cent of ownership or profits above its interest rate.

(g) Loan contracts and commitments covering one- to four-family dwellings may be prepaid without penalty, except federally insured loans that require a prepayment penalty.

(h) If the limitations on interest rates provided for in this section are inconsistent with the provisions of any other statute covering maximum interest, service charges or discount rates then the provisions of the other statute prevail. (§ 25-1-1 ACLA 1949; am § 20 ch 143 SLA 1968; am § 2 ch 69 SLA 1969; am §§ 1, 2 ch 94 SLA 1969; am §§ 1, 2 ch 239 SLA 1970; am §§ 1 — 3 ch 84 SLA 1973; am §§ 1 — 4 ch 146 SLA 1974; am § 1 ch 110 SLA 1976; am § 1 ch 159 SLA 1976; am § 2 ch 107 SLA 1980)

Cross references. — As to rate of interest under Alaska Small Loans Act, see AS 06.20. As to premium finance act, see AS 06.40.120. As to credit union loans, see AS 06.45.060. As to judgments, see AS 09.30.070. As to commercial fishing loans, see AS 16.10.320(a). As to housing development revolving loan fund, see AS 18.54.060. As to Alaska housing finance, see AS 18.56.098. As to insurance policy loans, see AS 21.45.080. As to veterans' loans, see AS 26.15.040. As to residential care facility loans, see AS 44.33.350(b). As to temperate social activities facilities loans, see AS 44.47.340(e). As to retail installment sales, see AS 45.10.120. As to collection of advance interest, see AS 45.45.080. As to Alternative Technology

and Power Resource loans, see AS 88.030(e). As to tourism loans, see AS 45.90.030(c). As to small business loans, see AS 45.95.020. As to historic district loans, see AS 45.98.010(4).

Effect of amendments. — The first 1976 amendment substituted "five percentage points" for "four percentage points" in the first sentence of subsection (b).

The second 1976 amendment rewrote subsection (a).

The 1980 amendment substituted "10.5" for "eight" near the beginning of subsection (a), and deleted the former second sentence of subsection (a), which read: "The rate of interest in the state is six per cent a year and no more on (1)

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FISCAL NOTE

I. REQUEST
 Bill/Resolution No. SB 280
 Title An Act relating to State chartered credit unions.
 Requested by Senate Labor and Commerce Date 3/19/81

II. FISCAL DETAIL Department of Commerce & Economic Development
 Agency Affected _____
 Program Category Affected Consumer Protection
 BRU, Program, or Subprogram(s) Affected Financial Institutions
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 3/19/81 PREPARED BY Willis F. Kirkpatrick, Director of Banking
 AGENCY Department of Commerce & Economic Development
 PHONE 465-2521
 Original: Legislative Finance
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

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Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99611

SUMMARY SB 281:

Amends the Small Loans Act, and relates to open-ended loans and the maximum rate of interest permitted. The interest may not exceed the greater of $1\frac{1}{2}\%$ ^(18%) per month, or 8% points above the Federal Reserve Discount Rate on 90 day commercial paper charged to banks for advances by the 12th Fed. Res District.

A judgement, after the declaration of taking, shall include lawful interest on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of judgement.

HUGHES THORSNESS GANTZ POWELL & BRUNDIN

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rel to Sen. 2 of SB 281

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February 6, 1981

Please reply to: ANCHORAGE

Senator Patrick Rodey
Pouch V
Juneau, AK 99811

RE: Senate Bill No. 19

Dear Senator Rodey:

I would like to take this opportunity to offer some suggestions for amendments to Senate Bill No. 19, "An act relating to the legal rate of interest; and providing for an effective date," introduced January 13, 1981 under your sponsorship and presently referred to the Senate Labor and Commerce Committee.

Due to apparent oversight by the legislature in prior sessions, an inequitable anachronism has been carried forward in the statutes of Alaska. AS 09.55.440(a) provides that the rate of judgment interest awarded under a declaration of taking proceeding will equal six per cent per year on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. This provision was enacted in 1962, and has never been amended (ch. 101, § 13.21, SLA 1962 .

By way of background, a declaration of taking is often used by the State of Alaska in lieu of a complaint for condemnation and the correlative court order for possession. It provides for immediate possession in the State; otherwise the State must await the execution of an order giving it possession. The impact upon Alaskan landowners is the same regardless of whether their land is taken by a declaration of taking or a complaint for condemnation. However, a different rate of interest is paid to the landowner depending upon which method is used by the State. When a complaint seeking condemnation and an order for possession is used,

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interest due the landowner (on amounts not deposited by the State) is governed by AS 09.55.330 which provides that the "lawful" rate of interest (AS 45.45.010) applies. This provision was enacted along with the provision applying to declarations of taking in 1962 (ch. 101, § 13.10, SLA 1962). Accordingly, it can be seen that in 1962 the legislature provided for the payment of interest at the rate of six per cent whether a declaration of taking or complaint seeking condemnation and an order for possession was used. However, in 1976 the statute setting the "lawful" rate of interest in Alaska [AS 45.45.010(a)] was amended to increase the rate of interest from six per cent to eight per cent. However, it would appear that no one has brought to the attention of the legislature the fact that interest under a declaration of taking condemnation remains at six per cent. Subsequent increases in the legal rate of interest have similarly failed to be reflected in AS 09.55.440(a).

It has been my unfortunate experience to witness the inequitable application of the six per cent interest statute to many landowners whose land is taken for public use. Surely, the procedural means by which possession is taken by the State should not dictate the rate of interest to be paid landowners on compensation which is delayed. However, attorneys in the Office of the Attorney General for the State of Alaska, while apparently recognizing the inequity of such differential treatment, are bound by AS 09.55.440(a).

The inequity in treatment was recently noted by the Supreme Court for the State of Alaska in State of Alaska v. Alaska Continental Development Corporation and Alaska General Properties, Inc., No. 2254, December 31, 1980 (emphasis added):

We note the disparity between the interest rate specified in AS 09.55.440(a) and the other statutes mentioned. We also are concerned about the inequity in awarding a higher rate of interest on judgments obtained in one form of eminent domain proceeding than in another, as may result from the current provisions of AS 09.55.440(a) and AS 09.55.330. We strongly urge the legislature to consider amending what appears

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to be a defect in the current statutory scheme. But we decline to repeal by judicial action the clear and unambiguous provision of an enactment of the legislature on the grounds that it must be an oversight.

Although the Alaska Supreme Court's recognition of the doctrine of separation of powers is admirable, landowners in the State of Alaska remain in need of an amendment to bring the rate of interest under a declaration of taking eminent domain proceeding in line with the other interest rate provisions in the Alaska statutes.

Since Senate Bill No. 19 will focus the legislature's attention on interest rate matters, it would seem an amendment or amendments may be attached to the bill which will remedy the inequitable situation described above. I would recommend for your consideration amendments to Senate Bill No. 19 along the following lines:

1. Insert a new Section 3--"AS 09.55.440(a) is amended to read:

(a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. The judgment shall include lawful interest [AT THE RATE OF SIX PERCENT PER YEAR] on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

2. Renumber present Section 3 of Senate Bill No. 19 as Section 4.

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I am enclosing for your convenience a copy of the relevant section from State of Alaska v. Alaska Continental Development Corporation and Alaska General Properties, Inc., No. 2254, December 31, 1980, and a version of Senate Bill No. 19 with the suggested amendments. Please feel free to contact me should you have any questions or need for further information with respect to this matter. I thank you for your time and consideration.

Very truly yours,


Steven S. Tervooren

SST/bs

Enclosure

cc: Senator Mulcahy, Chairman
Senate Labor and Commerce Committee

tiff to be just compensation for the property or the interest in it. (§ 13.20 ch 101 SLA 1962)

Cross reference.—See Civ. R. 72-(e)(3).

Where the state has adequate knowledge of separate interests, amounts should be specified for each.

Russian Orthodox Greek Catholic Church of North America v. Alaska State Housing Authority, Sup. Ct. Op. No. 809 (File No. 1600), 498 P.2d 737 (1972).

Sec. 09.55.440. Vesting of title and compensation. (a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. The judgment shall include interest at the rate of six per cent per year on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

(b) Upon motion of a party in interest and notice to all parties, the court may order that the money deposited or a part of it be paid immediately to the person or persons entitled to it for or on account of the just compensation to be awarded in the proceedings. If the compensation finally awarded exceeds the amount of money deposited, the deposit shall be offset against the award. If the compensation finally awarded is less than the amount of money deposited, the court shall enter judgment in favor of the plaintiff and against the proper parties for the amount of the excess. (§ 13.21 ch 101 SLA 1962)

Cross reference.—See Civ. R. 72-(e)(3).

Condemnation takes estate sought in declaration of taking.—The Alaska declaration of taking statutes are as effective as the federal statutes in effecting the vesting of title in the condemnor or whatever interest in the land it seeks to condemn. If the state undertakes to obtain title to real property in fee simple absolute by the filing of a declaration of taking that is the title which it obtains. 1960 Op. Att'y Gen., No. 15.

Alaska Const., art. I, § 18, necessitates that a property owner be compensated for delays incurred between the dates of the government's taking of property and making payment. If an award were paid immediately upon the taking of the land by the state no damages to the property owner would ensue. But where, due

to the necessity of lengthy proceedings to ascertain fair market value of property, delays ensue, the property owner is entitled to an adequate sum to reimburse him for the loss of use of the money during the period of such delay. To hold otherwise would constitute a taking of the property without just compensation. Therefore, it is well established that the owner of property is entitled to interest from the date of taking to the date of payment. Russian Orthodox Greek Catholic Church of North America v. Alaska State Housing Authority, Sup. Ct. Op. No. 809 (File No. 1600), 498 P.2d 737 (1972).

This section provides for interest on the amount awarded which exceeds the amount paid into court under the declaration of taking. Russian Orthodox Greek Catholic Church of North America v. Alaska State Housing Au-

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"A person may" near the beginning of the subsection.
As the rest of the section was not

affected by the amendment, it is not set out.

Sec. 06.20.230. Maximum interest permitted. (a) A licensee may lend any sum of money not exceeding \$25,000 and may charge, contract for, and receive on the loan interest at a rate not exceeding three percent a month on that part of the unpaid principal balance of a loan not in excess of \$500; two percent a month on the remainder of any unpaid principal balance exceeding \$500 but not exceeding \$1,000; and one percent a month on the remainder of any unpaid principal balance exceeding \$1,000 but not exceeding \$25,000. On loans the principal of which is \$50 or less a licensee may charge, contract and receive interest at a rate not exceeding five percent a month.

(b) Notwithstanding the provisions of (a) of this section, a licensee who makes open-end loans under this chapter or who makes a loan under this chapter exceeding \$5,000 but not exceeding \$25,000 may elect to charge, contract for, and receive interest not to exceed the greater of

(1) one and one-half percent a month; or

(2) eight percentage points above the Federal Reserve discount rate on 90-day commercial paper charged to banks for advances by the 12th Federal Reserve District on the first day of the month before the calendar quarter during which the loan is made.

(c) Interest on loans under (b) of this section shall be computed according to the actuarial method on the entire unpaid principal balance as determined in AS 06.20.285(b). (§ 16(a) ch 73 SLA 1955; am § 5 ch 94 SLA 1969; am § 7 ch 71 SLA 1978; am § 2 ch 84 SLA 1979; am § 3 ch 63 SLA 1980)

Effect of amendments.

The 1979 amendment added subsection (b).

The 1980 amendment, effective June 5, 1980, in subsection (a), substituted "\$25,000" for "\$5,000" twice; in subsection (b), inserted "or who makes a loan under this chapter exceeding \$5,000 but not exceeding \$25,000" and "the greater of", restructured the subsection into the

percent introductory paragraph and paragraphs (1) and (2), added "or" following "a month" in paragraph (1), added the provisions of paragraph (2); designated the provisions beginning "Interest on loans" as subsection (c), added "Interest on loans under (b) of this section shall be", and inserted "entire" preceding "unpaid principal" in subsection (c).

Sec. 06.20.250. Computation and payment of interest. (a) Interest shall not be paid, deducted, or received in advance. Except for open-end loans made under AS 06.20.285, interest shall be computed and paid only on unpaid principal balances and shall not be compounded; however, if part or all of the consideration for a loan contract is the unpaid principal balance of a prior loan, the principal amount payable under the loan contract may include any unpaid charges on the prior loan which have accrued within 60 days before the

tiff to be just compensation for the property or the interest in it. (§ 13.20 ch 101 SLA 1962)

Cross reference.— See Civ. R. 72-(e)(3).

Where the state has adequate knowledge of separate interests, amounts should be specified for each.

Russian Orthodox Greek Catholic Church of North America v. Alaska State Housing Authority, Sup. Ct. Op. No. 809 (File No. 1600), 498 P.2d 737 (1972).

Sec. 09.55.440. Vesting of title and compensation. (a) Upon the filing of the declaration of taking and the deposit with the court of the amount of the estimated compensation stated in the declaration, title to the estate as specified in the declaration vests in the plaintiff, and that property is condemned and taken for the use of the plaintiff, and the right to just compensation for it vests in the persons entitled to it. The compensation shall be ascertained and awarded in the proceeding and established by judgment. The judgment shall include interest at the rate of six per cent per year on the amount finally awarded which exceeds the amount paid into court under the declaration of taking. The interest runs from the date title vests to the date of payment of the judgment.

(b) Upon motion of a party in interest and notice to all parties, the court may order that the money deposited or a part of it be paid immediately to the person or persons entitled to it for or on account of the just compensation to be awarded in the proceedings. If the compensation finally awarded exceeds the amount of money deposited, the deposit shall be offset against the award. If the compensation finally awarded is less than the amount of money deposited, the court shall enter judgment in favor of the plaintiff and against the proper parties for the amount of the excess. (§ 13.21 ch 101 SLA 1962)

Cross reference.— See Civ. R. 72-(e)(3).

Condemnor takes estate sought in declaration of taking.— The Alaska declaration of taking statutes are as effective as the federal statutes in effecting the vesting of title in the condemnor of whatever interest in the land it seeks to condemn. If the state undertakes to obtain title to real property in fee simple absolute by the filing of a declaration of taking that is the title which it obtains. 1960 Op. Att'y Gen., No. 15.

Alaska Const., art. 1, § 18, necessitates that a property owner be compensated for delays incurred between the dates of the government's taking of property and making payment. If an award were paid immediately upon the taking of the land by the state no damages to the property owner would ensue. But where, due

to the necessity of legal proceedings to ascertain fair market value of property, delays ensue, the property owner is entitled to an adequate sum to reimburse him for the loss of use of the money during the period of such delay. To hold otherwise would constitute a taking of the property without just compensation. Therefore, it is well established that the owner of property is entitled to interest from the date of taking to the date of payment. Russian Orthodox Greek Catholic Church of North America v. Alaska State Housing Authority, Sup. Ct. Op. No. 809 (File No. 1600), 498 P.2d 737 (1972).

This section provides for interest on the amount awarded which exceeds the amount paid into court under the declaration of taking. Russian Orthodox Greek Catholic Church of North America v. Alaska State Housing Au-

thority, S No. 1600).

Interest the amount able for in owner or terests in Greek Ca America v thority, S No. 1600).

No inte draw fund owner.—In ure to wit the regist able to t owner, no on the po posited.

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Sec. 09 ing of th compensa which an quired to of entry ning of th ration of of the aw sonable p plaintiff d

(b) T special as

FISCAL NOTE

I. REQUEST SB 281
 Bill/Resolution No. SB 281
 Title An Act Relating to interest calculation and state preemption of federal usury statutes
 Requested by Senate Labor and Commerce Committee Date 3/19/81

II. FISCAL DETAIL Department of Commerce & Economic Development
 Agency Affected Department of Commerce & Economic Development
 Program Category Affected Consumer Protection
 BRU, Program, or Subprogram(s) Affected Financial Institutions
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 3/19/81 PREPARED BY Willis F. Kirkpatrick, Director of Banking
 AGENCY Department of Commerce & Economic Development
 Original: Legislative Finance PHONE 465-2521
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

S

B

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8

2



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY SB 282:

Amends AS45.45.010, (trade practices, legal rate of interest)
A broker-dealer registered under AS45.55 may charge a margin account customer interest up to eight percentage points above the annual rate charged member banks by the 12th Federal Reserve District that prevailed on the day the loan or commitment was made.

FOSTER & MARSHALL INC.

INVESTMENT BANKERS AND BROKERS

114 SOUTH FRANKLIN STREET
JUNEAU, ALASKA 99801

(907) 586-6000

MEMBERS
NEW YORK STOCK EXCHANGE, INC.
AMERICAN STOCK EXCHANGE, INC.
PACIFIC STOCK EXCHANGE, INC.
MIDWEST STOCK EXCHANGE, INC.
CHICAGO BOARD OPTIONS EXCHANGE

OFFICES
IN THE PRINCIPAL CITIES OF THE
PACIFIC NORTHWEST AND ALASKA

<u>DATE</u>	<u>FEDERAL DISCOUNT RATE</u>	<u>BASE RATE</u> [*]	<u>OUR COST</u>
10/28 - 11/2	11%	10%	14 %
11/3 - 11/5	11%	10%	14 1/2%
11/6 - 11/16	11%	10%	15 1/2%
11/17	12%	10%	16 3/4%
11/18 - 11/23	12%	10%	17 1/4%
11/24 - 11/27	12%	10%	17 3/4%
11/28 - 12/4	12%	10%	18 1/2%
12/5 - 12/14	13%	10%	20 %
12/15 - 12/17	13%	10%	21 %
12/18 - 12/22	13%	10%	22 %
12/23 - 12/28	13%	10%	21 %
12/29	13%	10%	20 %
12/30 - 1/27	13%	13%	20 1/2%
1/28 - 2/2	13%	13%	20 %
2/3 - 2/9	13%	13%	19 %
2/10 - 2/20	13%	13%	18 1/2%
2/21 - 2/23	13%	13%	18 %
2/24 - 3/9	13%	13%	17 1/2%
3/10 - 3/11	13%	13%	17 %
3/12 - Present	13%	13%	16 1/2%

* Add 5% for Alaska Usury Limit

STATE OF ALASKA
THE LEGISLATURE

POUCH 7 - STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 11, 1981

SUBJECT: Ray Amendments to SB 19-Security
Brokerage Exemption

TO: Senator Bob Mulcahy

FROM: Thomas A. Sofo, *AS*
Legislative Counsel

You have asked this office to propose draft language for amending SB 19 in a manner which would exempt security brokerage firms from the usury ceiling of AS 45.45.010(b). In looking into this matter I have reviewed the testimony submitted by Mr. Fred Koken dated February 2 and February 9, 1981. Statements made by Mr. Koken have raised several matters which call for further development.

