

ALASKA LEGISLATURE COMMITTEE FILES 1997-1998 8672

9350 HOUSE LABOR & COMMERCE



Trevor McCabe
Legislative Director

Ted Stevens
United States Senator
Alaska

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SUSAN SOLBERG
CHIEF OF TAX

STATE OF ALASKA
DEPARTMENT OF LABOR
EMPLOYMENT SECURITY DIVISION
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Chris Schabacker - 202-224-1041
Stevens' Office

*Rep. Ogan,
Tom Cashen is meeting
with Senator Stevenson
this subject Thursday in D.C.
I realize this is not an energy issue
but it is an issue that affects a lot
of people in Alaska.*

Rynn

0-LS1724A
Cramer
3/28/98

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

**Introduced:
Referred:**

A BILL

FOR AN ACT ENTITLED

1 "An Act exempting services of certain sports officials at amateur sporting events
2 from coverage under the Alaska Employment Security Act; and providing for an
3 effective date."

*DOL - employer
scholarship pay*

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 23.20.526(a) is amended by adding a new paragraph to read:

6 (22) services performed in the employ of the state, including the
7 University of Alaska, a political subdivision of the state, or an organization that is
8 exempt from federal income tax under 26 U.S.C. 501(a) in an officiating capacity at
9 amateur sporting events for which the state, political subdivision, or organization
10 agrees to provide officiating services.

11 * **Sec. 2.** This Act applies to services performed after the later of the effective date of this
12 Act or December 31, 1998.

13 * **Sec. 3.** This Act does not take effect unless the Federal Unemployment Tax Act (26
14 U.S.C. 3300 - 3311) is amended on or before December 31, 1999, to exempt from the

Called Mike Heatwell - July 24

WORK DRAFT

WORK DRAFT

WORK DRAFT

0-LS1724A
Cramer
3/28/98

*Rep. Rokberg
Attr: Shuler*

*referred
final
4/8/98
color w/ Senate
Bill*

HOUSE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act exempting services of certain sports officials at amateur sporting events
2 from coverage under the Alaska Employment Security Act; and providing for an
3 effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 23.20.52(a) is amended by adding a new paragraph to read:

6 (22) services performed in the employ of the state, including the
7 University of Alaska, a political subdivision of the state, or an organization that is
8 exempt from federal income tax under 26 U.S.C. 501(a) in an officiating capacity at
9 amateur sporting events for which the state, political subdivision, or organization
10 agrees to provide officiating services.

11 * **Sec. 2.** This Act applies to services performed after the later of the effective date of this
12 Act or December 31, 1998.

13 * **Sec. 3.** This Act does not take effect unless the Federal Unemployment Tax Act (26
14 U.S.C. 3300 - 3311) is amended on or before December 31, 1999, to exempt from the

1 definition of employment in that Act officiating services performed at amateur sporting events
2 as described in sec. 1 of this Act.

3 * Sec. 4. If this Act takes effect as described in sec. 3 of this Act, it takes effect on the
4 later of the following dates:

5 (1) immediately under AS 01.10.070(c); or

6 (2) the day on which the amendment to the Federal Unemployment Tax Act
7 described in sec. 3 of this Act takes effect.

A M E N D M E N T

OFFERED IN THE SENATE

TO: SB 349

- 1 Page 1, line 6, following "of":
- 2 Insert "the state, including the University of Alaska, a political subdivision of the
- 3 state, or"

- 4 Page 1, line 8, following "the":
- 5 Insert "state, political subdivision, or"

Draft

1 (a)(1) Section 3306(c) of Title 26, United States Code, is amended by adding the
2 following new paragraph:

3 "(22) services performed in the employ of a State, or any political subdivision
4 thereof, or any organization exempt from income tax under section 501(a) in an
5 officiating capacity at amateur sporting events for which such State, political subdivision,
6 or organization agrees to provide such officiating.^a

7 (2) Paragraph (2) shall be effective for such services performed after December 31, 1998.

DRAFT FEDERAL LANGUAGE FROM
SENATOR STEVENS' OFFICE. OURS
MUST CONFORM, HENCE THE AMENDMENT.

ALASKA STATE LEGISLATURE
House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER
HESS BUDGET SUBCOMMITTEE, MEMBER



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SESSION:
STATE CAPITOL
JUNEAU, AK 99801-1182
PHONE: (907) 465-4968
FAX: (907) 465-2040

Representative Norman Rokeberg

JUST THE FAX

Date: 3/27/98

TO: LAA Legal

FAX: 2029 Telephone: 2450

FROM: Representative Norman Rokeberg /Smiley

FAX: (907) 465-2040 Telephone: (907) 465-4968

Number of Pages: 2 (including this page)

Comments: Please draft a House Bill for
the House Labor + Commerce by Request
based on the attached language.

Smiley
3/27

Have a Nice Day

Draft

Sen Stevens
language

1 (a)(1) Section 3306(c) of Title 26, United States Code, is amended by adding the
2 following new paragraph:
3 "(22) services performed in the employ of a State, or any political subdivision
4 thereof, or any organization exempt from income tax under section 501(a) in an
5 officiating capacity at amateur sporting events for which such State, political subdivision,
6 or organization agrees to provide such officiating."
7 (2) Paragraph (2) shall be effective for such services performed after December 31, 1998.

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Fax Log Report

Mar-27-98 01:04 PM

<u>Identification</u>	<u>Result</u>	<u>Pages</u>	<u>Type</u>	<u>Date</u>	<u>Time</u>	<u>Duration</u>	<u>Diagnostic</u>
2029	OK	02	Sent	Mar-27	01:03P	00:00:54	002485030022

7.0.0

Draft FEDERAL LEGISLATION

1 (a)(1) Section 3306(c) of Title 26, United States Code, is amended by adding the
2 following new paragraph:

3 "(22) services performed in the employ of a State, or any political subdivision
4 thereof, or any organization exempt from income tax under section 501(a) in an
5 officiating capacity at amateur sporting events for which such State, political subdivision,
6 or organization agrees to provide such officiating."

7 (2) Paragraph (2) shall be effective for such services performed after December 31, 1998.

SEN. STEVENS

FROM: JACK REESCH

HEB

486

FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. HB 486

Revision Date: _____
 Title: Alaska Securities Act
 Sponsor: Labor & Commerce
 Requestor: _____

Department: Commerce and Economic Development
 BRU: Banking, Securities and Corporations
 Component: Banking, Securities and Corporations
 COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
CHANGE IN REVENUES	0.0	0.0	0.0	0.0	0.0	0.0

FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0
1006 GF/Mental Health						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

Because most of the provisions of HB 486 simply bring the Alaska Securities Act (the Act) into compliance with federal law (National Securities Markets Improvement Act of 1996 (NSMIA)), thus preserving the State's revenue and current authority to regulate market participants, there is no cost to implement this bill. Failure to pass this bill would result in a loss of revenue to the State of an estimated \$5.2 million in FY00, rising to \$8.8 million in FY04. Most of the language in HB 486 is uniform language, drafted by the North American Securities Administrators Assn., and has been adopted in a majority of the states at this time.

Prepared by: Willis F. Kirkpatrick, Director
 Division: Banking, Securities and Corporations
 Approved by Commissioner: Deborah B. Sedwick
 Agency: Commerce and Economic Development

Phone: 465-2521
 Date: 4-17-98
 Date: 4-18-98

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DRAFT FISCAL NOTE

STATE OF ALASKA
1998 LEGISLATIVE SESSION

BILL NO. For Information Only

Revision Date: _____
Title: Securities Act

Department: Commerce and Economic Development
BRU: Banking, Securities and Corporations
Component: Banking, Securities and Corporations

Sponsor: For Information Only
Requestor: _____

COMPONENT SERIAL NO. _____

Expenditures/Revenues

(Thousands of Dollars)

OPERATING EXPENDITURES	FY 99	FY 00	FY 01	FY02	FY 03	FY 04
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0
-----------------------------	------------	------------	------------	------------	------------	------------

CHANGE IN REVENUES	(4,600.0)	(5,200.0)	(5,900.0)	(6,800.0)	(7,700.0)	(8,800.0)
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 General Fund						
1005 GF/Program Receipts	(4,600.0)	(5,200.0)	(5,900.0)	(6,800.0)	(7,700.0)	(8,800.0)
1006 GF/Mental Health						
Other						
TOTAL	(4,600.0)	(5,200.0)	(5,900.0)	(6,800.0)	(7,700.0)	(8,800.0)

Estimate of any current year (FY 98) cost: \$ 0.0

POSITIONS

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary)

There is no cost to implement the Securities Act, but if this bill were not to pass, the State through the division, would lose revenue from refundable and non-refundable mutual funds and such a loss would be fiscally devastating as depicted above. In addition the State would lose approximately 287 federally covered advisers at \$75 per year per adviser - totaling approximately \$21,000. As well as revenue of \$20,000 from loss of notice fees for the Reg D 506 filings.

Prepared by: Willis F. Kirkpatrick, Director
Division: Banking, Securities and Corporations

Phone: 465-2521
Date: _____

Approved by Commissioner: Deborah B. Sedwick
Agency: Commerce and Economic Development

Date: _____

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HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 16, 1998

FURTHER REFERRALS:

Date of Committee Action: 4/27/98

The LABOR AND COMMERCE Committee considered:

HB 486

HOUSE BILL NO. 486

ALASKA SECURITIES ACT

"An Act relating to the Alaska Securities Act; and providing for an effective date."

recommends it be replaced with the following committee substitute CSHB 486(L+C) the same title a new title

additional referral to _____ Committee

attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____

APPROVES PREVIOUS: (Dept/Date) _____

fiscal note(s) _____

fiscal note(s) _____

zero fiscal note(s) DOR

zero fiscal note(s) _____

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Nancy Kately</i>	✓			
<i>Bill Hudson</i>	✓			
<i>Jim Sande</i>	✓			
<i>Joe Ryan</i>	✓			