As a preliminary matter, the more recent memo of Mr. Koken (February 9, 1981) and the attached bill before the House in the state of Washington has clarified the scope of the exemption with which we are dealing. Based upon the Washington approach I would suggest that any exemption to AS 45.45.010(b) be limited to persons registered under AS 45.55 which is the Alaska Securities Act. I do not see a need to include reference to the Federal Securities and Exchange Act of 1934 as did the Washington bill since, for our purposes, the coverage is apparently concurrent. Reference to AS 45.55 goes a long way toward addressing my concern that we do not open the door for other unintended persons or institutions to claim the exemption which we are considering. There is however a further consideration which needs to be addressed. Mr. Koken's February 2, 1981 statement mentioned that it is not merely the type of institution which must be considered but also the nature of the "loan" which it makes. In that earlier statement he discusses terms such as "effective annual rate" and "open line" of credit. Reference to these concepts would apparently alleviate the problem which his firm, and those similarly situated, have

Senator Bob Mulcahy
Page 2
February 11, 1981

experienced in these inflationary times. The problem which this creates is that the terms "effective annual rate" and "open line" of credit are not defined anywhere in the statutory base which makes up the text of the Alaska Statutes. Washington House Bill 96 attached to the February 9, 1981 statement of Mr. Koken suggests that the exemptions should be available if the underlying loans (1) may be paid in full at the option of the borrower and (2) are subject to credit regulations of the federal reserve system. Although I am not sure, I do not believe the two approaches outlined in the February 2, and February 9 statements of Mr. Koken would accomplish equivalent results.

We could of course merely exempt persons registered under AS 45.55 from the interest ceilings setup in AS 45.45.010(b). That particular approach leaves the still further question as to whether we merely want to exempt them from the ceiling in subsection (b) or create a different ceiling for them. Mr. Koken's February 2, 1981 letter suggests that a higher ceiling would be appropriate while the February 9 statement indicates outright exemption from any usury ceiling.

In short, the issues which remain are (1) whether we want an outright exemption from the usury ceiling for persons registered under AS 45.55 or do we merely want to create a different ceiling for such persons, and (2) is there a need to clarify for type of "loan" which qualifies for the exemption which we are creating or do we want to exempt all such transactions, even short term loans to which rationale earlier advanced by Mr. Koken might not apply.

I hope you do not feel that I am trying to be difficult in generating a work draft on what is ostensibly a simple drafting task. The area of securities brokerage and investment counseling is one in which I have very little expertise and in which I believe we should proceed with great caution. I would be happy to discuss these matters further with you at your convenience.

TAS:blg

Enclosure

Foster & Marshall Inc.
206 Columbia Avenue
Seattle, Washington 98104

RE: Loan for Business Purposes

Dear Sir:

I understand that under the terms of a business loan of over \$25,000 which I have with you, the only loan advances which you make to clients are solely for business purposes. I agree that you may rely on the statements made here concerning my margin borrowing to take advantage of State and Federal exemptions from the usuary provisions of the Revised Code of Washington.

This advance of _____ is for my business purpose of _____

_____ realize all the provisions of the Customer Agreement and the supplement to the Customer Agreement, which I have previously executed, will continue in effect.

Sincerely,

THIS IS A LETTER THAT IS REQUIRED
FROM EACH OF OUR "BUSINESS LOAN" CLIENTS
BEFORE THEIR DEBIT BALANCE CAN BE
INCREASED. IT IS CONSIDERABLE FOR BOTH
US AND THE CLIENT.

7/13/81

SUPPLEMENT TO CUSTOMER AGREEMENT
FOR MARGIN ACCOUNT CUSTOMERS

In consideration for Foster & Marshall Inc. extending and continuing to extend credit to my margin investment account, I acknowledge the following and agree to the terms and conditions herein:

1. Interest will be charged on any credit extended to or maintained for the account for the purpose of purchasing, carrying or trading in any security. The annual rate of interest which will be charged will depend on the amount of the debit balance in my account and on the New York call money rate charged to Foster & Marshall Inc. THE ACTUAL RATE OF INTEREST CHARGED WILL BE CHANGED WITHOUT NOTICE TO REFLECT EACH ADJUSTMENT IN THE NEW YORK CALL MONEY RATE. A STATEMENT OF THE RATE CURRENTLY IN EFFECT CAN BE OBTAINED FROM MY REPRESENTATIVE AT ANY TIME. The annual rate of interest will vary depending on the size of the average debit balance in the account during the month in accordance with the following schedule:

<u>If the Average Monthly debit balance is</u>	<u>The interest charge over the New York call money rate will be: *</u>
\$25,000 to \$29,999	1 3/4% above average call money rate
\$30,000 to \$49,999	1 1/4% above average call money rate
\$50,000 to \$99,999	3/4% above average call money rate
\$100,000 and up	1/2% above average call money rate

* The New York call money rate charged Foster & Marshall Inc. as of April 22, 1980 was 19 1/2%.

The interest rate charged will not, however, exceed 5 per centum in excess of the discount rate, including any surcharge thereon, on ninety-day commercial paper in effect, from time to time, at the Federal Reserve Bank in the Twelfth Federal Reserve District.

2. My margin account will be opened and carried solely for the purpose of borrowing to purchase, carry or trade investment securities in the account with the intent of increasing my net worth. I will not borrow for the purpose of withdrawing funds from the account for any other uses. I make all investment decisions for my account.

3. All or a portion of any borrowing in the account may be repaid at any time without penalty.

4. This Supplement is a supplement to the provisions of the Customer Agreement which I have previously executed and all of the provisions of such Agreement will continue in effect.

5. I understand that loans to the margin account which exceed \$25,000 in the aggregate will be exempt from any state law limiting the rate or amount of interest charged a loan for business purposes.

6. I understand and agree that my margin loan is a demand loan and that you have demanded payment on May 23, 1980. I hereby authorize Foster & Marshall Inc. to refinance the balance due and owing on my account as of May 27, 1980 with the proceeds of a new margin loan to my account on that date, which new loan will be subject to my Customer Agreement and this Supplement.

I have carefully read and considered the above statement and represent and warrant that my margin account is for my business purposes. I agree that the interest rate charged on the debit balance in my account may be a floating rate based on the New York call money rate charged Foster & Marshall Inc., as set forth above and shall not be subject to any limitation on the rate of interest imposed by state law if the debit balance exceeds \$25,000. I agree that you may rely on this statement of the business purpose of my margin account borrowings to take advantage of state and federal exemptions from any applicable state law.

(date)

(signed)

(city, state)

(signed)

NOTE: If joint account, both parties must sign.

FOSTER & MARSHALL INC.

INVESTMENT BANKERS AND BROKERS

215 COLUMBIA STREET
SEATTLE, WASHINGTON 98104
206 / 344-3800

OFFICES
IN THE PRINCIPAL CITIES OF THE
PACIFIC NORTHWEST AND ALASKA

MEMBERS
NEW YORK STOCK EXCHANGE, INC.
AMERICAN STOCK EXCHANGE, INC.
PACIFIC STOCK EXCHANGE, INC.
MIDWEST STOCK EXCHANGE, INC.
CHICAGO BOARD OF TRADE EXCHANGE

November 14, 1980

TO OUR WASHINGTON STATE RESIDENT MARGIN CLIENTS:

One of the services Foster & Marshall Inc. provides to you is the financing of security purchases on a margin basis. Historically, the rate of interest charged on margin purchases has varied directly with the brokers' cost of money which is presently approximately 15 1/2%. While the interest rate charged to our clients in other states is based on this cost, we are limited within the State of Washington to a 12% interest rate, except for business loan accounts, because of the usury limitation since we are headquartered within the State. Unlike most of our competition, we have been absorbing this differential for most accounts of Washington residents in the hope that the prime interest rate would drop below 12% or that a bill introduced in the Washington legislature during the last session would exempt margin interest from the State's 12% usury limitation and thereby recognize the true cost of carrying such accounts. While this has been the case throughout most of the country, the State legislature adjourned without taking action, and it appears that an early return to a 12% cost of money unfortunately is not a realistic possibility.

We at Foster & Marshall feel that under the circumstances we cannot indefinitely continue to absorb the increasing loss between our cost of money to finance margin accounts and the rate we have been charging our Washington clients.

A recent amendment to Federal legislation (H.R. 4986) provides an exemption from state usury for loans in excess of \$1,000 which are for business purposes, and the amendment confirms that a margin loan to purchase securities is a business loan. Since economic reality requires that we either charge a higher interest rate or call the margin loans outstanding and limit new loans, we intend to call the outstanding balance of those margin accounts whose debits exceed \$10,000 or convert them to new loans on December 20, 1980, to the extent that they are being made for business purposes in margining the accounts. We may further reduce this requirement to \$5,000 if we are not given relief by the State legislature.

We are enclosing an agreement for you to sign and return to us confirming that your margin loan is exclusively for business purposes and not for personal purposes. This agreement will supplement your Customer Agreement. Clients who sign and return this agreement prior to December 20, 1980, will be charged the standard Foster & Marshall interest rate on margin accounts as is applicable in all other states. A statement showing the methods used to compute interest is also enclosed, and in no event will the interest charge exceed 5 percent in excess of the discount rate, including any surcharge thereon, on ninety-day commercial paper in effect at the Federal Reserve Bank in the Twelfth Federal Reserve District.

Since the funds from an exempt business loan cannot be used for any purposes other than a business purpose, clients will not be able to withdraw any funds from their account which may be deemed to be proceeds of the loan for non-business purposes. After December 20, 1980, no withdrawals may be made from your margin account unless the withdrawal is the proceeds of a sale, a dividend, bond interest, etc., credited to the account that day, or you first provide satisfactory written certification to Foster & Marshall that the funds are to be used solely for a business purpose. If you wish, your account may be set up to automatically send you dividends or bond interest as it is credited to your account.

Please carefully read and understand the enclosed agreement and execute it if it is satisfactory. Those clients who do not sign and return this agreement either because their margin loans are wholly or partially for non-business purposes or because they do not wish to incur the higher interest rate will be required to deposit cash, liquidate securities, or make other arrangements to repay their margin account balance by December 20, 1980.

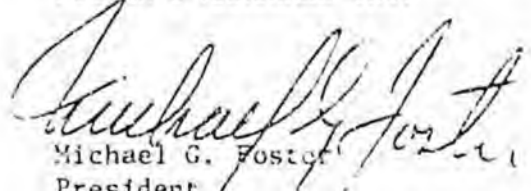
I have explained the background of our present dilemma so that you can understand why Foster & Marshall has been forced to take this action. It is not our desire to affect adversely the investment practices of any of our Washington clients, but rather to put them on the same basis as our clients in other states for interest purposes and to maintain our responsibility to all our clients to remain a viable and well-capitalized organization. We have suffered an increasing loss from this area of our business as long as we reasonably could, but the continued rise of interest rates has given us no alternative.

A copy of the agreement is enclosed for your records as well as a self-addressed, postage-free envelope to return your signed copy.

We value our relationship with you and we hope that you will understand why we have made this decision.

Sincerely,

FOSTER & MARSHALL INC.


Michael G. Foster
President



STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

Department Commerce & Economic Development	Sponsor (Principal) Labor & Commerce	Bill Number SB-19
Department Position Not opposed		
Division Director Willis <i>[Signature]</i>	Date 1/19/81	Commissioner Charles <i>[Signature]</i> W. <i>[Signature]</i>
		Date 1/19/81

GOVERNOR'S OFFICE USE

Comments:

Position Noted By _____ Date _____

SUMMARY

1. a) Related Bills (Similar or Conflicting) None of which I am aware	1. b) Other Agencies Affected by Bill None of which I am aware
2. a) Organizational Support for Bill All Alaska Financial Institution	2. b) Organizational Opposition to Bill None of which I am aware

3. Program Effects of Bill
None if passes as proposed.

4. Fiscal Impact: None Fiscal Note Attached

5. Amendments Proposed:
Consideration could be given for the removal of all interest rate ceilings. This would let each financial institution compete based on their costs and other competitive factors.

6. Comments:
The present quarterly adjustments do not allow for sudden changes in money market conditions. The daily calculation of the legal rate of interest will allow lenders to quickly adjust their charges as changes in the discount rate occur. AS 45.45.010(d) as stated in the bill must be repealed in order that the lender may quickly calculate the applicable interest rate without the delay of an intervening level of authority. Of necessity, AS 45.45.010 must be self-regulating. X

Direct Banking

FOSTER & MARSHALL INC.

MEMBERS
NEW YORK STOCK EXCHANGE, INC.
AMERICAN STOCK EXCHANGE, INC.
PACIFIC STOCK EXCHANGE, INC.
MIDWEST STOCK EXCHANGE, INC.
CHICAGO BOARD OPTIONS EXCHANGE

INVESTMENT BANKERS AND BROKERS

114 SOUTH FRANKLIN STREET
JUNEAU, ALASKA 99801

907-586-6000

OFFICES
IN THE PRINCIPAL CITIES OF THE
PACIFIC NORTHWEST AND ALASKA

February 2, 1981

Written Testimony: SENATE BILL NO. 19

Submitted By: Fred H. Foker
First Vice President
Foster & Marshall, Inc.

Security brokerage firms and other businesses that extend open lines of credit to their customers finance these loans through borrowings from major banks. The rate that is paid (the broker call rate/prime lending rate) moves up and down or "floats" with money market rates and the policy of the Federal Reserve Bank. In years past these rates have moved in a fairly narrow range and in an orderly manner. However, in the past eighteen months we have seen the broker call rate/prime lending rate make wide swings in very short periods of time. The current Alaska State usury law does not allow the necessary flexibility to keep pace with these interest rate changes and in fact can cause substantial losses to firms that extend open lines of credit.

EXAMPLE: Foster & Marshall is currently extending approximately \$2,700,000 in credit to Alaska residents. Under current law the maximum that can be charged is 18%. This is 5% above the 13% rate as set by the 12th Federal Reserve District on the 25th day of the month preceding the commencement of the calendar quarter. Our cost of money (the broker call rate) is now 20%. This means we are losing money at an annual rate of \$54,000. Since we normally charge 1% above our cost of money for accepting the risk of these loans and administering them we are actually losing money at an annual rate of \$81,000.

It is not the desire of any legitimate lender to take advantage of the borrower; however neither should the law allow the borrower to take advantage of the lender. In this situation the lender has two alternatives: 1) to continue to carry the loans and incur the loss, or 2) to call the loans and drive Alaska residents outside to do their business.

To correct the current situation two suggestions are offered:

1. Change the existing percentage point spread between the Federal Reserve rate and the usury limit to an eight percentage point spread.
2. Change the language in the existing law that now allows the rate to change only once a quarter and allow the rate to "float". This would mean that when the Federal rate went up so would the usury rate and when the Federal rate goes down so would the usury rate and that the maximum allowed by law would never be more than eight points above the effective annual Federal Reserve rate.

Page 2
Written Testimony
Fred Koken

Such a change would allow the usury limit to move or "float" in a constant relationship to the rate charged member banks by the 12th Federal Reserve District.

For suggestions as to specific language changes to SENATE BILL NO. 19 please review the attachment.

1. On line 12 delete the word [FIVE] and insert the word eight.
2. On line 12 insert the word effective between the words "the" and "annual".
3. On line 13 insert a period (.) after the word District.
4. At the end of line 13, through lines 14 and 15 and ending on line 16, delete the words [ON THE DAY ON WHICH THE CONTRACT OR LOAN COMMITMENT IS MADE.]

Note: The objective of suggestions 2, 3, and 4 is to eliminate the possible tying of the usury limit on open lines of credit to some contract date that might have established the open line of credit months or even years earlier.

FOSTER & MARSHALL INC.

INVESTMENT BANKERS AND BROKERS

1124 SOUTH FRANKLIN STREET

ANCHORAGE, ALASKA 99501

1967-1968

OFFICES

IN THE JURISDICTIONS OF THE
PACIFIC NORTHWEST AND ALASKA

February 9, 1981

MEMORANDUM FOR THE SENATE: SENATE BILL NO. 19

Submitted By: Fred E. Koken
First Vice President
Foster & Marshall, Inc.

In the testimony I submitted to you a week ago and in the discussion which followed it was mentioned that the particular problem our industry faces might be best addressed in separate legislation or a separate section of current legislation. Attached is a copy of legislation currently under consideration in the State of Washington which addresses my industry's particular problem.

HOUSE BILL NO. 1000

State of Washington
Legislature
1951 Regular Session

John W. ...
...
...

Read first time January 21, 1951, and referred to Committee on FINANCIAL
INSTITUTIONS AND BANKS

1 AN ACT Relating to commercial lending; and adding a new section
2 to chapter 19.52 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. Section 1. There is added to chapter 19.52
5 RCW a new section to read as follows:

6 The interest charged by any broker-dealer registered
7 under chapter 21.12 RCW and under the federal securities and
8 exchange act of 1934, as amended, shall not be subject to the
9 limitations imposed by this chapter if the underlying loans (1)
10 may be paid in full at the option of the borrower and (2) are
11 subject to the credit regulations of the board of governors of
12 the federal reserve system, or its successor. Regarding any
13 such loan, a borrower may not plead the defense of usury nor
14 maintain any action thereon or therefor.

STATE OF ALASKA

JAY S. HARMON, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES, SAVINGS LOANS & CORPORATIONS

POUCH D
ANCHORAGE, ALASKA 99511

NOTICE OF MAXIMUM LEGAL RATE OF INTEREST EFFECTIVE JANUARY 1, 1981 THROUGH MARCH 31, 1981

In compliance with AS 45.45.010(d), the Commissioner of the department gives public notice that the Federal Reserve discount rate prevailing in the 12th Federal Reserve District on the 25th day of the month preceding the commencement of the calendar quarter beginning January 1, 1980 was 13 percent.

AS 45.45.010(b) provides that:

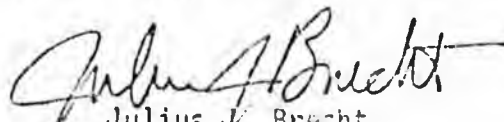
(b) No interest may be charged by express agreement of the parties in contract or loan commitment dated after June 24, 1976 which is more than five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District that prevailed on the 25th day of the month preceding the commencement of the calendar quarter during which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds \$100,000 is exempt from the limitation of this subsection.