CHAIR'S SIGNATURE Nancy Kately 4-27-98

Alaska State Legislature



Official Business

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99801-1182

LETTER OF INTENT BY THE CONFERENCE COMMITTEE

CSHB 486(L&C) am S - Alaska Securities Act

It is the intent of the legislature that, with regard to Section 43. AS 45.55.139 (b) in CSHB 486(L&C) am S, the Department of Commerce and Economic Development, Division of Banking, Securities and Corporations will evaluate the results of the current audit being conducted by the Legislative Audit Division regarding the department's actions on Native ANCSA Corporations. The department will work with the legislature to make the recommended changes through legislation and will address any concerns that may be raised by the audit and report back to the legislature at the beginning of the Twenty-First Legislature.

Representative Norman Rokeberg, Chairman

Senator Rick Halford, Chairman

Representative Pete Kott

Senator Jerry Ward

Representative Albert Kookesh

Senator Al Adams

Alaska State Legislature



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AMENDMENT

OFFERED IN CONFERENCE COMMITTEE

TO: CSHB 486(L&C) am S

PAGE 37, lines 24 through 30:

Delete all material and insert:

"(b) The administrator or his designee, may by regulation establish and by order enforce requirements as to disclosure of proxies, consents or authorizations, proxy statements and other materials relating to proxy solicitations described in (a) of this section. Regulations adopted under this section by the department should recognize the unique status ANCSA Corporation shareholder rights consistent with the requirements of AS 45.55.160.

Alaska State Legislature

am-d-2



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AMENDMENT

OFFERED IN CONFERENCE COMMITTEE

TO: CSHB 486(L&C) am S

PAGE 37, line 28 after "section.", through line 30:

Delete all material.

Alaska State Legislature

Amend



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AMENDMENT

OFFERED IN CONFERENCE COMMITTEE

TO: CSHB 486(L&C) am S

PAGE 37, lines 24 through 30:

Delete all material

Alaska State Legislature

Amend 3



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Juneau AK
99801-1182

AMENDMENT

OFFERED IN CONFERENCE COMMITTEE

TO: CSHB 486(L&C) am S

Section 43 is repealed effective June 30, 1999

Mark Hubert

Legislative History
H.B. 486

The last sentence of AS 45.55.139(b) is not intended to grant the administrator any authority to adopt regulations affecting the governance or other internal affairs of the Native corporations, nor to indicate any dissatisfaction with any aspect of the proxy and other regulations already promulgated by the administrator under the Securities Act. Rather, the sentence, which will not require any change in current regulations, nor cause the administrator to adopt new ones, merely (i) encourages (rather than requires) the administrator, in engaging in administrative rule-making, to take into account the social and economic circumstances of Shareholders, and (ii) emphasizes, in light of the social and economic circumstances of the Shareholders, the administrator's critical responsibility to zealously enforce the existing antifraud provisions of AS 45.55.160 with respect to all proxies and proxy soliciting materials distributed to shareholders of the Native corporations, whether such materials are distributed on behalf of, or in opposition to, the boards of directors of the corporations.

The last sentence of AS 45.55.139(b) shall not be interpreted to expand the existing authority or responsibilities of the administrator, nor to require the administrator to take any action whatsoever. Indeed, both the Division of Banking, Securities and Corporations and the Department of Law of the Office of the Attorney General have indicated that enactment of the last sentence of AS 45.55.139(b) will neither expand the administrator's authority nor require any new regulations. Nothing in the last sentence of AS 45.55.139(b) shall be read to require or permit regulation by the administrator of the form or content of proxies or proxy soliciting materials beyond that found in existing Alaska law. ~~_____~~ The last sentence of AS 45.55.139(b) shall not result in any expansion of the administrator's historic authority to ensure that proxies and proxy soliciting materials do not include any untrue statements of material fact or omit to state material facts necessary in order to make the statements made therein not misleading. ~~_____~~

ALASKA STATE LEGISLATURE

House of Representatives

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REPRESENTATIVE JOE RYAN
REPRESENTATIVE FERRY SANDERS
REPRESENTATIVE TOM BRICE
REPRESENTATIVE GENE KUDINA
COMMITTEE AIDE, SHIRLEY ARMSTRONG
COMMITTEE SECRETARY, CATHY WOOD
COMMITTEE HEARING ROOM 17 STATE CAPITOL



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Labor and Commerce Committee

MOTION:

The House has failed to concur with amendments by the other body to HB 486 (L&C).

I will appoint Rep Rokeberg, Chairman, Rep Kott and Rep Kookesh as the members of the Conference Committee.

I will also grant limited powers of Free Conference to the Conference Committee for Section 43.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE MEMBERS:

REPRESENTATIVE NORMAN ROKEBERG, CHAIRMAN
REPRESENTATIVE JOHN COWDERY, VICE CHAIRMAN
REPRESENTATIVE BILL HUDSON
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Labor and Commerce Committee

SPONSOR STATEMENT CSHB 486(L&C)

"An Act relating to the Alaska Securities Act ; and providing for an effective date."

Amendments To The Alaska Securities Act

Congress has recently enacted federal securities laws¹ that have a direct effect on Alaska (and other states) securities law and regulations. This federal action results in significant changes in both the registration of securities and those who market them. It is therefore essential that Alaska amend the Alaska Securities Act to conform to new federal provisions and to assure a degree of uniformity with other states. Another primary issue is to preserve Alaska's ability to collect designated revenues in excess of \$3 million that funds the division's investor protection programs.

The new federal law (NSMIA) provides in part:

- New class of security **Federal Covered Securities**, exempt from state registration. These include securities like Mutual Funds and limited offerings under Regulation D of the SEC.
- **Federal Covered Securities** would:
 - File a Notice with the State².
 - Pay Notice fees.
- New class of **Federal Covered Advisers** which are those with more than \$25 million under management. This class would no longer fall under the jurisdiction of the States. Although exempt, they too would have to file Notice and pay fees for the purpose of funding local investor protection.

The effect of this federal legislation also provides greater responsibility of the state to register and regulate those who are not within the Federal Covered Advisers and their investment adviser representatives (equivalent to Broker Dealer representatives.)

The legislation we propose covers the areas that need to be addressed because of federal action. This will allow Alaska to:

- Preserve funding for investor protection.
- Conform with securities laws of other states.
- Establish regulation for state licensed investment advisers and representatives of investment advisers. Also regulation for those Federal Covered Advisers who have a place of business in Alaska.

There are two primary points to consider. This legislation preserves the right for Alaska to continue to collect over \$3 million dollars in Notice fees. If by 1999 we do not enact legislation, Alaska will be preempted from requiring Notice and the intended fees. With the increase of problems in Alaska in investment advising it is essential that Alaska continues to receive this financial support.

¹ The National Securities Markets Improvement Act (NSMIA) enacted October 11, 1996.

² NSMIA requires the states to amend their securities law by October 1999 to prevent preemption of Notice and fees.

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE MEMBERS:

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Labor and Commerce Committee

LETTER OF INTENT

CSHB 486(L&C) am S - Alaska Securities Act

It is the intent of the legislature that, with regard to AS 45.55.139 (b) in CSHB 486(L&C) am S, the Department of Commerce and Economic Development;

- (1) may only adopt regulations under the subsection relating to the disclosures of proxies and the form of proxies, consents, authorizations, proxy statements, and other proxy solicitation materials required to be filed under AS 45.55.139 (a); and
- (2) may not enforce regulations under AS 45.55.139 (b) and that enforcement of these regulations must be handled by the affected corporation and its shareholders under AS 10.06 (Alaska Corporations Code) notwithstanding AS 45.55.160, 45.55.920, or any other provision of AS 45.55; and
- (3) may not insert itself into the internal corporate governance of the ANCSA Corporations subject to AS 45.55.139.

Nothing contained in AS 45.55.139 (b) is intended to suggest to the management or shareholders of ANCSA Corporations that the department may enforce regulations promulgated under this section or settle corporate disputes.

Representative Norman Rokeberg

Representative

Representative Albert Kookesh

Letter of Intent

It is the intent of the legislature that, with regard to AS 45.55.139(b) in CSHB 486(L&C)amS, the Department of Commerce and Economic Development

(1) may only adopt regulations under the subsection relating to the disclosures in and form of proxies, consents, authorizations, proxy statements, and other proxy solicitation materials required to be filed under AS 45.55.139(a);

(2) may not enforce these regulations, whether under AS 45.55.160, 45.55.920, or any other provision of AS 45.55, and that any enforcement of these regulations must be handled by the affected corporation and its shareholders under AS 10.06;

(3) is not authorized to insert itself into the internal corporate governance of the corporations subject to AS 45.55.139.

- Norm's Copy -

Letter of Intent for AS 45.55.139(b) in CSHB 486(L&C) am S

It is the legislature's intent that the Department of Commerce and Economic Development maintain and adopt regulations under this ~~section~~ ^{sub-section} only as to disclosure and form of proxies, consents, authorizations, proxy statements, and other materials ~~distributed solely for the purpose of soliciting proxies, consents and authorizations and only for those documents herein listed that are required to be filed with the administrator.~~ ^{relating to proxy solicitations}