THEFORE, effective January 1, 1981, the maximum legal rate of interest which may be charged by express agreement of the parties in a contract or loan commitment of \$100,000 or less is 18 percent.

On March 31, 1980, President Carter signed into law H.R. 4986, a bill which makes a number of changes affecting banks and financial institutions and state usury laws. In particular, that bill affects the provision of the Alaska usury statute, AS 45.45.010(b) as follows:

1. The ceiling on interest rates allowable on certain home mortgage loans including mobile homes loans, is preempted starting April 1, 1980, and there is no ceiling set by federal law.
2. The ceiling on interest rates allowable on business and agriculture loans over \$1,000 is preempted if that ceiling falls below the ceiling established by the federal law (this provision applies for a period of three years ending at the close of April 1, 1983). Consult the current discount rate from the Federal Reserve Bank in Seattle to determine if preemption has occurred.

Regulations for federally-related mortgage loans have been adopted. See 12 Code Federal Regulations Part 590. For further information relating to the federal legislation, please contact the Alaska Congressional Delegation and refer to Public Laws 96-221 and 95-399.


Julius J. Brecht
Director



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

March 23, 1981

COMMITTEE MEETING MINUTES

The meeting was called to order at 3:09 P.M. by Chairman Mulcahy. Those present were: Senators Hohman, Ziegler, Fahrenkamp and Rodey. H

First on the agenda was SB 200 "An Act relating to the fisheries business tax (AS 43.75.015); and providing for an effective date."

Senator Dick Eliason addressed SB 200, explaining the background of the fisheries business tax, and that the tax is retroactive for two years. (tape reading 010 to 272)

Mr. Gary Jenkins, Director of the Audit Division, Department of Revenue testified on the problems with administrating the bill; fish buyers are not always identifiable. Suggested language-salmon must be sold to a licensed processor; easier to administer. (tape reading 275 to 458)

Mr. Lewis Schnaper representing the Alaska Trollers Association testified in support of SB 200, stating that the class of fishermen who have made substantial investments, 50 to 75 trollers with freezing capacities would be impacted; less economical to freeze but the quality speaks to the need. The Canadians recognize the value of sea frozen salmon, and it is the most effective use of a fishermans fuel.

Senator Pat Rodey offered proposed language; frozen salmon must be transferred to a licensed buyer.

Chairman Mulcahy moved we accept Senator Rodeys amendment and move SB 200 as amended. (tape reading 570)

Next on the agenda was SB 81 "An Act increasing the number of directors of the Alaska Housing Finance Corporation."

This bill was brought up for discussion; Senator Ziegler questioned the need for the bill, Senator Mulcahy offered background on the bill, and it was decided to hold the bill for later. (tape reading 580 to 630)

page 2
Senate L & C minutes
March 23, 1981

Next on the agenda was SB 85 "An Act permitting a minor under the age of 18 to be employed in an occupation in which a strike or lockout is in progress."

Chairman Mulcahy offer background testimony, and addressed the constitutionality of the rights of minors to picket. Chairman Mulcahy proposed we move the bill and Senator Hohman recommended the bill move from Committee. (tape reading 634 to 653)

Next on the agenda was SB 282 "An Act relating to the legal rate of interest."

Mr. Fred Koken, First Vice-President of Foster and Marshall testified on SB 282, elaborating on the problems with SB 19 usury rates, and how the bill did not reflect the needs of his industry. The policy on interest at Foster & Marshall is dictated by competition in the industry. (tape reading 678 to 830)

Committee ~~action on~~ ^{moved} SB 282 ~~was~~ ^{"D. Pass"}

Next on the agenda was SB 172 "An Act relating to Uniform Commercial Code filings; and providing for an effective date."

There was no testimony and it was recommended that we hold the bill for further work. (tape reading 660 to 669)

The meeting was adjourned by Chairman Mulcahy at 3:50 P.M.

COMMITTEE REPORT

SENATE

FURTHER: Finance

3/13/81

Date: 23 MARCH 1981

Mr. President:

The Committee on LABOR & COMMERCE has had SB 282

legal rate of interest

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for _____ same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation
- referred to the _____ Committee

MEMBERS SIGNING
DO PASS

Bob Mulcahy

MEMBERS HAVING
OTHER RECOMMENDATIONS:

1/1/81 _____

2/1/81 No Rec _____

3/1/81 No Rec _____

4/1/81 No Rec _____

Bob Mulcahy

CHAIRMAN

Sec. 45.45.010. Legal rate of interest.

(a) The rate of interest in the state is 10.5 percent a year and no more on money after it is due except as provided in (b) of this section.

(b) No interest may be charged by express agreement of the parties in a contract or loan commitment dated after June 4, 1976 which is more than five percentage points above the annual rate charged member banks for advances by the 12th Federal Reserve District that prevailed on the 25th day of the month preceding the commencement of the calendar quarter during which the contract or loan commitment is made. A contract or loan commitment in which the principal amount exceeds \$100,000 is exempt from the limitation of this subsection.

(c) Repealed by § 3 ch 84 SLA 1973.

(d) Notice of the annual rate charged member banks for advances by the 12th Federal Reserve District prevailing on the 25th day of the month preceding the commencement of each calendar quarter required for the maximum interest rate computation under (b) of this section shall be provided by the Department of Commerce and Economic Development.

(e) Repealed by § 4 ch 146 SLA 1974.

(f) No bank, savings and loan institution, pension fund, insurance company or mortgage company may require or accept any per cent of ownership or profits above its interest rate.

(g) Loan contracts and commitments covering one- to four-family dwellings may be prepaid without penalty, except federally insured loans that require a prepayment penalty.

(h) If the limitations on interest rates provided for in this section are inconsistent with the provisions of any other statute covering maximum interest, service charges or discount rates then the provisions of the other statute prevail. § 25-1-1 ACLA 1949; am § 20 ch 143 SLA 1968; am § 2 ch 69 SLA 1969; am §§ 1, 2 ch 94 SLA 1969; am §§ 1, 2 ch 239 SLA 1970; am §§ 1 — 3 ch 84 SLA 1973; am §§ 1 — 4 ch 146 SLA 1974; am § 1 ch 110 SLA 1976; am § 1 ch 159 SLA 1976; am § 2 ch 107 SLA 1980)

Cross references. — As to rate of interest under Alaska Small Loans Act, see AS 06.20. As to premium finance act, see AS 06.40.120. As to credit union loans, see AS 06.45.060. As to judgments, see AS 09.30.070. As to commercial fishing loans, see AS 16.10.320(b). As to housing development revolving loan fund, see AS 18.54.060. As to Alaska housing finance, see AS 18.56.098. As to insurance policy loans, see AS 21.45.080. As to veterans' loans, see AS 26.15.040. As to residential care facility loans, see AS 44.33.350(b). As to temperate social activities facilities loans, see AS 44.47.340(e). As to retail installment sales, see AS 45.10.120. As to collection of advance interest, see AS 45.45.080. As to Alternative Technology

and Power Resource loans, see AS 88.030(e). As to tourism loans, see AS 45.90.030(c). As to small business loans, see AS 45.95.020. As to historic district loans, see AS 45.98.040(4).

Effect of amendments. — The first 1976 amendment substituted "five percentage points" for "four percentage points" in the first sentence of subsection (b).

The second 1976 amendment rewrote subsection (a).

The 1980 amendment substituted "10.5" for "eight" near the beginning of subsection (a), and deleted the former second sentence of subsection (a), which read: "The rate of interest in the state is six per cent a year and no more on (1)

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department or other public body for which a charge or fee may or may not be made or collected for the reproduced recording. (§ 1 ch 134 SLA 1974; am § 1 ch 193 SLA 1975)

Editor's Note. — This section derives from AS 45.51.010 and AS 45.51.020 and was renumbered by the revisor of statutes pursuant to AS 01.05.031.

Chapter 55. Alaska Securities Act of 1959.

Article

1. Fraudulent and Other Prohibited Practices (§§ 45.55.010 — 45.55.020)
2. Registration of Broker-Dealers, Agents, and Investment Advisers (§§ 45.55.030 — 45.55.060)
3. Registration of Securities (§§ 45.55.070 — 45.55.120)
4. General Provisions (§§ 45.55.130 — 45.55.270)

Article 1. Fraudulent and Other Prohibited Practices.

Section

10. Sales and purchases
20. Advisory activities

Sec. 45.55.010. Sales and purchases. It is unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly, to

- (1) employ a device, scheme, or artifice to defraud;
- (2) make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (3) engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon a person. (§ 101 ch 198 SLA 1959; am § 1 ch 86 SLA 1972)

Cited in American Building & Loan Ass'n, Inc. v. State, Sup. Ct. Op. No. 112 (File No. 149), 376 P.2d 370 (1962); Demee v. Dean Witter & Co., 476 F. Supp. 275 (D. Ala. 1979).

Am. Jur. 2d, ALR and C.J.S. references. — 69 Am. Jur. 2d, Securities Regulation — Federal, § 1 et seq.; 69 Am. Jur. 2d, Securities Regulation — State, § 1 et seq.

Blue Sky Laws, 87 ALR 42
Violation of Blue Sky Laws affecting liability of purchaser of stock as stockholder, 87 ALR 121.

Federal Security Act as superseding state acts, 146 ALR 1252.

What constitutes stocks, securities or investment contracts within contemplation of state and federal statutes

regulating sale of securities, 163 ALR 1050.

Applicability of Blue Sky Laws to pre-incorporation subscriptions, 50 ALR2d 1103.

Sale of memberships in club or similar organization as sale of securities within provisions of securities acts, 87 ALR2d 1140.

What constitutes an "investment contract" within the meaning of state Blue Sky Laws, 47 ALR3d 1376.

Effect, as between stockbroker and customer, of broker's mistaken sale of stock or other security other than that intended by customer, 48 ALR3d 513.

Duty to disclose material facts to stock purchaser, 80 ALR3d 13.

53 C.J.S. Licenses §§ 72-78.

Sec. 45.55.020. Advisory activities. (a) It is unlawful for a person who receives a consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise, to

(1) employ a device, scheme, or artifice to defraud the other person; or

(2) engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

(b) It is unlawful for an investment adviser to enter into, extend, or renew an investment advisory contract unless it provides in writing that

(1) the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or portion of the funds of the client;

(2) no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract; and

(3) the investment adviser, if a partnership, shall notify the other party to the contract of a change in the membership of the partnership within a reasonable time after the change.

(c) The provisions of (b)(1) of this section do not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date.

(d) "Assignment," as used in (b)(2) of this section, includes a direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

(e) It is unlawful for an investment adviser to take or have custody of the securities or funds of a client if

(1) the administrator by rule prohibits custody, or

(2) in the absence of rule, the investment adviser fails to notify the administrator that he has or may have custody. (§ 102 ch 198 SLA 1959)

**Article 2. Registration of Broker-Dealers, Agents,
and Investment Advisers.**

Section

30. Registration requirements
40. Registration procedure
50. Post-registration provisions

Section

60. Denial, revocation, suspension,
cancellation, and withdrawal of
registration

Sec. 45.55.030. Registration requirements. (a) It is unlawful for a person to transact business in this state as a broker-dealer or agent unless he is registered under this chapter.

(b) It is unlawful for a broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during a period when he is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the administrator.

(c) It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is registered as an investment adviser under this chapter; (2) he is registered as a broker-dealer without the imposition of a condition under AS 45.55.060(d)(5); or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(d) Every registration expires one year from its effective date unless renewed. The administrator may by rule or order prepare an initial schedule for registration renewals so that subsequent renewals of registrations effective on May 9, 1959, may be staggered by calendar months. For this purpose the administrator may by rule reduce the registration fee proportionately. (§ 201 ch 198 SLA 1959)

Sec. 45.55.040. Registration procedure. (a) A broker-dealer, agent, or investment adviser may obtain an initial or renewal registration by filing with the administrator an application together with a consent to service of process pursuant to AS 45.55.260(g). The application shall be accompanied by the fingerprints and a photograph of the applicant and shall contain whatever information the administrator by rule requires concerning such matters as

- (1) the applicant's form and place of organization;
- (2) the applicant's proposed method of doing business;
- (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of a partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser, the qualifications and business

(4) an injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and

(5) the applicant's financial condition and history.

(b) The administrator may by regulation or order require an applicant for initial registration to publish an announcement of the application in one or more specified newspapers published in this state. If no denial order is in effect and no proceeding is pending under AS 45.55.060, registration becomes effective at noon on the 30th day after an application is filed, except that registration becomes effective upon filing of the application by any of the persons subject to this chapter who were doing business in this state on May 9, 1959. The administrator may by regulation or order specify an earlier effective date, and he may by order defer the effective date until noon of the 30th day after the filing of an amendment.

(c) Every broker-dealer applicant for initial registration shall pay a registration fee of \$125. Every agent applicant and investment adviser applicant for initial registration shall pay a registration fee of \$50. Every broker-dealer applicant for annual renewal of registration shall pay an annual renewal fee of \$75. Every agent applicant and investment adviser applicant for annual renewal of registration shall pay an annual renewal fee of \$30.

(d) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. A broker-dealer may file a request to transfer from a previous broker-dealer an agent's unexpired portion of the registration if the provisions of AS 45.55.030(b) have been met. There is a filing fee of \$10 for filing applications under this subsection.

(e) The administrator shall by regulation require of registered broker-dealers and investment advisers a minimum capital and a bond guaranteed by a corporate surety qualified to do business in this state.

(f) The administrator shall by regulation require registered broker-dealers, agents, and investment advisers to post surety bonds in amounts up to \$10,000, and shall by regulation determine their conditions. An appropriate deposit of cash or securities shall be accepted in place of a bond so required. Every bond shall provide for suit on it by any person who has a cause of action under AS 45.55.220 and, if the administrator by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce a liability on the bond unless brought within three years after the sale or other act upon which it is based. (§ 202 ch 198 SLA 1959; am § 1 ch 55 SLA 1972; am §§ 2 — 6 ch 86 SLA 1972; am § 6 ch 132 SLA 1977)

Effect of amendments. — The 1977 amendment, in subsection (b), deleted the last sentence, which read "Registration of a broker-dealer automatically constitutes registration of an agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions."

Sec. 45.55.050. Post-registration provisions. (a) Every registered broker-dealer and investment adviser shall make and keep the accounts, correspondence, memoranda, papers, books and other records which the administrator by rule prescribes. All records so required shall be preserved for three years unless the administrator by rule prescribes otherwise for particular types of records.

(b) Every registered broker-dealer and investment adviser shall file the financial reports which the administrator by rule prescribes.

(c) If the information contained in a document filed with the administrator is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment unless notification of the correction is given under AS 45.55.030(b).

(d) All the records referred to in (a) of this section are subject to reasonable periodic, special, or other examinations by representatives of the administrator, inside or outside this state, as the administrator considers necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the administrator, insofar as he considers it practicable in administering (d) of this section, may cooperate with the securities administrators of other states, the Securities and Exchange Commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934. (§ 203 ch 198 SLA 1959)

Sec. 45.55.060. Denial, revocation, suspension, cancellation, and withdrawal of registration. (a) The administrator may by order deny, suspend, or revoke a registration if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, a partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser

(1) has filed an application for registration which as of its effective date, or as of a date after filing in the case of an order denying effectiveness, was incomplete in a material respect or contained a statement which was, in light of the circumstances under which it was made, false or misleading with respect to a material fact;

(2) has wilfully violated or wilfully failed to comply with a provision of this chapter or a rule or order under this chapter;

(3) has been convicted, within the past 10 years, of a misdemeanor involving a security or an aspect of the securities business, or a felony;

(5) is the subject of an order of the administrator denying, suspending, or revoking registration as a broker-dealer, agent, or investment adviser;

(6) is the subject of an order entered within the past five years by the securities administrator of another state or by the Securities and Exchange Commission denying or revoking registration as a broker-dealer, agent or investment adviser, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the Securities and Exchange Commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United State Post Office fraud order; but

(A) the administrator may not institute a revocation or suspension proceeding under this paragraph more than one year from the date of the order relied on, and

(B) he may not enter an order under this paragraph on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or unethical practices in the securities business;

(8) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the administrator may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; or

(9) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business, except as otherwise provided in (d) of this section.

(b) The administrator may by order deny, suspend, or revoke any registration if he finds that the order is in the public interest and that the applicant or registrant

(1) has failed reasonably to supervise his agents if he is a broker-dealer or his employees if he is an investment adviser; or

(2) has failed to pay the proper filing fee; but the administrator may enter only a denial order under this clause, and he shall vacate the order when the deficiency is corrected.

(c) The administrator may not institute a suspension or revocation proceeding on the basis of a fact or transaction known to him when registration became effective unless the proceeding is instituted within the next 30 days.

(d) The following provisions govern the application of (a)(9) of this section:

(1) The administrator may not enter an order against a broker-dealer on the basis of the lack of qualification of a person other

(2) The administrator may not enter an order against an investment adviser on the basis of the lack of qualification of any person other than (A) the investment adviser himself if he is an individual or (B) another person who represents the investment adviser in doing any of the acts which make him an investment adviser.

(3) The administrator may not enter an order solely on the basis of lack of experience if the applicant or registrant is qualified by training or knowledge or both.

(4) The administrator shall consider that an agent who will work under the supervision of a registered broker-dealer need not have the same qualifications as a broker-dealer.

(5) The administrator shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a broker-dealer or agent. When he finds that an applicant for initial or renewal registration as a broker-dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a broker-dealer upon his not transacting business in this state as an investment adviser.

(6) The administrator may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser, provided that examinations required by (d)(6) of this section shall not be required of a registrant under this chapter who was doing business in this state and was a resident of this state on May 9, 1959.

(e) The administrator may by order summarily postpone or suspend registration pending final determination of a proceeding under this section. Upon the entry of the order, the administrator shall promptly notify the applicant or registrant, and the employer or prospective employer if the applicant or registrant is an agent, that it has been entered and of the reasons for it and that within 15 days after the receipt of a written request the matter will be set for hearing. If no hearing is requested and none is ordered by the administrator, the order remains in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing, may modify or vacate the order or extend it until final determination.

(f) If the administrator finds that a registrant or applicant for registration no longer exists or has ceased to do business as a broker-dealer, agent or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the administrator may by order cancel the registration or application.

application to withdraw or within a shorter period of time as the administrator may determine, unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at the time and upon the conditions as the administrator by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the administrator may nevertheless institute a revocation or suspension proceeding under (a)(2) of this section within one year after withdrawal is effective and enter a revocation or suspension order as of the last date on which registration was effective.