Truthful disclosure of material information in materials filed with the administrator is required by AS 45.55.160, and ~~Nothing in this section should suggest to the Department that it should venture beyond that requirement in enforcement proceedings.~~ ^{is intended to} ~~regulations adopted under this section should recognize the social and economic circumstances of Shareholders and encourage maximum participation by not creating unnecessary barriers to participation and by enforcing truthfulness of documents filed with the administrator.~~ ^{of regulations} ~~Nothing in this section should suggest to the Department that it is authorized to insert itself into the internal corporate governance of the ANCSA corporations subject to filing requirements of AS 45.55.139 beyond those matters limited in this section.~~ ^{regulators} ~~adopting the~~

to adopt regulations into proceedings to enforce the regulation

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

May 11, 1998

SUBJECT: Letter of intent

TO: Representative Norman Rokeberg
Attn: Shirley Armstrong

FROM: Tamara Brandt Cook *TBC*
Director

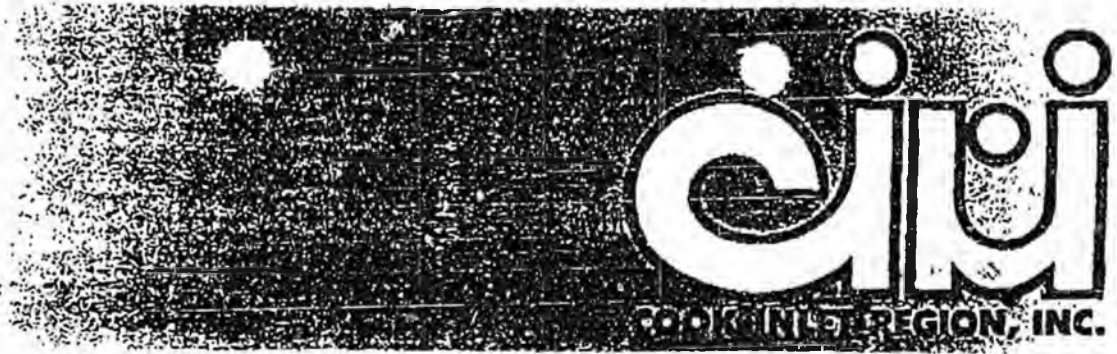
You have asked about the effect of a letter of intent and procedures for adopting a letter. A letter of intent does not constitute law. It is part of the legislative history and, therefore, only one extrinsic aid in resolving ambiguities in the law that is adopted. The circumstances of each case will determine what, if any, weight a court will give to the letter as evidence of the meaning of the law.

In situations involving the construction of a statute, a court does, at times, look to the legislative intent in passing the statute to help with that determination. (*State v. City of Haines*, 672 P.2d 1047 (Alaska 1981)) A letter of intent can provide evidence of what the legislature, in fact, intended by particular statutory language. The court has cautioned, however, that a letter of intent cannot serve as a substitute for a formally enacted provision of law. (*State v. Alaska State Employees Association/AFSCME Local 52*, 923 P.2d 18 (Alaska 1996))

A letter of intent may be considered at any time, but, as a practical matter, the later it is adopted after passage of the bill it relates to the less persuasive it will be. The legislature has gone so far as to comment in a letter of intent on laws adopted by a previous legislature. Also, a letter of intent adopted only by a committee does not carry the weight that a letter of intent adopted by the full legislature does. The court discussed these types of letters in some detail in *South Central Health Planning v. Com'r.* 672 P.2d 1047 (Alaska 1981) saying:

A letter of intent of the House Committee on Health and Social Services accompanying its report on a bill which, after several changes, eventually became part of Chapter 122, expresses the view that 'nursing portions of Pioneers' Homes are not subject to certificate of need provisions.' 1978 House Journal 1485. Taken at face value this letter of intent is the expression of one committee of the legislature as to the meaning of an enactment passed by a prior legislature. As such, it is entitled to only secondary weight.

TBC:jdr
98-297:jdr



February 20, 1979

Julius Brecht, Director
Division of Banking & Securities
Department of Commerce and
Economic Development
Pouch D
Juneau, Alaska 99811

RECEIVED
FEB 22 1979

DEPARTMENT OF COMMERCE
DIVISION OF BANKING & SECURITIES

RE: Comments Regarding Proxy Rules for Native Corporations and Shareholders

Dear Mr. Brecht:

I am in receipt of your letter of February 5 concerning the above referenced subject matter. As you are aware, CIRI has had virtually continuous experience grappling with the question of interpreting A.S. 45.55.139. The waiver of SEC jurisdiction over Native corporations by Congress in P.L. 94-204 three years ago has unleashed a barrage of false and misleading proxy solicitations in the region which has caused CIRI to expend substantial amount of its time and money combatting these fraudulent attacks. We therefore appreciate the opportunity to comment.

In short, Cook Inlet Region strongly believes that the State should adopt regulations interpreting A.S. 45.55.139 which are closely patterned after the rules used by the Federal Securities and Exchange Commission. The legislative history of P.L. 94-204 indicates that when the U.S. Congress waived the requirements of SEC for the Native corporations, they did so with the understanding that the State would provide no less protection for the corporations' stockholders than could be provided by the SEC. Even absent congressional intent, this would be an ideal pattern for the State to use in fashioning its rules. The fifty plus years of experience accumulated by the SEC provide for a rather complete set of regulations responsive to these types of problems. The stockholders of Native corporations are no less entitled to protection from fraudulent proxy solicitations and corrupt management practices than are the stockholders of any other corporation.