(h) No order may be entered under any part of this section except the first sentence of (e) of this section without (1) appropriate prior notice to the applicant or registrant as well as the employer or prospective employer if the applicant or registrant is an agent, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law. To the extent the Administrative Procedure Act (AS 44.62) is not in conflict herewith, it applies to all procedures. (§ 204 ch 198 SLA 1959)

Article 3. Registration of Securities.

Section	Section
70. Registration requirement	110. Provisions applicable to registration generally
80. Registration by notification	120. Denial, suspension, and revocation of registration
90. Registration by coordination	
100. Registration by qualification	

Sec. 45.55.070. Registration requirement. It is unlawful for a person to offer or sell a security in this state unless (1) it is registered under this chapter or (2) the security or transaction is exempted under AS 45.55.140. (§ 401 ch 198 SLA 1959, as added by § 19 ch 105 SLA 1961)

Seven per cent debentures offered in exchange for stock must be registered. — Seven per cent debentures of a corporation which are offered to stockholders of the same corporation in exchange for their stock must be registered, unless the debentures are otherwise exempted from the registration requirement of the act 1961 Op. Att'y Gen. No. 15.
Application of registration requirements to conversion plans. — See 1961 Op. Att'y Gen. No. 15.

Sec. 45.55.080. Registration by notification. (a) The following securities may be registered by notification, whether or not they are also eligible for registration by coordination under AS 45.55.090:

(1) a security whose issuer and predecessors have been in continuous operation for at least five years if (A) there has been no default during

(or any predecessor) with a fixed maturity or a fixed interest or dividend provision, and (B) the issuer and predecessor during the past three fiscal years have had average net earnings, determined in accordance with generally accepted accounting practices, (i) which are applicable to all securities without a fixed maturity or a fixed interest or dividend provision outstanding at the date the registration statement is filed and equal at least five per cent of the amount of these outstanding securities (as measured by the maximum offering price or the market price on a day, selected by the registrant, within 30 days before the date of filing the registration statement, whichever is higher, or book value on a day, selected by the registrant, within 90 days of the date of filing the registration statement to the extent that there is neither a readily determinable market price nor a cash offering price), (ii) which, if the issuer and predecessors have not had any security of the type specified in (B) (i) of this paragraph outstanding for three full fiscal years, equal at least five per cent of the amount (as measured in (B) (i) of this paragraph) of all securities which will be outstanding; if all the securities being offered or proposed to be offered (whether or not they are proposed to be registered or offered in this state) are issued;

(2) a security (other than a certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under the title or lease) registered for nonissuer distribution if (A) any security of the same class has ever been registered under this chapter, or (B) the security being registered was originally issued pursuant to an exemption under this chapter.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in AS 45.55.110(c) and the consent to service of process required by AS 45.55.260(g):

(1) a statement demonstrating eligibility for registration by notification;

(2) with respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction; the date of its organization; and the general character and location of its business;

(3) with respect to a person on whose behalf a part of the offering is to be made in a nonissuer distribution, his name and address; the amount of securities of the issuer held by him as of the date of the filing of the registration statement; and a statement of his reasons for making the offering;

(4) a description of the security being registered;

(5) the information and documents specified in AS 45.55.100(b)(8), (10), and (12); and

(6) in the case of registration under (a)(2) of this section which does

of the issuer as of a date within four months before the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and predecessor's existence if less than two years.

(c) If no stop order is in effect and no proceeding is pending under AS 45.55.120, a registration statement under this section automatically becomes effective at three o'clock Pacific Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at an earlier time as the administrator determines. (§ 402 ch 198 SLA 1959, as added by § 19 ch 105 SLA 1961)

Sec. 45.55.090. Registration by coordination. (a) A security for which a registration statement has been filed under the Securities Act of 1933 or any security for which filing has been made under Regulations A, E, and F pursuant to subsection (b) of § 3 of the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in AS 45.55.110(c) and the consent to service of process required by AS 45.55.260(g):

(1) three copies of the latest form of prospectus filed under the Securities Act of 1933;

(2) if the administrator requires, copies of the articles of incorporation and bylaws (or their substantial equivalent) currently in effect, a copy of an agreement with or among underwriters, a copy of an indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) if the administrator requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(4) an undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) no stop order is in effect and no proceeding is pending under AS 45.55.120; (2) the registration statement has been on file with the administrator for at least 10 days; and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and

period which the administrator permits and the offering is made within those limitations.

(d) The registrant shall promptly notify the administrator by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the administrator may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with (c) and (d) of this section if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of (c) and (d) of this section as to notice and post-effective amendment, the stop order is void as of the time of its entry. The administrator may by rule or otherwise waive either or both of the conditions specified in (c)(2) and (3) of this section. If the federal registration statement becomes effective before all the conditions in (c) and (d) of this section are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly advise the registrant by telephone or telegram at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under AS 45.55.120; but this advice by the administrator does not preclude the institution of the proceeding at any time. (§ 403 ch 198 SLA 1959, as added by § 19 ch 105 SLA 1961; am § 2 ch 55 SLA 1972; am § 7 ch 86 SLA 1972)

Sec. 45.55.100. Registration by qualification. (a) A security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in AS 45.55.110(c) and the consent to service of process required by AS 45.55.260(g):

(1) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and

(2) with respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within 30 days of the filing of the registration statement; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of a material interest in a material transaction with the issuer or a significant subsidiary effected within the past three years or proposed to be effected;

(3) with respect to persons covered by (2) of this subsection, the remuneration paid during the past 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, together with all predecessors, parents, subsidiaries, and affiliates, to all those persons in the aggregate;

(4) with respect to a person owning of record, or beneficiary if known, 10 per cent or more of the outstanding shares of any class of equity security of the issuer: the information specified in (2) of this subsection other than his occupation;

(5) with respect to every promotor if the issuer was organized within the past three years: the information specified in (2) of this subsection, an amount paid to him within that period or intended to be paid to him, and the consideration for the payment;

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

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

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation from this at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of that person or class; the basis upon which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees

value to accrue to the underwriters or finders in connection with the offering) or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement under which the distribution is to be made, or the proposed form of the agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered other than through an underwriter;

(9) the estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property (including goodwill) other than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of persons who have received commissions in connection with the acquisition, and the amounts of the commissions and any other expense in connection with the acquisition (including the cost of borrowing money to finance the acquisition);

(10) a description of a stock option or other security options outstanding, or to be created in connection with the offering, together with the amount of the options held or to be held by every person required to be named in (2), (4), (5), (6), or (8) of this subsection and by a person who holds or will hold 10 per cent or more in the aggregate of the options;

(11) the dates, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the registration statement or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which materially affects its business or assets (including the litigation or proceeding known to be contemplated by governmental authorities);

(12) a copy of a prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date, to be used in connection with the offering;

(13) a specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, or their substantial

(14) a signed or conformed copy of an opinion of counsel as to the legality of the security being registered (with an English translation if it is in a foreign language) which states whether the security when sold will be legally issued, fully paid, and nonassessable, and, if a debt security, a binding obligation of the issuer;

(15) the written consent of an accountant, engineer, appraiser, or other person whose profession gives authority to a statement made by him, if the person is named as having prepared or certified a report or valuation (other than a public and official document or statement) which is used in connection with the registration statement;

(16) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a profit and loss statement and analysis or surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and a predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the same financial statements which would be required if that business were the registrant; and

(17) the additional information which the administrator requires by rule or order.

(c) A registration statement under this section becomes effective when the administrator so orders.

(d) The administrator may by rule or order require as a condition of registration under this section that a prospectus containing a designated part of the information specified in (b) of this section be sent or given to each person to whom an offer is made before or concurrently with whichever of the following occurs first:

(1) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by an underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of any such person;

(3) payment under the sale; or

(4) delivery of the security under the sale. (§ 404 ch 198 SLA 1959, as added by § 19 ch 105 SLA 1961)

Sec. 45.55.110. Provisions applicable to registration generally. (a) A registration statement may be filed by the issuer, another person on whose behalf the offering is to be made, or a registered broker-dealer.

(b) Every person filing a registration statement shall pay a filing fee of \$50 and a registration fee of one-tenth of one per cent of the

be less than \$50 or more than \$1,500. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under AS 45.55.120, the administrator shall retain the \$50 filing fee.

(c) Every registration statement shall specify (1) the amount of securities to be offered in this state; (2) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (3) an adverse order, judgment, or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the Securities and Exchange Commission.

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

(e) The administrator may by rule or otherwise permit the omission of an item of information or document from a registration statement.

(f) In the case of a nonissuer distribution, information may not be required under AS 45.55.100 or (j) of this section unless it is known to the person filing the registration statement or to the persons on whose behalf the distribution is to be made, or can be furnished by them without unreasonable effort or expense.

(g) The administrator may by rule or order require as a condition of registration by qualification or coordination that a security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to a person for a consideration other than cash, be deposited in escrow, and that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The administrator may by rule or order determine the conditions of an escrow or impounding required in this subsection but he may not reject a depository solely because of location in another state.

(h) The administrator may by rule or order require as a condition of registration that a security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the administrator or preserved for any period up to three years specified in the rule or order.

(i) Every registration statement is effective for one year from its effective date, or any longer period during which the security is being offered or distributed in a nonexempted transaction by or for the issuer, or other person on whose behalf the offering is

in effect under AS 45.55.120. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction if the registration statement is effective and between the thirtieth day after the entry of a stop order suspending or revoking the effectiveness of the registration statement under AS 45.55.120 (if the registration statement did not relate in whole or in part to a nonissuer distribution) and one year from the effective date of the registration statement. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding. A registration statement may be withdrawn otherwise only in the discretion of the administrator.

(j) So long as a registration statement is effective, the administrator may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering.

(k) A registration statement relating to a security issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. An amendment becomes effective when the administrator so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in (b) of this section, with respect to the additional securities proposed to be offered. (§ 405 ch 198 SLA 1959, as added by § 19 ch 105 SLA 1961; am § 1 ch 44 SLA 1962; am § 8 ch 86 SLA 1972)

Sec. 45.55.120. Denial, suspension, and revocation of registration. (a) The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if he finds that the order is in the public interest and that

(1) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under AS 45.55.110(k) as of its effective date, or any report under AS 45.55.110(j) is incomplete in a material respect or contains a statement which was, in the light of the circumstances under which it was made, false or misleading with respect to a material fact;

(2) a provision of this chapter or a rule, order, or condition lawfully imposed under this chapter has been wilfully violated, in connection with the offering, by (A) the person filing the registration statement, (B) the issuer, a partner, officer, or director of the issuer, a person

(3) the security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction under another federal or state act applicable to the offering; but (A) the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year from the date of the order or injunction relied on, and (B) he may not enter an order under this paragraph on the basis of an order or injunction entered under another state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

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

(5) the offering has worked or tended to work a fraud upon purchasers or would so operate;

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

(7) when a security is sought to be registered by notification, it is not eligible for that registration;

(8) when a security is sought to be registered by coordination, there has been a failure to comply with the undertaking required by AS 45.55.090(b)(4); or

(9) the applicant or registrant has failed to pay the proper filing fee; but the administrator may enter only a denial order under this paragraph and he shall vacate the order when the deficiency is corrected.

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

(c) The administrator may by order summarily postpone or suspend the effectiveness of the registration statement pending final determination of a proceeding under this section. Upon the entry of the order, the administrator shall promptly notify each person specified in (d) of this section that it has been entered and of the reasons for it and that within 15 days after the receipt of a written request the matter will be set for hearing. If no hearing is requested and none is ordered by the administrator, the order remains in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice and opportunity for hearing to each person specified in (d) of this section, may modify or vacate the order or extend it until final determination.

whose behalf the securities are to be or have been offered, (2) opportunity for hearing, and (3) written findings of fact and conclusions of law.

(e) The administrator may vacate or modify a stop order if he finds that the conditions which prompted entry have changed or that it is otherwise in the public interest to do so. (§ 406 ch 198 SLA 1959, as added by § 19 ch 105 SLA 1961; am § 3 ch 55 SLA 1972)

Article 4. General Provisions.

Section	Section
130. Definitions	195. Reimbursement of expenses incident to examination
138. Application to Alaska Native Claims Settlement Act corporations	200. Orders and injunctions
139. Reports of corporations	210. Criminal penalties
140. Exemptions	220. Civil liability
150. Filing of sales and advertising literature	225. Hearings: Regulations
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	270. Short title

Sec. 45.55.130. Definitions. In this chapter unless the context otherwise requires:

(1) "administrator" means the commissioner of commerce and economic development or his designee;

(2) "agent" means an individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchase or sale of securities; a partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition; "agent" does not include an individual who represents an issuer in (A) effecting transactions in a security exempted by AS 45.55.140(1), (2), (3), (4), or (5), (B) effecting transactions exempted by AS 45.55.140(b), or (C) effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

(3) "broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for his own account; "broker-dealer" does not include (A) an agent, (B) an issuer, (C) a bank, savings institution, or trust company, (D) a person who has no place of business in this state if he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks.

1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (E) a person who has no place of business in this state if during a period of 12 consecutive months he does not direct more than 15 offers to sell or buy into this state in any manner to persons other than those specified in (3)(D) of this section whether or not the offeror or any offeree is then present in this state;

(4) "fraud," "deceit," and "defraud" are not limited to common-law deceit;

(5) "guaranteed" means guaranteed as to payment of principal, interest, or dividends;

(6) "investment adviser" means a person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates, analyzes or reports concerning securities; "investment adviser" does not include (A) a bank, savings institution, or trust company; (B) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession; (C) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them; (D) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation; (E) a person whose advice, analyses, or reports relate only to securities exempted by AS 45.55.140(a)(1); (F) a person who has no place of business in this state if (i) his only clients in this state are other investment advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during a period of 12 consecutive months he does not direct business communications into this state in any manner to more than five clients other than those specified in (F)(i) of this paragraph, whether or not he or any of the persons to whom the communications are directed is then present in this state; or (G) other persons not within the intent of this paragraph whom the administrator designates by rule or order;

(7) "issuer" means a person who issues or proposes to issue any security, except that (A) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment

the duties of depositor or manager under the provisions of the trust or other agreement or instrument under which the security is issued; and (B) Repealed by § 2 ch 56 SLA 1978;

(8) "nonissuer" means not directly or indirectly for the benefit of the issuer;

(9) "person" means an individual, a corporation, a partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(10) "sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value; "offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value; a security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value; a purported gift of assessable stock is considered to involve an offer and sale; every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;

(11) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended after May 9, 1959;

(12) "security" means a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; collateral-trust certificates; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; a certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease or in any sale of or indenture or bond or contract for the conveyance of land or any interest in land; an option on a contract for the future delivery of agricultural or mineral commodities or any other commodity offered or sold to the public and not regulated by the Commodity Futures Trading Commission; however, the contract or option is not subject to the provisions of AS 45.55.070 if it is sold or purchased on the floor of a bona fide exchange or board of trade and offered or sold to the public by a broker-dealer or agent registered under this chapter; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of some

interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing; "security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or for some other specified period;

(13) "state" means any state, territory, or possession of the United States, the District of Columbia, and Puerto Rico. (§ 301 ch 198 SLA 1959; am §§ 1 and 2 ch 105 SLA 1961; am § 9 ch 5 SLA 1966; am §§ 9, 10 ch 86 SLA 1972; am § 1 ch 217 SLA 1975; am §§ 14, 108 ch 218 SLA 1976; am § 2 ch 56 SLA 1978; am § 2 ch 69 SLA 1980)

Effect of amendments. — The 1976 amendment substituted "commissioner of commerce and economic development" for "commissioner of commerce" in paragraph (1), and "Commodity Futures Trading Commission" for "Commodity Exchange Authority of the United States Department of Agriculture" near the middle of paragraph (12).

The 1978 amendment, in paragraph (7), repealed item (B), which read, "with respect to certificates of interest or participation in oil, gas, or mining titles or leases or in payments out of production under these titles or leases, there is not considered to be any 'issuer'."

The 1980 amendment inserted "or variable" near the end of paragraph (12).

Sec. 45.55.138. Application to Alaska Native Claims Settlement Act corporations. The initial issue of stock of a corporation organized under Alaska law pursuant to the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) is not a sale of a security under AS 45.55.070 and AS 45.55.130(10). (§ 6 ch 70 SLA 1972)

Editor's note. — Section 1, ch 70, SLA 1972, provides: "Purpose. It is the purpose of this Act to implement the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) by amending state law to resolve those ambiguities, conflicts and problems directly or impliedly created by the enactment by Congress of the Alaska Native Claims Settlement Act. It is also the purpose of this Act to complement through state policy, in a reasonable and fair manner, the federal policy expressed

Seven per cent debentures offered in exchange for stock must be registered. — See same catchline in note to AS 45.55.070.

For analysis of securities law of Alaska and its effect on corporate transactions, see 1961 Op. Atty. Gen., No. 15.

ALR references. — Who is "dealer" under state securities acts exempting sales by owners other than issuers not made in course of successive transactions, and the like, 6 ALR3d 1425.

What constitutes "public" or "private" offering within meaning of state securities regulation, 84 ALR3d 1009

provision of this Act or AS 10.05 or 10.20 and a provision of the Alaska Native Claims Settlement Act (P.L. 92-203; 85 Stat. 688; 43 U.S.C. 1601 et seq.) or a provision in the articles of incorporation or bylaws required by the U.S. Secretary of the Interior under sec. 7(e) of the federal Act, the federal Act or the required provision in the articles or bylaws prevail with regard to a corporation organized under Alaska law pursuant to the federal Act. However, nothing in this section or elsewhere in this Act deprives a

Alaska law pursuant to the federal Act. To the extent of an inconsistency between a provision of this Act and a provision of AS 10.05 or 10.20, this Act prevails with regard to a corporation organized under Alaska law pursuant to the federal Act."

Sec. 45.55.139. Reports of corporations. A copy of all annual reports, proxies, consents or authorizations, proxy statements and other materials relating to proxy solicitations distributed, published or made available by any person to at least 30 Alaska resident shareholders of a corporation which has total assets exceeding \$1,000,000 and a class of equity security held of record by 500 or more persons and which is exempted from the registration requirements of AS 45.55.070 by AS 45.55.138, shall be filed with the administrator concurrently with its distribution to shareholders. (§ 1 ch 58 SLA 1977)

For case construing common law prohibition of materially false and misleading statements in proxy solicitations, see Brown v. Ward, Sup. Ct. Op. No. 1825 (File No. 3579), 593 P.2d 247 (1979).

Sec. 45.55.140. Exemptions. (a) The following securities are exempted from AS 45.55.070:

(1) a security, including a revenue obligation, issued or guaranteed by the United States, a state, a political subdivision of a state, or an agency or corporate or other instrumentality of one or more of the foregoing; or a certificate of deposit for any of the foregoing;

(2) a security issued or guaranteed by Canada, a Canadian province, a political subdivision of a Canadian province, an agency or corporate or other instrumentality of one or more of the foregoing, or a foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor;

(3) a security issued by and representing an interest in or a debt of, or guaranteed by, a bank organized under the laws of the United States, or a bank, savings institution, savings and loan association, building and loan association, or trust company organized and supervised under the laws of a state or of the United States;

(4) a commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or a guarantee of the paper or of the renewal, if the commercial paper is of the type eligible for discount by a federal reserve bank;

(5) an investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan

(6) a security issued by and representing an interest in or a debt of, or guaranteed by, a federal savings and loan association, or a building and loan or similar association organized under the laws of a state and authorized to do business in this state;

(7) a security issued by and representing an interest in or a debt of, or guaranteed by, an insurance company organized under the laws of a state and authorized to do business in this state; but this exemption does not apply to an annuity contract, investment contract, or similar security under which the promised payments are not fixed in dollars but are substantially dependent upon the investment results of a segregated fund or account invested in securities; except that policies or annuity contracts of insurance companies admitted to do business in the state are not subject to this chapter;

(8) a security issued or guaranteed by a federal credit union or any credit union, industrial loan association, or similar association organized and supervised under the laws of this state;

(9) a security issued or guaranteed by a railroad, other common carrier, public utility, or holding company which is

(A) subject to the jurisdiction of the Interstate Commerce Commission;

(B) a registered holding company under the Public Utility Holding Company Act of 1935 or a subsidiary of the company within the meaning of that Act;

(C) regulated in respect of its rates and charges by a governmental authority of the United States or a state; or

(D) regulated in respect of the issuance or guarantee of the security by a governmental authority of the United States, a state, Canada, or a Canadian province;

(10) a security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, or the Pacific Coast Stock Exchange, or any other security of the same issuer which is of senior or substantially equal rank; a security called for by subscription rights or warrants so listed or approved; or a warrant or right to purchase or subscribe to any of the foregoing;

(11) a security issued by a person organized and operated not for private profit but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or reformatory purposes, or as a chamber of commerce or trade or professional association.

(b) The following transactions are exempted from AS 45.55.070:

(1) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(2) a transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for

(3) a transaction by an executor, administrator, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(4) an offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(5) sales by an issuer

(A) to no more than 10 persons in this state other than those designated in (4) of this subsection during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective buyer in this state;

(ii) the total dollar amount invested during a period of 12 consecutive months does not exceed \$100,000;

(iii) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(iv) offers are made without public solicitation or advertisement and

(v) the issuer files with the administrator a notice specifying the issuer, the security to be sold and the terms of the offer at least two days before any sales are made;

(B) to no more than 25 persons in this state other than those designated in (4) of this subsection during a period of 12 consecutive months whether or not the seller or any of the buyers is then present in this state, if

(i) the sales are made solely in this state;

(ii) before any sale, each prospective buyer is furnished access to the information that would be provided to a prospective buyer in a registration under AS 45.55.100 (which information shall be furnished to the administrator upon his request);

(iii) the total dollar amount invested during a period of 12 consecutive months does not exceed \$500,000;

(iv) commissions or other remuneration meet the requirements of this chapter and are made only to persons registered under AS 45.55.040;

(v) a legend is placed on the certificate or other document evidencing ownership of the security, stating that the security is not registered under this chapter and cannot be resold without registration under this chapter or exemption from it;

(vi) the issuer obtains a signed agreement from the buyer acknowledging that he is buying for investment purposes and that the

(vii) offers are made without public solicitation or advertisement; and

(viii) the issuer files with the administrator a notice specifying the issuer, the security to be sold, and the terms of the offer at least two days before any sales are made;

(6) an offer or sale of a preorganization certificate or subscription if

(A) no commission or other remuneration is paid or given directly or indirectly for soliciting a prospective subscriber,

(B) the number of subscribers does not exceed 10, and

(C) no payment is made by any subscriber;

(7) a transaction under an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if

(A) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting a security holder in this state, or

(B) the issuer first files a notice specifying the terms of the offer and the administrator does not by order disallow the exemption within the next five full business days;

(8) an offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending under either Act;

(9) an isolated nonissuer transaction, whether effected through a broker-dealer or not;

(10) a nonissuer distribution of an outstanding security if

(A) a recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within 18 months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or

(B) the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years, or during the existence of the issuer and any predecessors if less than three years, in the payment of principal, interest, or dividends on the security;

(11) a nonissuer transaction effected by or through a registered broker-dealer under an unsolicited order or offer to buy; however, the administrator may by rule require that the customer acknowledge upon a specified form that the sale was unsolicited, and that a signed copy of each form be preserved by the broker-dealer for a specified period;

(13) a transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation or sale of assets, if

(A) no commission or other remuneration, other than a standby commission is paid or given directly or indirectly for soliciting a security holder in this state; and

(B) the issuer files a notice in the form specified by the administrator not less than 30 days before making the offer;

(14) a stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by stockholders for the dividend other than the surrender of a right to a cash or property dividend when each stockholder may elect to take the dividend in cash or property or in stock;

(15) an act incident to a class vote by stockholders, under the certificate of incorporation or the applicable corporation statute, on a merger, consolidation, reclassification of securities or sale of securities of another corporation;

(16) the offer or sale by a registered broker-dealer, acting either as principal or agent, of securities previously sold and distributed to the public if

(A) the securities are sold at prices reasonably related to the current market price at the time of sale, and, if broker-dealer is acting as agent, the commission collected by the broker-dealer on account of the sale is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;

(B) the securities do not constitute the whole or a part of an unsold allotment to or subscription or participation by the broker-dealer as an underwriter of the securities or as a participant in the distribution of the securities by the issuer, by an underwriter or by a person or group of persons in substantial control of the issuer or of the outstanding securities of the class being distributed; and

(C) the securities have been lawfully sold and distributed in this state under this chapter;

(17) offers or sales of certificates of interest or participation in oil, gas, or mining rights, titles or leases, or in payments out of production under such rights, titles or leases, if the purchasers

(A) are or have been during the preceding two years engaged primarily in the business of exploring for, mining, producing, or refining oil, gas, or minerals; or

(B) have been found by the administrator upon written application to be substantially engaged in the business of exploring for, mining,

(c) In any proceeding under this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

(d) The administrator may by order deny or revoke an exemption specified in (a)(5), (7) or (11) of this section or in (b) of this section with respect to a specific security or transaction. The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for it and that within 15 days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested and none is ordered by the administrator, the order remains in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

(e) No order under (d) of this section may operate retroactively. No person may be considered to have violated AS 45.55.070 or 45.55.150 by reason of an offer or sale effected after the entry of an order under this subsection if he sustains the burden of proof that he did not know, and in the exercise of reasonable care could not have known of the order.

(f) The administrator shall by regulation prescribe a schedule of fees for examination or investigation of claimed exemption. (§ 302 ch 198 SLA 1959; am §§ 3 — 11 ch 105 SLA 1961; am § 1 ch 8 SLA 1966; am § 1 ch 25 SLA 1968; am §§ 11 — 13 ch 86 SLA 1972; am § 15 ch 218 SLA 1976; am §§ 1 — 3 ch 132 SLA 1977; am § 1 ch 56 SLA 1978; am § 50 ch 94 SLA 1980)

Effect of amendments. — The 1976 amendment inserted "not" preceding "by order disallow" in paragraph (7)(B) of subsection (b).

The 1977 amendment rewrote paragraph (5) of subsection (b), substituted "under this chapter" for "or any other state of the United States under this or any act regulating the sale of the securities" in paragraph (16)(C) of subsection (b), and substituted "(a)(5), (7) or (11)" for "(a)(5) or (7)" in the first sentence of subsection (d).

The 1978 amendment added paragraph (17) of subsection (d).

The 1980 amendment, in subparagraph

(b)(5)(B)(viii), substituted "sold" for "offered" near the middle of the subparagraph, and substituted "any sales are" for "the offer is" near the end of the subparagraph.

Legislative history reports. — For report on ch. 8, SLA 1966, see House Journal (1966), p. 169. For report on ch. 132, SLA 1977 (SB 48), see 1977 Senate Journal, p. 190.

ALR references. — What securities are exempt from registration under § 402(n) of the Uniform Securities Act, 84 ALR3d 576

Sec. 45.55.150. Filing of sales and advertising literature. The administrator may by rule or order require the filing of a prospectus, pamphlet, circular, form letter, advertisement, or other sales literature, or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser. (§ 303 ch 198 SLA 1959; am § 12 ch 105 SLA 1961; am § 14 ch 86 SLA 1972)

Sec. 45.55.160. Misleading filings. It is unlawful for a person, in a document filed with the administrator or in a proceeding under this chapter, to make or cause to be made an untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading. (§ 304 ch 198 SLA 1959; am § 15 ch 86 SLA 1972)

Materiality under common law. — Under Alaska common law, a misrepresentation is material if there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote. Subjective proof that one or more shareholders actually granted a proxy because of a falsehood is not required; only the objective standard encompassed in the definition of materiality need be met. *Brown v. Ward*, Sup. Ct. Op. No. 1825 (File No. 3579), 593 P.2d 247 (1979).

Proxy solicitations held materially false. — Where the misrepresented ability of a regional corporation to distribute

money or land to shareholders on the large scale expressed in the solicitation would be likely to influence shareholders to grant proxies to the solicitor, the proxy solicitations were materially false as a matter of law. *Brown v. Ward*, Sup. Ct. Op. No. 1825 (File No. 3579), 593 P.2d 247 (1979).

ALR and C.J.S. references. — Attorney's preparation of legal document incident to sale of securities as rendering him liable under state securities regulations statutes, 62 ALR3d 252.

19 C.J.S. Corporations §§ 931, 1364; 53 C.J.S. Licenses § 78.

Sec. 45.55.170. Unlawful representations concerning registration or exemption. (a) Neither the fact that an application for registration under AS 45.55.030—45.55.060 or a registration statement under AS 45.55.070—45.55.120 is filed nor the fact that a person or security is effectively registered constitutes a finding by the administrator that a document filed under this chapter is true, complete, and not misleading. Neither the fact of filing nor the fact that an exemption or exception is available for a security or a transaction means that the administrator has passed in any way upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction.

(b) It is unlawful to make, or cause to be made, to a prospective purchaser, customer, or client any representation inconsistent with (a) of this section. (§ 305 ch 198 SLA 1959; am § 13 ch 105 SLA 1961)

Sec. 45.55.180. Administration of chapter. (a) The Department

(b) It is unlawful for the administrator or an officer or employee of the administrator to use for personal benefit information which is filed with or obtained by the administrator and which is not made public. No provision of this chapter authorizes the administrator or an officer or employee of the administrator to disclose the information except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the administrator or an officer or employee of the administrator. (§ 306 ch 198 SLA 1959)

Sec. 45.55.190. Investigations and subpoenas. (a) The administrator in his discretion may (1) make public or private investigations inside or outside this state as he considers necessary to determine whether a person has violated or is about to violate any provision of this chapter or a rule or order under this chapter, or to aid in the enforcement of this chapter or in the prescribing of rules and forms under this chapter, (2) require or permit a person to file a statement in writing, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning the matter to be investigated, and (3) publish information concerning any violation of this chapter or any rule or order under this chapter.

(b) For the purpose of an investigation or proceeding under this chapter, the administrator or an officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of books, papers, correspondence, memoranda, agreements, or other documents or records which the administrator considers relevant or material to the inquiry.

(c) In case of contumacy by, or refusal to obey a subpoena issued to a person, the superior court, upon application by the administrator, may issue to the person an order requiring him to appear before the administrator, or the officer designated by him, to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

(d) No person is excused from attending and testifying or from producing a document or record before the administrator, or in obedience to the subpoena of the administrator or officer designated by him, or in a proceeding instituted by the administrator, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. However, no individual may be prosecuted or subjected to a penalty or forfeiture for or on

individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying. (§ 307 ch 198 SLA 1959)

Sec. 45.55.195. Reimbursement of expense; incident to examination. (a) An issuer, broker-dealer, agent, or investment adviser shall reimburse the administrator for actual travel expenses and per diem incurred in connection with an examination incident to a registration under this chapter.

(b) The administrator may by rule or order adopt a schedule of charges for annual examination fees of issuers, broker-dealers, agents and investment advisers.

(c) If an issuer, broker-dealer, agent or investment adviser fails to pay the fees and expenses provided for in this section, the fees and expenses shall be paid out of the funds of the administrator in the same manner as other disbursements made by the administrator. The amounts paid from the funds of the administrator are a lien upon all of the assets and property in this state of the issuer, broker-dealer, agent or investment adviser and the amount may be recovered by the attorney general on behalf of the state.

(d) Failure of the issuer, broker-dealer, agent or investment adviser to pay fees and expenses under this section is a wilful violation of this chapter and the violation falls within the provisions of AS 45.55.060, 45.55.120, 45.55.200 and 45.55.210. (§ 16 ch 86 SLA 1972)

Sec. 45.55.200. Orders and injunctions. Whenever it appears to the administrator that a person has engaged or is about to engage in an act or practice in violation of any provision of this chapter or rule or order under this chapter, he may

(1) if he considers it in the public interest or for the protection of investors, issue an order directing the person to cease and desist from continuing the act or practice, provided that reasonable notice of and an opportunity for a hearing shall first be given, except that the administrator may issue a temporary order pending the hearing which shall remain in effect until 10 days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within 15 days after the receipt of notice; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter or rule or order under this chapter, and upon a proper showing, the appropriate remedy shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond. (§ 308 ch 198 SLA 1959; am § 1 ch 126 SLA 1968)

Sec. 45.55.210. Criminal penalties. (a) A person who wilfully

45.55.160 knowing the statement made to be false or misleading in a material respect or the omission to be misleading by any material respect, upon conviction, is punishable by a fine of not more than \$5,000, or by imprisonment for not less than one year nor more than five years, or both. Upon conviction of an individual for a felony under this chapter, imprisonment for not less than one year is mandatory. However, no individual may be imprisoned for the violation of a rule or order if he proves that he had no knowledge of the rule or order. No indictment or information may be returned under this chapter more than five years after the alleged violation.

(b) The administrator may refer the evidence which is available concerning violations of this chapter or a rule or order under this chapter to the attorney general who may, with or without a reference, institute appropriate criminal proceedings under this chapter.

(c) Nothing in this chapter limits the power of the state to punish a person for conduct which constitutes a crime by statute or at common law. (§ 309 ch 198 SLA 1959; am § 40 ch 43 SLA 1964; am § 17 ch 86 SLA 1972)

Sec. 45.55.220. Civil liabilities. (a) A person is liable to the person buying the security from him for the consideration paid for the security, together with interest at six per cent a year from the date of payment, costs, and reasonable attorneys' fees, less the amount of income received on the security, upon the tender of the security, or for damages if he no longer owns the security, if he

(1) offers or sells a security in violation of AS 45.55.030(a), AS 45.55.070, or AS 45.55.170(b) or of a rule or order under AS 45.55.150 which requires the filing of sales literature before it is used, or of a condition imposed under AS 45.55.100(d) or AS 45.55.110(g) or (h), or

(2) offers or sells a security by means of an untrue statement of a material fact, or omits to state a material fact, the omission of which makes a statement misleading.

(b) Damages are the amount that would be recoverable upon a tender less the value of the security when the buyer disposed of it and interest at six per cent a year from the date of disposition.

(c) Every person who directly or indirectly controls a seller liable under (a) of this section, every partner, officer, or director of such a seller, every person occupying a similar status or performing similar functions, every employee of the seller who materially aids in the sale, and every broker-dealer or agent who materially aids in the sale are also liable jointly and severally with and to the same extent as the seller, unless the nonseller who is liable sustains the burden of proof that he did not know, and in exercise of reasonable care could not have known, of the existence of the facts by reason of which the liability is

(d) A tender specified in this section may be made at any time before entry of judgment.

(e) Every cause of action under this chapter survives the death of a person who might have been a plaintiff or defendant.

(f) No person may sue under this section more than three years after the contract of sale. No person may sue under this section

(1) if the buyer received a written offer, before suit and at a time when he owned the security, to refund the consideration paid together with interest at six per cent a year from the date of payment, less the amount of income received on the security, and he failed to accept the offer within 30 days of its receipt, or

(2) if the buyer received the offer before suit and at a time when he did not own the security, unless he rejected the offer in writing within 30 days of its receipt.

(g) No person who makes or engages in the performance of a contract in violation of a provision of this chapter or rule or order under this chapter, or who acquires a purported right under the contract with knowledge of the facts by reason of which its making or performance is in violation, may base a suit on the contract.

(h) A condition, stipulation, or provision binding a person acquiring a security to waive compliance with a provision of this chapter or a rule or order under this chapter is void.

(i) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or AS 45.55.040(f). (§ 310 ch 198 SLA 1959; am § 14 ch 105 SLA 1961; am § 18 ch 86 SLA 1972)

ALR references. — Who, other than officers and directors of a corporation, is civilly liable under the state securities acts (Blue Sky Laws) for purchase price of unauthorized securities, 59 ALR2d 1030.

Waiver of rights or release of liability in advance of controversy, under state securities act or Blue Sky Law, 61 ALR2d 1308.

Purchaser's right to set up invalidity of contract because of violation of state securities regulation as affected by doctrine of estoppel, 84 ALR2d 479.

What amounts to participation by corporate officer or agent in illegal issuance of security, in order to impose liability upon him under state securities regulations, 44 ALR3d 588.

Sec. 45.55.225. Hearings: Regulations. (a) The administrator shall adopt regulations, consistent with the provisions of this chapter, governing administrative hearings conducted by the administrator or his designee for the following:

(1) orders issued under AS 45.55.120, 45.55.140(d), or 45.55.200; in these instances, the administrator shall promptly send a notice of opportunity for hearing to the issuer of the securities and to all persons

(2) orders issued under AS 45.55.060; before the administrator enters an order under AS 45.55.060, he shall send to the person involved a notice of opportunity for hearing; if the person involved is an agent, then the administrator shall in addition notify the employing broker-dealer, investment advisor, or issuer.