Julius Brecht, Director

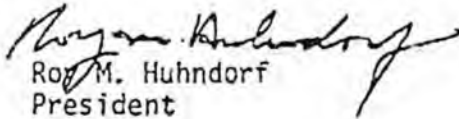
-2-

February 20, 1979

But if SEC type rules are adopted by the State, they will only be as effective as your agency's capability to carry them out. We are aware of the large commitment of personnel and money that would be required to enforce a State version of the rules as broad and detailed as those of the Securities and Exchange Commission. If the State is unable or unwilling to make such a commitment, we believe it is necessary that the congressional committees and the Security and Exchange Commission are so informed so that the necessary protection can be reinstated. We believe our experience demonstrates that anything short of SEC type regulations vigorously enforced by the State would provide inadequate protection for the stockholders of the Native corporations.

Again, we appreciate this opportunity to comment. We are prepared to further share our thoughts and submit proposed proxy rules for consideration by the State government.

Sincerely,


Roy M. Huhndorf
President

RMH:dk

cc: Morris Thompson, President, AFN

WILKINSON, CRAGUN & BARKER

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July 25, 1980

RECEIVED

AUG 01 1980

DEPARTMENT OF COMMERCE
DIVISION OF BANKING
AND SMALL BUSINESSMr. Julius J. Brecht
Administrator of Securities
Division of Banking, Securities,
Small Loans & Corporations
Department of Commerce &
Economic Development
Pouch D
Juneau, Alaska 99811Re: ANCSA - Draft of Regulations
Covering Proxy Solicitations

Dear Mr. Brecht:

On behalf of NANA Regional Corporation, Inc. ("NANA"), we will address here the July 8, 1980, draft regulations on the solicitation of proxies by certain ANCSA corporations which you sent us by letter of July 11, 1980. We appreciate the opportunity you have provided us to comment on the draft. In our view the draft represents a very good first effort. We recognize that regulations along the lines proposed would be far less cumbersome to comply with than those of the Securities and Exchange Commission. In this regard, one must keep in mind the reasons why ANCSA corporations were exempted in the first instance from the SEC laws and the SEC's extremely complex regulations and requirements. While NANA endorses any state regulations which provide the stockholders with necessary protections through disclosure, it is important that the proxy materials be allowed to remain as uncomplicated as possible. As you surely recognize, excessively long and complex disclosure documents can defeat their very purpose. Further, disclosure requirements can also be costly to comply with, and regulations intended to help a stockholder make an informed decision can have the unfortunate side effect of drastically limiting the choices available to him. There are thus certain competing interests to be considered, and we have kept these in mind in reviewing the draft.

**Bristol
Bay
Native
Corporation**

445 E. 5TH AVENUE / P.O. BOX 220 / ANCHORAGE, ALASKA 99510 / PH (907) 278-3602

January 31, 1979

Julius J. Brecht
Division of Banking, Securities,
Small Loans and Corporations
Department of Commerce and
Economic Development
State of Alaska
Pouch D
Juneau, AK 99811

RECEIVED

FEB 02 1979

DEPARTMENT OF COMMERCE
DIVISION OF BANKING
SECURITIES AND SMALL LOANS

Dear Mr. Brecht:

X [Thank you for your letter concerning regulations pursuant to Alaska Statute 45.55.139. As we previously expressed, Bristol Bay Native Corporation is very supportive of statutes or regulations which serve to protect shareholders from false or misleading statements. Generally speaking, meaningful disclosure is an extremely important goal. Of course, it must be tested by the burden involved and the ease of enforcement. In any case, it is difficult to make more specific comments without having actual drafts of proposed regulations.

As I mentioned to you on the phone, Bristol Bay Native Corporation will be publishing your suggestion in our newsletter so that any of our shareholders who wish to comment may do so. Also, as you suggested, we are presently having conversations with some of the other regional corporations to see if we can develop concise recommendations for regulations. I assure you that our not responding more specifically at the present time is not for lack of commitment to proposed regulations, but is rather a reflection of the fact that there are twelve different regional corporations to be consulted.

As soon as possible, I will submit to you more specific suggestions. Please feel free to contact me at any time.

Very truly yours,

Elizabeth Johnston

Elizabeth Johnston
General Counsel

*Don't copy letter
to meeting
to her. 2-5-79
AW*

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January 5, 1979

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 JAN 08 1979

DEPARTMENT OF COMMERCE
 DIVISION OF BANKING
 SECURITIES AND SMALL LOANS

Julius J. Brecht, Director
 Division of Banking, Securities,
 Small Loans and Corporations
 Department of Commerce & Economic Development
 Pouch D
 Juneau, Alaska 99811

Dear Mr. Brecht:

Thank you for your letter of November 27, 1978, extending an invitation to comment on the need for regulations interpreting AS 45.55.139. On behalf of Sealaska Corporation, please consider this our notice that we wish to be notified of any meetings which might be convened by the department on this subject.