(b) In conducting a hearing in accordance with (a) of this section, the administrator may issue a subpoena to compel the attendance of any witness or party and to compel production of evidence. (§ 4 ch 132 SLA 1977)

Sec. 45.55.230. Judicial review of orders. (a) A person aggrieved by a final order of the administrator may obtain a review of the order in the superior court by filing, within 60 days after the entry of the order, a written petition praying that the order be modified or set aside in whole or in part. A copy of the petition shall be served immediately upon the administrator, and thereupon the administrator shall certify and file in court a copy of the filing and evidence upon which the order was entered. When these are filed, the court has exclusive jurisdiction to affirm, modify, enforce, or set aside the order, in whole or in part.

(b) The commencement of proceedings under (a) of this section does not, unless specifically ordered by the court, operate as a stay of the administrator's order.

(c) The Administrative Procedure Act (AS 44.62) applies to all regulations issued or authorized under this chapter. (§ 311 ch 198 SLA 1959; am § 5 ch 132 SLA 1977)

Effect of amendment. — The 1977 amendment, in subsection (c), substituted "all regulations" for "all rules, regulations, orders and review" and deleted "including judicial review and its scope" following "this chapter."

Sec. 45.55.240. Rules, forms, orders, and hearings. (a) The administrator may make, amend, and rescind the rules, forms, and orders which are necessary to carry out this chapter, including rules and forms governing registration statements, applications, and reports, and defining terms, whether or not used in this chapter insofar as the definitions are not inconsistent with this chapter. For the purpose of rules and forms, the administrator may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

(b) No rule, form, or order may be made, amended, or rescinded unless the administrator finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of this chapter. In prescribing rules and forms the

uniformity in the form and content of registration statements, applications, and reports wherever practicable.

(c) All financial statements shall be prepared in accordance with generally accepted accounting practices. The administrator may by rule or order prescribe (1) the form and content of financial statements required under this chapter, (2) the circumstances under which consolidated financial statements shall be filed, and (3) whether any required financial statements shall be certified by independent or certified public accountants.

(d) No provision of this chapter imposing liability applies to an act done or omitted in good faith in conformity with a rule, form, or order of the administrator, notwithstanding that the rule, form, or order may be later amended or rescinded or be determined by judicial or other authority to be invalid.

(e) Every hearing in an administrative proceeding shall be public unless the administrator in his discretion grants a request joined in by all the respondents that the hearing be conducted privately. (§ 312 ch 198 SLA 1959)

Sec. 45.55.250. Administrative files and opinions. (a) A document is filed when it is received by the administrator.

(b) The administrator shall keep a register of all applications for registration and registration statements which are or have ever been effective under this chapter and all denial, suspension, or revocation orders which have been entered under this chapter. The register shall be open for public inspection.

(c) The information contained in or filed with a registration statement, application, or report may be made available to the public under the rules which the administrator prescribes.

(d) Upon request and at the reasonable charges which he prescribes, the administrator shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In a proceeding or prosecution under this chapter, a copy so certified is prima facie evidence of the contents of the entry or documents certified.

(e) The administrator in his discretion may honor requests from interested persons for interpretative opinions. (§ 313 ch 198 SLA 1959; am §§ 16, 17 ch 105 SLA 1961)

Sec. 45.55.260. Scope of the chapter and service of process. (a) AS 45.55.010, 45.55.030(a), 45.55.070, 45.55.170, and 45.55.220 apply to persons who sell or offer to sell when (1) an offer to sell is made in this state, or (2) an offer to buy is made and accepted in this state.

(b) AS 45.55.010, 45.55.030(a), and 45.55.170 apply to persons who

(c) For the purpose of this section, an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (1) originates from this state or (2) is directed by the offeror to this state and received at the place to which it is directed, or at a post office in this state in the case of a mailed offer.

(d) For the purpose of this section, an offer to buy or to sell is accepted in this state when acceptance is communicated to the offeror in this state and has not previously been communicated to the offeror, orally or in writing, outside this state. Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed, or at a post office in this state in the case of a mailed acceptance.

(e) An offer to sell or to buy is not made in this state when (1) the publisher circulates or there is circulated on his behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months, or (2) a radio or television program originating outside this state is received in this state.

(f) AS 45.55.020, 45.55.030(c), and 45.55.170, so far as investment advisers are concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

(g) Every applicant for registration under this chapter and every issuer which proposes to offer a security in this state through a person acting on an agency basis in the common-law sense shall file with the administrator, in the form which he prescribes by rule, an irrevocable consent appointing the administrator or his successor in office to be his attorney to receive service of lawful process in a civil suit, action, or proceeding against him or his successor executor or administrator which arises under this chapter or a rule or order under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who files the consent in connection with a previous registration need not file another. Service may be made by leaving a copy of the process in the office of the administrator, but it is not effective unless (1) the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by him, immediately sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last address on file with the administrator, and (2) the plaintiff's affidavit of mailing is filed in the case on or before the return day of the process, if any, or within the further time which the court allows.

under this chapter, and he has not filed a consent to service of process under (g) of this section and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct is considered equivalent to his appointment of the administrator or his successor in office to be his attorney to receive service of process in a civil suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under this chapter or a rule or order under this chapter, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the administrator, but service is not effective unless (1) the plaintiff, who may be the administrator in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (2) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

(i) When process is served under this section, the court, or the administrator in a proceeding before him, shall order the continuance which is necessary to afford the defendant or respondent reasonable opportunity to defend. (§ 314 ch 198 SLA 1959; am § 18 ch 105 SLA 1961)

Sec. 45.55.270. Short title. This chapter may be cited as the Alaska Securities Act of 1959. (§ 315 ch 198 SLA 1959)

Chapter 57. Takeover Bid Disclosure Act.

Section	Section
10. Provisions of takeover bids	70. Criminal penalties
20. Disclosure	80. Civil liabilities
30. Recommendations to accept or reject	90. Consent to service of process
40. Deceptive practices	100. Regulations
50. Investigations and subpoenas	110. Definitions
60. Injunctions	120. Short title

Sec. 45.57.010. Provisions of takeover bids. The following provisions apply to every takeover bid:

(1) The period of time within which securities may be tendered by an offeree under a takeover bid shall not be less than 21 days nor more than 35 days from the date copies of the takeover bid are first published or sent or given to offerees.

(2) Securities deposited under a takeover bid may be withdrawn by an offeree or his attorney-in fact by demand in writing on the offeror within 21 days from the date copies of the

FISCAL NOTE

I. REQUEST
 Bill/Resolution No. SB 282
 Title An Act relating to the legal rate of interest
 Requested by S. Labor & Commerce Date 3/17/81

II. FISCAL DETAIL
 Agency Affected Department of Commerce & Economic Development
 Program Category Affected Consumer Protection
 BRU, Program, or Subprogram(s) Affected Financial Institutions
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)
EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0	0	0	0	0	0
OTHER (Specify Fund Source)	0	0	0	0	0	0

POSITIONS

FULL TIME	0	0	0	0	0	0
PART TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 3/17/81 PREPARED BY Willis F. Kirkpatrick, Director of Banking
 AGENCY Dept. of Commerce & Economic Development
 Original: Legislative Finance PHONE 465-2521
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)

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Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SUMMARY SB 286:

A person receiving benefits under the Judicial Retirement System may obtain auditory, visual and dental insurance under AS39.30.090 (15). The person electing to have insurance shall pay the cost of the insurance.



Alaska Court System

State of Alaska

OFFICE OF ADMINISTRATIVE DIRECTOR

303 K Street
Anchorage, Alaska 99501

WM. GRANT CALLOW
General Counsel

April 14, 1981

Honorable Bob Mulcahy, Chairman
Senate Labor and Commerce Committee
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Senator Mulcahy:

At the request of the Alaska Court System, SB 286 was introduced this year which, if enacted, would amend AS 39.30.090(15) to allow retired state judges and justices who receive retirement benefits from the state to purchase auditory, visual and dental insurance for themselves. The bill has been referred to the Senate Labor and Commerce Committee for review.

Under the current statute, retired teachers and other retired state employees are allowed to purchase this type of insurance coverage, and it seems that the drafters of the subsection may have inadvertently overlooked retired judges since (1) they are expressly covered in all the other related subsections of the statute (9-13); and (2) there is no fiscal impact because the retired judges are expressly required to pay the cost of the insurance. I am enclosing copies of the current statute and SB 286 for your reference.

A number of our retired state judges and justices, and particularly Senior Justice John Dimond, are understandably concerned about this bill.

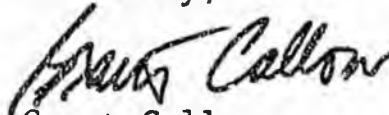
On behalf of the Court System, I would like to respectfully request that SB 286 be considered by the Labor and Commerce Committee at its earliest convenience. Since it is a short bill without any apparent fiscal impact to the state, I would not expect it to be at all controversial.

Honorable Bob Mulcahy
April 14, 1981
page two

I will, of course, be happy to appear before the Labor and Commerce Committee to answer any questions which you or any of the other committee members may have on the bill.

Please let me know if you have any questions.

Sincerely,



Grant Callow
General Counsel

GC:kmp

enclosures

(8) "wages" means remuneration for employment, including the cash value of remuneration paid in any medium other than cash, except that "wages" does not include that part of remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act. (§ 2 ch 95 SLA 1951)

Editor's note. — The federal Insurance Contributions Act, referred to in paragraph (4), may be found in 26 U.S.C. §§ 3101 — 3125. The Social Security Act, referred to in paragraph (7), may be found in 42 U.S.C. § 301 et seq.

Article 2. Group Life and Health Insurance.

Section

90. Procurement of group insurance

100. Definitions

Sec. 39.30.090. Procurement of group insurance. The Department of Administration may obtain a policy or policies of group insurance covering state employees and employees of other participating governmental units subject to the following conditions:

(1) A group insurance policy shall provide one or more of the following benefits: life insurance, accidental death and dismemberment insurance, weekly indemnity insurance, hospital expense insurance, surgical expense insurance, dental expense insurance, audio-visual insurance, or other medical care insurance.

(2) Each eligible employee of the state, his spouse and his unmarried children chiefly dependent on him for support and each eligible employee of another participating governmental unit shall be covered by the group policy, unless exempt under regulations adopted by the commissioner of administration.

(3) A governmental unit may participate under a group policy if

(A) its governing body adopts a resolution authorizing participation, and payment of required premiums;

(B) a certified copy of the resolution is filed with the Department of Administration; and

(C) the commissioner of administration approves the participation in writing.

(4) Repealed by § 14 ch 47 SLA 1974.

(5) Repealed by § 14 ch 47 SLA 1974.

(6) The Department of Administration shall obtain the insurance policy from any insurer authorized to transact business in the state under AS 21.09 and 21.90.

(7) The Department of Administration shall make available bid specifications for desired insurance benefits to all insurance carriers

least once every succeeding five years. The lowest responsible bid submitted by an insurance carrier with adequate servicing facilities shall govern selection of a carrier under this section.

(8) If the aggregate of dividends payable under the group insurance policy exceeds the governmental unit's share of the premium, the excess shall be applied by the governmental unit for the sole benefit of the employees.

(9) A person receiving benefits under AS 14.25.110, AS 22.25 or AS 39.35 who is not 65 years of age may obtain major medical and life insurance under this section for himself and any dependents who have not reached the age of 65 years.

(10) A person receiving benefits under AS 14.25.110, AS 22.25 or AS 39.35 who is 65 years of age or older but who has dependents who are under 65 may obtain major medical insurance for these dependents under this section.

(11) A person receiving benefits under AS 14.25.110, AS 22.25 or AS 39.35 may obtain major medical and prescription drug insurance under this section for himself and any dependents to cover costs which are not covered by the federal old age survivor's and disability insurance program.

(12) A person electing to have insurance under (9), (10) or (11) of this section shall pay the cost of this insurance.

(13) No person may elect for coverage under (9), (10) or (11) of this section unless he was or is presently eligible for coverage under this section.

(14) For each permanent part-time employee electing coverage under this section, the state shall contribute one-half the state contribution rate for permanent full-time state employees, and the permanent part-time employee shall contribute the other one-half.

(15) A person receiving benefits under AS 14.25 or AS 39.35 may obtain auditory, visual, and dental insurance for himself under this section. The level of coverage for persons over 65 shall be the same as that available before reaching age 65 except that the benefits payable shall be supplemental to those afforded under the federal old age, survivors, and disability insurance program, if any. A person electing to have insurance under this paragraph shall pay the cost of the insurance. The commissioner of administration shall adopt regulations implementing this paragraph. (§ 2 ch 151 SLA 1955; am § 1 ch 168 SLA 1959; am § 1 ch 105 SLA 1965; am § 1 ch 70 SLA 1968; am § 66 ch 69 SLA 1970; am § 1 ch 123 SLA 1970; am § 1 ch 159 SLA 1972; am §§ 1, 2 ch 46 SLA 1973; am §§ 13, 14 ch 47 SLA 1974; am § 2 ch 27 SLA 1976; am § 39 ch 177 SLA 1978; am § 1 ch 55 SLA 1979)

Effect of amendments. — The 1976 amendment added paragraph (14). The 1978 amendment, retroactive to "electing coverage under this section" and deleted "as a condition of employment" following "permanent part-time

(d) The employer may begin participation as a participating employer covered by AS 39.30.150 — 39.30.180 on the date designated by the commissioner. (§ 1 ch 135 SLA 1980; § 23 ch 146 SLA 1980)

Editor's note. — Section 7, ch. 135, both make this section retroactive to SLA 1980 and § 52, ch. 146, SLA 1980, January 1, 1980.

Sec. 39.30.180. Definitions. In AS 39.30.150 — 39.30.180,

(1) "commissioner" means the commissioner of the Department of Administration;

(2) "participating employer" means

(A) the State of Alaska; and

(B) an employer

(i) who is an employer as defined in AS 39.35.680(17);

(ii) who has never participated in or has withdrawn from participation in the federal social security system; and

(iii) whose participation in the supplemental employee benefit program has been approved by the commissioner. (§ 1 ch 135 SLA 1980; § 23 ch 146 SLA 1980)

Editor's note. — Section 7, ch. 135, both make this section retroactive to SLA 1980 and § 52, ch. 146, SLA 1980, January 1, 1980.

Chapter 35. Public Employees' Retirement System of Alaska.

Article

1. Administration (§§ 39.35.010 — 39.35.110)
2. Membership (§§ 39.35.120 — 39.35.150)
3. Contributions by Employees (§§ 39.35.160 — 39.35.240)
4. Contributions by Employers (§§ 39.35.250 — 39.35.290)
5. Service (§§ 39.35.300 — 39.35.360)
6. Benefits (§§ 39.35.370 — 39.35.547)
7. Participation by Political Subdivisions and Public Organizations (§§ 39.35.550 — 39.35.650)
8. General Provisions (§§ 39.35.660 — 39.35.690)

Article 1. Administration.

Section	Section
10. Purpose and effective date	60. Duties of the administrator
20. Administration	70. Duty of employers to furnish records
30. Public Employees Retirement Board	80. Duties of commissioner of revenue
40. Powers and duties of board	90. Attorney general
42. Regulations	100. Accounting
50. Administrator	110. Investments

Sec. 39.35.010. Purpose and effective date. (a) The purpose of

(b) The system created becomes effective as of January 1, 1961, at which time contributions by the state and its employees begin. (§ 2 ch 143 SLA 1960; am § 25 ch 13 SLA 1980)

Effect of amendment. — The 1980 amendment inserted "or a political subdivision or public organization of the state" following "in the service of the state" near the middle of subsection (a).

Sec. 39.35.020. Administration. The commissioner of administration is responsible for the administration of the system and for carrying out this chapter. In addition he has the following powers and duties:

- (1) maintain the accounts of the system;
- (2) make payments for the various purposes specified;
- (3) submit periodic reports or statements of account which are needed;
- (4) issue a statement of account to an employee requesting it showing the amount of his contributions to the system;
- (5) as soon as possible after the close of each fiscal year, and not later than six months after the close of each fiscal year, send to the governor, the legislature, and the board an annual statement on the operations of the system containing
 - (A) a balance sheet;
 - (B) a statement of income and expenditures for the year;
 - (C) a report on an actuarial valuation of its assets and liabilities;
 - (D) a detailed statement of the investments acquired and disposed of during the year;
 - (E) a list of investments owned;
 - (F) other statistical financial data which are necessary for a proper understanding of the financial condition of the system and the result of its operations;
- (6) Repealed by § 50 ch 13 SLA 1980. (§ 31 ch 143 SLA 1960; § 50 ch 13 SLA 1980)

Effect of amendment. — The 1980 amendment, repealed paragraph (6), which read "publish a synopsis of the annual report for the information of employees included in the system."

Sec. 39.35.030. Public Employees Retirement Board. (a) A Public Employees Retirement Board composed of five members is established.

(b) Three board members shall be members of the personnel board of the Department of Administration. The remaining two board members shall be members of the system and elected by the members of the system.

the board. The term of office of an elected member is six years. A vacancy in an unexpired elective term shall be filled by election for a new six year term.

(d) A member of the board may receive a per diem allowance and transportation expenses in carrying out the duties set out in this chapter. (§ 32 ch 143 SLA 1960; am §§ 14, 15 ch 128 SLA 1977)

Effect of amendment. — The 1977 amendment substituted "board members" for "members of the board" in the first sentence of subsection (b), rewrote the second sentence of that subsection, and rewrote subsection (c).

Sec. 39.35.040. Powers and duties of board. The Public Employees Retirement Board has the following powers and duties:

(1) to hold such regular meetings and special meetings considered necessary; all meetings are open to the public and the board keeps a full record of all its proceedings;

(2) to adopt, with modifications it considers proper, rules and regulations recommended by the administrator for carrying out this chapter;

(3) to consider and adopt resolutions on matters referred to it by the administrator in connection with changes in policy and revisions of this chapter;

(4) to act as an appeals board, hold hearings at the request of an employer, employee, surviving spouse or a beneficiary on decisions made by the administrator, and submit its findings to the administrator;

(5) to have prepared, at least biennially, an actuarial valuation of the total obligations under the system of each employer and, on the basis of the valuation and in time for incorporation of the results in the state budget, to certify to the appropriate budgetary authorities of each employer:

(A) an appropriate contribution rate for all employers, in addition to which the state shall pay the appropriate social security contribution; and

(B) an amount appropriate for each employer to liquidate his past service liability; the board shall have an actuarial and financial experience analysis of the system conducted at appropriate intervals, but no less frequently than once every six years; the actuarial valuations and the actuarial and financial experience analysis shall be prepared and certified by a member of the American Academy of Actuaries;

(6) to prescribe the policies for the proper operation of the system and carry on other activities which are considered necessary to carry out the intent and purpose of the system in accordance with this

(8) to waive the requirements of AS 39.35.520 in accordance with AS 39.35.522;

(9) to exercise the duties set out in AS 39.30.155 with respect to the supplemental employee benefit program (AS 39.30.150 — 39.30.180),

(10) to exercise the duties set out in AS 39.45.025 with respect to the deferred compensation program for state employees. (§ 32 ch 143 SLA 1960; am § 1 ch 235 SLA 1968; am § 1 ch 109 SLA 1970; am § 2 ch 159 SLA 1972; am §§ 1—4 ch 1 SLA 1974; am §§ 16, 17 ch 128 SLA 1977, am § 8 ch 174 SLA 1978; am § 24 ch 146 SLA 1980)

Effect of amendments. — The 1977 amendment substituted "surviving spouse" for "widow" in paragraph (4), and in paragraph (5), substituted "each employer" for "the state and each participating political subdivision and public organization" in two places in the introductory paragraph, deleted "participating" preceding "employers" in subparagraph (A) and preceding "employer" in subparagraph (B), and substituted "actuarial" for "biennial" in subparagraph (3).
The 1978 amendment added paragraph (8).
The 1980 amendment added paragraphs (9) and (10).

Sec. 39.35.042. Regulations. Regulations adopted by the board under this chapter relate to the internal management of state agencies and their adoption is not subject to the Administrative Procedure Act (AS 44.32). (§ 3 ch 13 SLA 1963)

Sec. 39.35.050. Administrator. (a) The commissioner shall appoint an administrator in charge of the public employees' retirement system and the supplemental employee benefit program (AS 39.30.150 — 39.30.180).

(b) Repealed by § 50 ch 13 SLA 1980. (§ 33 ch 143 SLA 1960; am § 5 ch 1 SLA 1974; am §§ 26, 50 ch 13 SLA 1980; am § 25 ch 146 SLA 1980)

Effect of amendments. — The first 1980 amendment deleted "the detailed affairs of" preceding "the system" near the end of the former first sentence of subsection (a), deleted the former second sentence of subsection (a) which read: "The commissioner may appoint the personnel director of the personnel division of the Department of Administration as the administrator," and repealed subsection (b), which read: "The administrator shall serve as secretary of the board. He shall administer the business of the system and is responsible for its proper operation."
The second 1980 amendment inserted "public employees' retirement" preceding "system" near the beginning of the section, and added "and the supplemental employee benefit program (AS 39.30.150—39.30.180)" at the end of the section.

Sec. 39.35.060. Duties of the administrator. The administrator shall:

(1) with the assistance of a technical actuarial advisor, submit to the board the required actuarial tables and the statistical data necessary for periodic actuarial surveys of the operating experience of the system;

information requested by the actuary for preparing valuations and periodic experience analyses;

(3) attend meetings of the board and serve as secretary of the board;

(4) certify to the appropriate division of the Department of Administration the payments made according to this chapter;

(5) remit to the appropriate division of the Department of Revenue for deposit in the name of the system, money received for the account of the system;

(6) formulate and recommend to the board rules and regulations to govern the operation of the system;

(7) formulate and recommend to the board regulations to govern the operation of the supplemental employee benefit program (AS 39.30.150 — 39.30.180). (§ 33 a ch 143 SLA 1960; am § 6 ch 1 SLA 1974; am § 27 ch 13 SLA 1980; am § 26 ch 146 SLA 1980)

Revisor's note. — Under the authority of AS 01.05.031, this section has been slightly reworded and rearranged for clarity.

1980 amendment added "and serve as secretary of the board" at the end of paragraph (3).

The second 1980 amendment added paragraph (7).

Effect of amendments. — The first

Sec. 39.35.070. Duty of employers to furnish records. Each employer shall furnish the administrator with records concerning the periods of service, dates of birth, compensation, new entrants into service, death, withdrawals and other employee data necessary for the proper and effective operation of the system. (§ 33 b ch 143 SLA 1960; am § 7 ch 1 SLA 1974)

Sec. 39.35.080. Duties of commissioner of revenue. The commissioner of revenue is the treasurer of the system and shall

(1) act as official custodian of the cash and securities belonging to the system and provide adequate safe deposit facilities for them;

(2) receive cash belonging to the system;

(3) collect the interest and principal on securities acquired by the system and deposit it in the pension fund maintained in the name of the system;

(4) invest and reinvest the assets of the pension fund in accordance with AS 39.35.110. (§ 34 ch 143 SLA 1960)

Sec. 39.35.090. Attorney general. The attorney general of the state is the attorney for the system and shall represent it in a legal proceeding. (§ 35 ch 143 SLA 1960)

Sec. 39.35.100. Accounting. (a) The commissioner of administration shall establish and maintain an adequate system of accounts and records for the system. The accounts and records shall be integrated with the accounts, records, and procedures of the employers

(b) All income of the pension fund and all disbursements made by the fund shall be credited or charged, whichever is appropriate, to the following accounts:

(1) an individual account shall be maintained for each employee to record the amount of his mandatory contributions collected under AS 39.35.160(a). As of the last day of each calendar year and each fiscal year beginning with June 30, 1969, this account shall be credited with interest, by applying one half of the prescribed rate of interest to the balance in the account as of that date. Upon retirement, the amount actuarially determined as necessary to fully fund the benefits to be received shall be transferred first from the employee contribution account and, after the employee contribution account has been exhausted, then from the employer contribution account into the retirement reserve account.

(2) An individual account shall be maintained for each employee to record the amount of his voluntary contributions. As of the last day of each calendar year and each fiscal year beginning with June 30, 1969, this account shall be credited with interest, by applying one half of the prescribed rate of interest to the balance in the account as of that date. Amounts which, before termination of employment, are withdrawn by an employee from his savings account shall be charged to that account. Upon retirement, the amount actuarially determined as necessary to fully fund the benefits to be received shall be transferred first from the employee savings account and, after the employee savings account has been exhausted, then from the employer contribution account into the retirement reserve account.

(3) A separate account for each employer shall be maintained. The account shall be credited with contributions of the employer. This account shall be charged with the employer's actuarial charge for pension, death benefits, and other benefits paid under this system to or on behalf of the employee of the employer. After an allowance for interest credited to employee contribution accounts and employee savings accounts, the investment income of the pension fund shall be allocated to each employer asset share account according to the ratio that the average of the assets in an employer's account as of the beginning and as of the end of the fiscal year bears to the total of the average balance of all employers.

(4) An expense account shall be maintained for the system. This account shall be charged with all disbursements representing administrative expenses incurred by the system. At the end of the year the expense account shall be allocated to each employer in accordance with (b)(3) of this section. Expenditures from this account shall be included in the governor's budget for each fiscal year and are subject

Effect of amendments. — The 1977 amendment in subsection (b), substituted "record" for "which" in the first sentences of paragraphs (1) and (2), deleted "shall be credited as of the date of deduction or payment, as the case may be" from the end of the first sentences of paragraphs (1) and (2), substituted "retirement" for "granting a pension" near the beginning of the third sentence of paragraph (1), deleted "an employee's" preceding "retirement, the amount," in the fourth sentence of paragraph (2), substituted "savings account" for "contribution account" in two

places in the fourth sentence of paragraph (2), and deleted an exception from the end of the second sentence of paragraph (3). The amendment also, in paragraph (4) of subsection (b), deleted "credited with all contributions of employers for the purposes of meeting their respective proportion of the total administrative expenses of the system during each fiscal year, and it shall be" following "This account shall be" near the beginning of the second sentence and rewrote the third sentence.

Sec. 39.35.110. Investments. (a) When, in the opinion of the commissioner of administration, there is on hand in the pension fund a surplus over and above a reasonably safe amount to take care of current demands upon the fund, the surplus, or so much of it as in the judgment of the commissioner of administration is considered proper, may be invested at competitive national market rates by the commissioner of revenue in

- (1) Repealed by § 15 ch 122 SLA 1980.
- (2) Repealed by § 15 ch 122 SLA 1980.
- (3) Repealed by § 15 ch 122 SLA 1980.
- (4) Repealed by § 15 ch 122 SLA 1980.
- (5) shares of federally chartered savings and loan associations in Alaska, to the extent that the investment is insured by the federal government or an agency of the federal government;
- (6) deposits with mutual savings banks in Alaska, to the extent that the investment is insured by the federal government or an agency of the federal government;
- (7) deposits with state and national banks in Alaska to the extent that the investment is insured by the federal government or an agency of the federal government;
- (8) Repealed by § 15 ch 122 SLA 1980.
- (9) the guaranteed portion of Small Business Administration loans;
- (10) first lien real estate mortgages guaranteed by the federal Veterans Administration;
- (11) notes secured by mortgages of commercial or residential buildings if the mortgages are insured by a private mortgage insurance corporation which is authorized to do business in Alaska and has combined capital, surplus and reserves aggregating at least \$20,000,000; however,

(A) no mortgage insurance is necessary for commercial loans having loan-to-value ratios of less than 50 percent and the minimum coverage of other commercial loans shall be 10 percent for those having a

(B) no mortgage insurance is necessary for residential loans having a loan-to-value ratio of less than 70 percent and the minimum coverage of other residential loans shall be 10 percent for those having a loan-to-value ratio greater than 70 percent but less than 90 percent and 20 percent for those having a loan-to-value ratio of 90 percent;

(12) conventional residential mortgages if the originating financial institution retains at least 25 percent of the mortgage for a minimum of two years;

(13) notes secured by mortgages of commercial buildings if the originating financial institution retains at least 25 percent of the mortgage until maturity;

(14) FHA guaranteed portion of business and industrial loans made under the Rural Development Act of 1972;

(15) Repealed by § 15 ch 122 SLA 1980.

(16) Repealed by § 15 ch 122 SLA 1980.

(17) bankers' acceptances which are eligible for discount at the Federal Reserve Bank and certificates of deposit issued by United States domestic banks which are members of the Federal Deposit Insurance Corporation if a generally recognized secondary market exists for the certificates of deposit;

(18) obligations of, or obligations insured by or guaranteed by, the United States or agencies or instrumentalities of the United States;

(19) obligations secured by reserves paid in by the United States or agencies or instrumentalities of the United States or obligations of corporations in which the United States is a shareholder or member;

(20) corporate debt securities with a minimum rating of "A" or an equivalent rating by a nationally recognized rating organization;

(21) preferred and common stock of companies which have paid dividends in each of the three years immediately preceding the investment;

(22) commercial paper bearing the highest rating of a nationally recognized rating organization;

(23) securities of foreign governments, foreign governmental agencies, and foreign corporations the principal, interest or dividends on which are payable in either United States dollars or foreign currencies; however, investments under this paragraph may not exceed 10 percent of the total investments of the pension fund;

(24) foreign time deposits of both United States-owned and foreign-owned banks and trust companies denominated in either United States dollars or foreign currencies; however, investments under this paragraph may not exceed 20 percent of the total investments of the pension fund;

(25) gold bullion certified as to fineness of at least 9½ percent; however, investments under this paragraph may not exceed 10 percent

that Alaska gold bullion is available if it can be obtained at a price comparable to out-of-state sources.

(b) Repealed by § 15 ch 122 SLA 1980.

(c) In making investments the commissioner of revenue shall exercise the judgment and care under the circumstances then prevailing which an institutional investor of ordinary prudence, discretion, and intelligence exercises in the management of large investments entrusted to it not in regard to speculation but in regard to the permanent disposition of funds, considering probable safety of capital as well as probable income. However, no more than 50 percent of the pension fund may be invested at a given time in corporate stocks and debt securities, nor may more than five percent of the voting stock of one corporation be owned. Stocks eligible for purchase are restricted to stocks which, except for bank stocks and insurance stocks, are listed upon an exchange registered with the Federal Securities and Exchange Commission.

(d) Except as provided in this section, the commissioner of revenue may

(1) invest and reinvest the principal and income of the pension fund without distinction between principal and income;

(2) sell, exchange, convey, transfer, or otherwise dispose of an investment of the pension fund held in the name of the system by private contract or at public auction;

(3) vote upon a stock, bond, or other security; give a general or special proxy or power of attorney with or without power of substitution; exercise a conversion privilege, subscription right, or other option and make payments incidental to it; consent to or participate in a corporate reorganization or other change affecting corporate securities, delegate discretionary power, pay an assessment or charge in connection with the delegation; and generally exercise any of the powers of an owner with respect to stocks, bonds, securities, or other investments held in the pension fund;

(4) make, execute, acknowledge, and deliver documents of transfer and conveyance and instruments necessary or appropriate to carry out the powers granted;

(5) register investments held in the pension fund in the name of the system;

(6) do all acts whether or not expressly authorized which are considered necessary or proper for the protection of the investments held in the pension fund.

(e) To qualify as a mortgage which may be purchased under (a)(1), (12), or (13) of this section,

(2) the mortgage may not have been held by the originating financial institution for a period greater than 90 days.

(f) When more than one-half of one per cent of the aggregate of all loans purchased from a financial institution becomes delinquent for 60 days, the pension fund shall discontinue purchasing loans from that financial institution until the delinquency is reduced to less than one-half of one per cent.

(g) Repealed by § 15 ch 122 SLA 1980.

(h) The commissioner of revenue may enter into futures contracts for the sale of investments purchased under (a) of this section only for the purpose of hedging an existing equivalent ownership position in the investments.

(i) The commissioner of revenue may transfer at any time a portion of the assets of the pension fund to a trust which is qualified under sec. 401(a) of the Internal Revenue Code (26 U.S.C. sec. 401(a)) and exempt from taxation under sec. 501(a) of the Internal Revenue Code (26 U.S.C. sec. 501(a)) and which is maintained as a medium for pooling a portion of the funds of pension and profit-sharing trusts for diversifying investments in real estate and interests in real estate.

(j) The commissioner of revenue may enter into a contract or trust agreement necessary to effectuate the transfer of assets of the pension fund or to maintain the assets of the pension fund to be transferred to a trust under (i) of this section. (§ 37 ch 143 SLA 1960; am § 1 ch 129 SLA 1961; am § 1 ch 150 SLA 1962; am § 2 ch 4 SLA 1964; am §§ 1 — 3 ch 80 SLA 1964; am § 1 ch 111 SLA 1964; am § 1 ch 56 SLA 1967; am § 4 ch 73 SLA 1969; am §§ 3, 4 ch 17 SLA 1970; am § 2 ch 112 SLA 1972; am §§ 3, 4 ch 25 SLA 1974; am §§ 3, 4 ch 59 SLA 1977; am §§ 7 — 10, 15 ch 122 SLA 1980)

Cross references. — As to custody and investment of the teachers retirement fund, see AS 14.25.180. As to investment of surplus funds of the state, see AS 37.10.070.

Effect of amendments. — The 1977 amendment, in subsection (a), inserted "private mortgage insurance" in paragraph (11), added the language beginning "however, (A) no mortgage insurance is necessary" to the end of that paragraph, and added paragraphs (16) and (17).

The 1980 amendment, in subsection (a), inserted "at competitive national market rates" near the end of the introductory paragraph, repealed former paragraphs (1) — (4), (8), and (15) and (16), substituted "the" for "such" preceding "investment" in paragraphs (5) and (6), substituted "of the

security" near the beginning of the introductory paragraph of paragraph (11), substituted "buildings" for "real estate" and added "until maturity" in paragraph (13), and "negotiable time" preceding "certificates of deposit" in paragraph (17), substituted "United States domestic" for "commercial" near the middle of paragraph (17), added the material at the end of paragraph (17), which begins "which are members of" and ends "certificates of deposit," and added paragraphs (18) — (25). The amendment, in subsection (c), substituted "an institutional investor" for "a man," and "large investments entrusted to it" for "his own affairs" near the beginning of the subsection, deleted "his" following "permanent disposition of" and "the" preceding "probable safety of capital" near the middle of the subsection, inserted

them as well as the probable safety of his capital" at the end of the first sentence, deleted "mutual funds and" preceding "corporate stocks" near the beginning of the second sentence, substituted "debt securities" for "bonds," and "may" for "any" near the middle of the second

sentence, substituted "and" for a comma following "bank stocks," and deleted "and shares in mutual funds" following "insurance stocks" near the middle of the third sentence; rewrote subsection (e); added subsections (h) - (j); and repealed subsections (b) and (g).

Article 2. Membership.

Section	Section
120. Commencement of participation	154. North Pacific Fishery Management Council employees
125. Participation of elected officials	155. [Obsolete]
130. [Repealed]	157. [Obsolete]
140. [Repealed]	158. Administrative director of courts
150. Re-employment of retired employees	
153. Army and air national guard employees	

Sec. 39.35.120. Commencement of participation. (a) An employee of the state shall be included in this system upon commencement of his employment with the state, or on January 1, 1961, whichever is later. An employee of a political subdivision or public organization which becomes an employer shall be included in the system on the effective date of the employer's participation or the date of the employee's commencement of employment with the employer, whichever is later.

(b) [Effective until January 1, 1981] Inclusion in the system is a condition of employment for an employee except an elected official.

[Effective January 1, 1981] Inclusion in the system is a condition of employment for an employee except as otherwise provided for an elected official. (§ 4 ch 143 SLA 1960; am § 1 ch 155 SLA 1966; am § 28 ch 13 SLA 1980; am § 27 ch 146 SLA 1980)

Effect of amendments. - The first 1980 amendment deleted "or quasi-public" preceding "organization" near the beginning of the second sentence in subsection (a).

The second 1980 amendment, effective January 1, 1981, inserted "as otherwise provided for" preceding "an elected official" near the end of subsection (b).

Negotiability of retirement system benefits. - Given subsection (b) of this section and AS 39.35.120, which make inclusion in the public employees

retirement system (AS 39.35) a condition of employment for state employees and contributions to it mandatory, the conclusion is that the legislature intended the statutory provisions of the public employees retirement system to apply to all state employees, and benefits under the public employees retirement system may not be negotiated under the Public Employment Relations Act (AS 23.40.070 - 23.40.260). January 23, 1978, Op. Att'y Gen.