Shortly after the Superior Court decision in McGarvey v. Aleut I spoke to one of your assistants. We agreed any new regulations should be drafted with an eye to that decision. * []

Very truly yours,

BIRCH, HORTON, BITTNER & MONROE

Bruce
 Bruce Monroe

BM:ms

cc: Byron I. Mallott

Why concur with Senate amendments to CSHB 486(L&C)

1. Passage of CSHB 486(L&C) preserves over \$4.5 million in annual general fund revenues and preserves the state's authority to regulate all investment advisers to assist every Alaska investor who has problems. (In the past 13 months, the Division has issued two orders each imposing \$25,000 civil fines for violations of investment adviser laws.)
2. Those revenues have been growing at a 14% annual rate, which means they could double in about 5 years.
3. 40 other states have already passed similar legislation.
4. **We have a 67-page bill before us on which both bodies agree**, except that one sentence added on the floor of the other body has raised concerns from an ANCSA regional corporation about what it might mean. And that corporation has been trying to stir up others. One sentence, and some would have us kill the bill and try again next year.
5. What is the sentence? "Regulations adopted under this section should recognize the social and economic circumstances of Shareholders and encourage maximum participation consistent with the requirements of AS 45.55.160."
6. Some say "encouraging maximum participation" is a Trojan Horse that could grant the Securities Division the ability to regulate the internal governance of Native corporations.
 - A. The Division is on record in writing that this amendment would not cause them to change their current regulations or adopt more intrusive ones.
 - B. It has been Division policy for 17 years to limit its responsibilities to proxy-materials as provided in the statute, and this amendment does not expand those responsibilities.
 - C. The Division operates under an August 4, 1982 Attorney General's letter which states, in part, "...we have concluded that the State does not have the authority to direct the corporation to repeal its own bylaws. As long as bylaws are not implemented in a way that is inconsistent with state law, a corporation is free to adopt them without interference by the state."
 - D. I point out that the sentence in question says the regulations "should" recognize and encourage..., not "shall."
 - E. I also point out that the entire sentence says the regulations should recognize and encourage... consistent with the section that deals exclusively with prohibiting the filing of misleading documents with the Division. Nothing here would expand the state's role in corporate governance. It all relates to truthful filings with the Division.
 - F. The Department of Law is on record in writing that this sentence is not expected to result in a major rewrite of current regulations or adoption of new regulations.

- G. Even if future events show the sentence is a problem after all, the legislature could deal with that without jeopardizing the securities regulation that is what HB 486 really is about.
7. Some would have us kill the bill and do it next year. That just is not acceptable.
- A. Federal law requires our statutes and regulations be changed before October 11, 1999, or lose over \$4.5 million in revenues and the ability to regulate most investment advisers. Securities regulation would be damaged and all Alaskans would suffer.
 - B. Even if a bill passed in the next session, it could be impossible to change all the regulations in time. Why take such a chance for one sentence?
 - C. Further, there is no assurance that this sentence, or maybe others, won't be placed in a bill next year, thus forever jeopardizing securities regulation and investor protection in Alaska.
8. In short, one sentence in a 67-page bill that a corporation speculates MIGHT mean the Division will insert itself into corporate governance is **not** a reason to kill this bill in light of:
- A. the loss of over \$4.5 million in annual general fund revenue that could result;
 - B. the written statement of the Division that the sentence would not cause it to alter its current regulations or adopt new ones;
 - C. the written statement of the Department of Law that the sentence would not result in a major rewrite of current regulation or adoption of new ones; and
 - D. the written August 4, 1982 Attorney General's letter, which the Division is following, which states clearly that the State does not have the authority to interfere with bylaws of the corporation that are implemented consistent with state law.
9. All this sentence says is that the regulations SHOULD recognize social and economic circumstances of Shareholders and encourage maximum participation consistent with the requirement that a person may not file a misleading document with the Division. The corporation is over-reacting and hurting every Alaska investor in the process.

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

TONY KNOWLES, GOVERNOR

PLEASE REPLY TO:

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May 9, 1998

Rep. Norman Rokeberg
Alaska State Legislature
State Capitol, Room 24
Juneau, AK 99801-1182

23-19-200-100 8010

Dear Rep. Rokeberg:

I received a request through Willis Kirkpatrick, director of the division of banking, securities, and corporations, for some analysis on the amendments to HB 486 offered by Senator Halford on the Senate floor yesterday evening.

There were three amendments. The first makes only a technical amendment acknowledging the difference between "establishing" and "enforcing" requirements relating to form and disclosure requirements for proxy statements. This amendment recognizes the different role of regulations and orders issued under them. This amendment does not seem to have sparked controversy. The third amendment simply states what is the case in any event. It requires all investigative files to be kept confidential, as they are now and as the bill would have them be. The amendment establishes an exception in the event of either administrative or judicial subpoena. This amendment too provoked no concerns.

The second amendment, however, appears to have raised considerable concern. The amendment provides an addition to AS 45.55.139(b) which amends present law to give the administrator (Commissioner of Commerce & Economic Development) the authority to adopt regulations and issue enforcement orders respecting "the disclosure and form of proxies, consents, authorizations, proxy statements, and other materials relating to proxy solicitations described in (a).]" Subsection (a), unchanged by this bill, relates to the materials which must be filed with the administrator and the conditions affecting the requirement of filing. The amendment adds the following language to the sentence quoted above:

Regulations adopted under this section should recognize the social

and economic circumstances of Shareholders and encourage maximum participation consistent with the requirements of AS 45.55.160.