Sec. 39.35.125. Participation of elected officials. [Effective until January 1, 1981] (a) An elected official, other than a state legislator who is an active member of the teachers' retirement system, may be included in the system if, within 60 days after taking the oath

(1) he directs his employer in writing to make the necessary deductions from his salary and to pay into the system the contributions required by and for an employee under this chapter and

(2) notice is given the commissioner of administration in writing.

(b) After an elected official has elected to be included in the system he and his employer are liable for contributions whenever he is a qualified elected official of an employer.

(c) An elected official, other than a state legislator who is an active member of the teachers' retirement system, may be included retroactively in the system if he makes retroactive contributions equal to what he would have made if he had elected to be included when he became eligible under (a) of this section.

(d) A former elected state official whose latest term of office expired before May 12, 1966 may be included retroactively in the system and receive credit for time previously served as an elected state official if he makes retroactive contributions equal to what he would have made if he had been eligible for membership in the system.

(e) Former elected state officials whose latest term of office expired before May 12, 1966 must claim prior legislative service and make retroactive contributions before July 1, 1977.

[Effective January 1, 1981] (a) An elected official is included in the system unless he files a written waiver of coverage with the administrator. A waiver under this subsection waives coverage of future employment as an elected official, regardless of any change of employer. An elected official may file a waiver under this subsection at any time after his election to office, including the period before he takes the oath of his office. An elected official may revoke a waiver under this subsection by filing a written revocation with the administrator. A revocation under this subsection operates prospectively only, and the elected official may not receive credited service for service as an elected official while the waiver was in effect. There is no limit on the number of times an elected official may file a waiver or revocation under this subsection.

(b) Service as an elected official before January 1, 1981, with an employer may be included retroactively as credited service with the system if the elected official or former elected official makes retroactive contributions equal to what he would have made if he had been included in the system when he took the oath of his office as an elected official. The rate used to calculate the retroactive contributions may not be less than the rate in effect on January 1, 1961. An elected official or former elected official must claim prior service and make retroactive contributions before February 1, 1982. An elected official or former elected official may not receive credited service under this subsection for any period in which he was receiving a retirement benefit from the

to claim credited service under this subsection unless he is reemployed as an active member and claims the credited service before February 1, 1982. Service as an elected official with an employer constitutes employment as an active member so long as no waiver of coverage under (a) of this section is in effect.

(c) An elected official included in the system and his employer are liable for contributions whenever he is an elected official unless a waiver of coverage under (a) of this section is in effect. (§ 2 ch 155 SLA 1966; am § 3 ch 159 SLA 1972; am § 1 ch 254 SLA 1976; am § 19 ch 128 SLA 1977; am §§ 8, 9 ch 82 SLA 1979; am § 28 ch 146 SLA 1980)

Effect of amendments. — The 1976 amendment added subsections (d) and (e).

The 1977 amendment substituted "an employer" for "a participating employer" at the end of subsection (b).

The 1979 amendment inserted "other than a state legislator who is an active member of the teachers' retirement system" in the introductory language of subsection (a) and in subsection (c).

The 1980 amendment, effective January 1, 1981, rewrote the section.

Editor's note. — Section 46, ch 146, SLA 1980, effective January 1, 1981, provides: "AS 39.35.125 (a), as reenacted in § 28 of this Act, applies to an elected official holding office on or after January 1, 1981, even though he may have assumed office before that date."

Sec. 39.35.130. Termination of participation.

Repealed by § 55 ch 128 SLA 1977.

Editor's note. — The repealed section derived from § 5, ch. 143, SLA 1960.

Sec. 39.35.140. Re-employment of former employees.

Repealed by § 55 ch 128 SLA 1977.

Editor's note. — The repealed section derived from § 6, ch. 143, SLA 1960.

Sec. 39.35.150. Re-employment of retired employees. If a retired employee subsequently becomes an active member, no benefit payments will be made during the period of re-employment. During the period of re-employment, deductions from the employee's salary will be made in accordance with AS 39.35.160. Upon subsequent retirement, the retired employee is entitled to receive an additional pension based on the credited service and the average monthly compensation earned during the period of re-employment in accordance with AS 39.35.370. (§ 7 ch 143 SLA 1960; am § 4 ch 109 SLA 1970; am § 4 ch 159 SLA 1972; am § 11 ch 1 SLA 1974; am § 20 ch 128 SLA 1977)

Effect of amendment. — The 1977 amendment rewrote this section. (CSSB 264), see 1972 House Journal, p. 924

"re-employed" by the state on a "regular full-time basis" if he were elected to the state legislature. 1965 Op. Att'y Gen., No. 4, issued prior to the 1977 amendment. But see AS 39.35.125.

A former territorial employee, retired

under the Public Employees Retirement Act of 1949, was entitled to receive both his salary as a legislator and his retirement benefits while he served in the state legislature. 1965 Op. Att'y Gen., No. 4, issued prior to the 1977 amendment.

Sec. 39.35.153. Army and air national guard employees. Regular full-time civilian employees of the Alaska Army National Guard and Air National Guard, whose entire salary is paid from allotted federal funds, are included in this system, if the federal or state government pays the employer's contributions. If the amount which the federal government may legally contribute to the system is lower than the required employer's contribution, the state government shall contribute the difference. If the employer's contributions are not paid when due, no service credit for the period of delinquency will be granted until the contributions are paid. (§ 1 ch 53 SLA 1965)

Sec. 39.35.154. North Pacific Fishery Management Council employees. Employees of the North Pacific Fishery Management Council appointed under 16 U.S.C. 1852(f)(1) (§ 302(f)(1) of P. L. 94-265), whose compensation is paid from allotted federal funds, are included in the system if the council pays the employer's contributions. If the employer's contributions are not paid when due, no credited service for the period of delinquency may be granted until the contributions are paid. (§ 1 ch 86 SLA 1977)

Legislative history report. — For 1977 House Journal, p. 1206; 1977 Senate report on ch. 86, SLA 1977 (CSSB 135), see Journal, p. 535.

Sec. 39.35.155. Former magistrates. [Obsolete]

Revisor's note. — This section is obsolete. It reads as follows: "A magistrate who terminated his employment before July 1, 1977 may be included retroactively in the system and receive service credit for time previously served as a magistrate if,

before July 1, 1978, he makes retroactive contributions equal to what he would have made if he had been participating in the system."

Editor's note. — The obsolete section derived from § 21, ch. 128, SLA 1977.

Sec. 39.35.157. Alaska State Office in Tokyo employees. [Obsolete]

Revisor's note. — This section is obsolete. It reads as follows: "An employee of the Alaska State Office in Tokyo (AS 44.19.082) who, before July 1, 1979, was not treated as being included in the system may be included retroactively in the system and receive service credit time

by the state on his behalf in an individual account in the Far East severance account in the Department of Administration. If the employee does not elect to be included in the system retroactively, the state shall pay the employee the amount held by the state on the employee's behalf in the Far East severance account on July 1, 1980, at

Editor's note. — The obsolete section was derived from § 4, ch. 52, SLA 1979.

Sec. 39.35.158. Administrative director of courts. An administrative director of the Alaska court system who withdraws from the judicial retirement system under AS 22.25.012 is eligible for membership in the system and shall receive credited service in the system for service rendered as administrative director. To be eligible for membership in the system under this subsection, the administrative director must contribute to the system

(1) the amount he would have contributed if he had been a member during the period of his membership in the judicial retirement system; and

(2) any contributions for services as administrative director refunded to him by the system at the time he became a member of the judicial retirement system. (§ 30 ch 146 SLA 1980)

Article 3. Contributions by Employees.

Section	Section
160. Amount of employee contributions	210. [Repealed]
170. Employment contributions mandatory	220. [Repealed]
180. Voluntary contributions by employee	230. Refund upon death of retired employee
190. [Repealed]	240. Withdrawal of voluntary contributions
200. Refund upon termination of employment for reason other than death	

Sec. 39.35.160. Amount of employee contributions. (a) While participating in the system each peace officer and each fireman shall contribute five per cent and every other employee shall contribute four and one-quarter per cent of his compensation to the public employees' retirement system.

(b) Repealed by § 6 ch 135 SLA 1980 and § 39 ch 146 SLA 1980. (§ 8a ch 143 SLA 1960; am § 2 ch 235 SLA 1968; am § 3 ch 35 SLA 1969; am § 5 ch 109 SLA 1970; am § 5 ch 159 SLA 1972; am § 2 ch 58 SLA 1979; § 6 ch 135 SLA 1980; § 39 ch 146 SLA 1980)

Effect of amendments. The 1970 amendment substituted the language beginning "he consider" to have agreed" for "pay the appropriate social security contribution" in subsection (b).

The first and second 1980 amendments, retroactive to January 1, 1980, repealed subsection (b).

Editor's note. — Section 2, ch. 123, SLA 1976, purported to amend subsection

a special election conducted by the Public Employees Retirement Board to be held among active members of the retirement system. During the conduct of this election, the division shall remain impartial and take no position on the question." The amendment was rejected by the public employees.

Section 1, ch. 58, SLA 1979, purported to amend subsection (a) of this section.

January 1, 1980, by the Department of Administration among the active members of the Public Employees' Retirement System. The amendment was rejected. **Legislative history report.** For report on ch. 159, SLA 1972 (FCCS HCS (SSB) 264), see 1972 House Journal, p. 924.

Sec. 39.35.170. Employment contributions mandatory. Contributions of employees shall be made by payroll deductions. Every included employee shall be considered to consent to payroll deductions. It is of no consequence that a payroll deduction may cause the compensation paid in cash to an employee to be reduced below the minimum required by law. Payment of an employee's compensation, less payroll deductions, is a full and complete discharge and satisfaction of all claims and demands by the employee relating to remuneration of his services during the period covered by the payment, except with respect to the benefits provided under the system. (§ 8 b ch 143 SLA 1960; am § 3 ch 155 SLA 1966)

Negotiability of retirement system benefits. — Given AS 39.35.120(b) and this section, which make inclusion in the public employees retirement system (AS 39.35) a condition of employment for state employees and contributions to it mandatory, the conclusion is that the legislature intended the statutory provisions of the public employees retirement system to apply to all state employees, and benefits under the public employees retirement system may not be negotiated under the Public Employment Relations Act (AS 23.40.070-23.40.260), January 23, 1978, Op. Atty Gen

Sec. 39.35.180. Voluntary contributions by employee. In addition to the mandatory contributions required of an employee under AS 39.35.170, an employee may, during each calendar year he is participating in the system, voluntarily contribute to his employee savings account an amount not to exceed five per cent of his compensation for that year. (§ 8 c ch 143 SLA 1960)

Sec. 39.35.190. Disposition of contributions.

Repealed by § 55 ch 128 SLA 1977.

Editor's note. — The repealed section derived from § 8 d, ch. 143, SLA 1960.

Sec. 39.35.200. Refund upon termination of employment for reason other than death. (a) An inactive employee, not on leave-without-pay status or layoff status, is entitled to receive a refund of the balance of (1) his employee contribution account and (2) his employee savings account.

(b) If, upon termination of employment, an employee has credited service of less than five years and has less than \$1,000 in his employee

reemployed with an employer and whose contributions have not been refunded before re-employment is not eligible for a refund. (§ 9 a ch 143 SLA 1960; am § 12 ch 1 SLA 1974; am § 1 ch 81 SLA 1976; am § 22 ch 128 SLA 1977)

Effect of amendments. — The 1976 amendment inserted "a" preceding "refund" in present subsection (a) and in the first sentence of present subsection (b) and added the second sentence of present subsection (b).

The 1977 amendment designated the former first sentence as subsection (a) and

the former second and third sentences as subsection (b), rewrote present subsection (a), and in present subsection (b), substituted "an employee" for "the employee" in the first sentence and substituted "an employer" for "a participating employer of the system" in the second sentence.

Sec. 39.35.210. Refund upon termination of employment by death.

Repealed by § 55 ch 128 SLA 1977.

Editor's note. — The repealed section derived from § 9 b, ch 143, SLA 1960, am § 106, ch 127, SLA 1974

Sec. 39.35.220. Refund upon retirement.

Repealed by § 55 ch 128 SLA 1977.

Editor's note. — The repealed section derived from § 9 c, ch 143, SLA 1960

Sec. 39.35.230. Refund upon death of retired employee. Upon the death of a retired employee, the employee's beneficiary shall be paid

(1) the excess of the balance in the employee contribution account of the deceased employee as of the date of the beginning of the employee's pension payments over the sum of the pension payments previously received by the employee, but this amount may not be paid if a joint and survivor option under AS 39.35.450 is in effect or if a surviving spouse's pension under AS 39.35.440 is payable; and

(2) the remaining payments purchased by the balance in the employee savings account of the deceased employee as of the date he retired. (§ 9 d ch 143 SLA 1960; am § 107 ch 127 SLA 1974)

Sec. 39.35.240. Withdrawal of voluntary contributions. An active employee may withdraw his savings account only if he receives the consent of the administrator. The administrator may permit a withdrawal before termination of employment only in cases of financial need. (§ 9 e ch 143 SLA 1960; am § 23 ch 128 SLA 1977)

Effect of amendment. — The 1977 amendment rewrote the first sentence and substituted "administrator" for "board" in the second sentence.

Article 4. Contributions by Employers.

Section	Section
250. Calculation of employer's contribution rate	280. Determination and payment of state contributions
260. Annual calculation	290. Rules governing treatment of employer contributions
270. Amount of employer's contributions	

Sec. 39.35.250. Calculation of employer's contribution rate. (a) An employer shall make contributions to the system in amounts determined in accordance with this section. For the purposes of this section, the past service date for each employer is the entry date of the employer or December 31, 1972, whichever is later. After December 31, 1972, if amendments to this chapter are enacted which substantially affect benefits accrued before the effective date of the amendment, the past service date will be changed to December 31 of the year immediately preceding that in which the amendment is enacted. The contribution rate is the sum of the consolidated employer rate and the past service rate.

(b) As used in (a) of this section, "consolidated employer rate" means the percentage of compensation of all active employees in the system which, if paid over the period of their credited service after their past service date and when combined with all employee contributions, is sufficient to provide the benefits earned after such past service dates. This percentage is uniformly determined for all employers and is applicable to each employer.

(c) As used in (a) of this section, "past service rate" means the percentage of compensation of all active employees in the system necessary to provide the annual amount required to amortize the unfunded obligations of the employer for benefits earned before the employer's past service date over a period not to exceed 40 years. The period of amortization begins at the past service date of each employer. The percentage is separately determined for each employer. (§ 10 a ch 143 SLA 1960; am § 13 ch 1 SLA 1974; am § 24 ch 128 SLA 1977)

Effect of amendment. — The 1977 amendment rewrote the section

Sec. 39.35.260. Annual calculation. The contribution rate for each employer shall be calculated every fiscal year, using the information available at the time the computation is made. The computation shall be completed in time to be considered in the state budget. Each employer shall provide in its budget for the payment of

Sec. 39.35.270. Amount of employer's contributions. The amount of each employer's contributions shall be determined by applying the employer's contribution rate to the total compensation paid to the active employees of the employer for each payroll period. This amount shall be remitted by the employer to the administrator in accordance with AS 39.35.610. (§ 10 c ch 143 SLA 1960; am § 14 ch 1 SLA 1974; am § 25 ch 128 SLA 1977)

Effect of amendment. — The 1977 amendment divided the former first sentence into the present first and second sentences, substituted "compensation paid to the active employees" for "of all compensation paid to participating employees" in the present first sentence, rewrote the present second sentence, and deleted the former second sentence, which provided for the determination of the percentage of the annual payment for past service liability

Sec. 39.35.280. Determination and payment of state contributions. The total amount of contributions required under AS 39.35.350 — 39.35.290 to be made by the state into the system shall be ascertained by the department of administration as soon as practicable after the end of each calendar month and shall be paid from the general fund of the state, except as provided in this section. If an employee is paid wages by the state during the month from a special or administrative fund provided by law, the payment to the system shall be made from that special or administrative fund. If the wages of an employee include both wages for state employment paid from the general fund of the state and wages for state employment paid from special or administrative funds, the amount to be paid into the system shall be prorated among the state funds in proportion to the wages paid to the individuals from each fund. However, no payment may be made from the special or administrative fund if the statute covering the special or administrative fund prohibits it. (§ 10 d ch 143 SLA 1960)

Sec. 39.35.290. Rules governing transmittal of employer contributions. The board shall adopt rules to ensure the orderly and efficient transmittal of employer contributions. (§ 10 e ch 143 SLA 1960)

Article 5. Service.

Sector	Section
300. Employment with the state	340. Military service
310. Employment with other employers	345. Temporary service credit
320. [Repealed]	350. Restatement of credited service
330. Leave of absence	360. Earlier service

of this chapter, the University of Alaska is not an office, department, division, or agency of the state. Service credit may not be granted under this chapter for service which is creditable under the teachers' retirement system, AS 14.25.

(b) A permanent part-time employee of the state receives credited service on a pro rata basis to that which would have been earned as a permanent full-time employee. (§ 11 ch 143 SLA 1960; am § 4 ch 155 SLA 1966; am § 4 ch 27 SLA 1976; am § 26 ch 128 SLA 1977; am § 29 ch 13 SLA 1980)

Effect of amendments. — The 1976 amendment added subsection (b). The 1977 amendment rewrote subsection (a) and substituted "credited service" for "service credit" in subsection (b). The 1980 amendment added the present second and third sentences in subsection (a).

Sec. 39.35.310. Employment with other employers. (a) An active employee is entitled to credited service for periods of employment with a political subdivision or a public organization beginning with the effective date of the employer's participation in the system. The employee is also entitled to credited service for periods of employment as designated in the employer's participation agreement.

(b) A permanent part-time employee of a political subdivision or a public organization receives credited service on a basis proportionate to that which would have been earned as a permanent full-time employee. (§ 12 ch 143 SLA 1960; am § 27 ch 128 SLA 1977; am § 30 ch 13 SLA 1980)

Effect of amendments. — The 1977 amendment rewrote the section. The 1980 amendment deleted "or quasi-public" preceding "organization" in the first sentence of subsection (a) and in subsection (b).

Sec. 39.35.320. Transfers between employers.

Repealed by § 55 ch 128 SLA 1977.

Editor's note. — The repealed section derived from § 13, ch. 143, SLA 1960.

Sec. 39.35.330. Leave of absence. (a) A leave of absence with pay authorized by an employer will not be considered as interrupting employment, if the employee is a permanent part-time employee, credited service will be granted on a basis proportionate to that which would have been earned as a permanent full-time employee.

(b) A leave of absence without pay which exceeds 10 working days authorized by an employer will be