AS 45.55.160, also unaffected by this legislation, prohibits the making of untrue or misleading statements, or omitting a material fact in a document filed with the administrator.

This amendment adds only language calling upon the administrator, when adopting regulations under AS 45.55.139, to take into account any impacts the regulation may have on the social and economic situations of shareholders in ANCSA corporations. Couched as "should" rather than "shall" it is more in the nature of an admonition than an imperative.

The second part of the amendment also charges the encouragement of maximum participation, presumably in the affairs of the corporations. The language of the amendment requires the addition of the latter presumption when it is not explicitly stated. This participation must be tempered by the requirement that the dictates of AS 45.55.160 be adhered to. In other words, any shareholder's involvement in corporate affairs must be free of any activity calculated to mislead others.

If this legislation is signed into law, there will undoubtedly be a need to review all existing regulations to ensure their compatibility with the new Act. It would be prudent at the same time to review all regulations affecting ANCSA corporations (and there are relatively few) with a view towards meeting the spirit and intent of the amendment. This should not be an onerous task, nor should it result in any major rewrites, nor additional regulations.

We believe this answers your questions. Should you have any further question or wish any amplification, please do not hesitate to contact the undersigned.

Very truly yours,

BRUCE M. BOTELHO
ATTORNEY GENERAL

By: 
Vincent L. Usera
Assistant Attorney General

VLU:ps

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER
HESS BUDGET SUBCOMMITTEE, MEMBER



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Representative Norman Rokeberg

Concurrence Message

CSHB 51(RLS) AM

to

SCS CSHB 51(FIN)

"An Act relating to DEC; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

CSHB 51(RLS) AM underwent a complete rewrite in the Senate Finance Committee and now contains the language that is substantially the same as HB 71 and CSSB 50(CRA).

1. Section 1. Deleted - replaced with Section 1 Findings of SB 50(CRA).
2. Section 2. Deleted - pollutant discharge
3. Section 3. Deleted - natural conditions.
4. Section 4. Deleted - water quality standards and mixing zones
5. Section 5. Reduced dollar amount of administrative penalties; simplified notice and appeal process; and court rules changed to allow either party to recover full reasonable attorney fees and costs.
6. Section 8. Deleted - review of water quality regulations.
7. NEW SECTION 2 - Provides statutory authority to enter into "compliance agreements"
8. NEW SECTION 4 - Defines compliance agreements
9. NEW DEFINITION OF ENTITY - defined as the owner or operator of a public water system
10. NEW EFFECTIVE DATE SECTIONS.

I recommend concurrence with the Senate amendments.

(REVISED 5/10/98)

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS:

LABOR & COMMERCE COMMITTEE, CHAIRMAN
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
JUDICIARY COMMITTEE, MEMBER
CORRECTIONS BUDGET SUBCOMMITTEE, MEMBER
ADMINISTRATION BUDGET SUBCOMMITTEE, MEMBER
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Representative Norman Rokeberg

SPONSOR STATEMENT

SCS CSHB 51(FIN) - "An Act relating to DEC ; amending Rules 79 and 82, Alaska Rules of Civil Procedure; and providing for an effective date."

HB 51 underwent a substantial rewrite in Senate Finance and now has the support of the Department of Environmental Conservation.

This bill sets up administrative penalties that are required by EPA that allows Alaska to retain primacy for drinking water under the federal SAFE DRINKING WATER ACT. In addition, the federal government requires each state with primacy to enact a system of administrative penalties in order to have access to federal grants for public drinking water systems.

The penalties outlined in the bill will be administered and assessed by DEC against public water systems that do not meet the guidelines of the federal SAFE DRINKING WATER ACT. The original dollar figures requested by the department have been amended. Communities with over 10,000 people will be assessed \$1,000 per day for non-compliance; \$250 per day for communities with 1,000 – 10,000 people; and \$100 per day for communities under 1,000 people.

At the request of a number of communities the department agreed to the inclusion of an informal appeal process before assessment of the penalty.

I urge your support for this bill.

(REVISED 5/1/98)

Informal summary of changes for Rules Committee hearing 4/20/98

Chairman's Notes

HB 51 -- Dept. of Environ. Conservation Water Penalties

LATEST VERSION: SCS CSHB 51(FIN)\EE

SUMMARY OF THE CHANGES to CS HB 51(RLS) am

OVERVIEW:

DRAFT
COPY

Finance REMOVED most of the material that was NOT directly applicable to maintaining state primacy for enforcement of the federal drinking water program. Also, there were some compromises on new language proposed by the sponsor that were included, and part of governor's bill was restored.

From the PRIOR version: the FINDINGS were REPLACED with Section 1 of SB 50; Section 2 dealing with "pollutant discharge" was DELETED; Section 3 dealing with "natural conditions" was DELETED; and Section 4, Water Quality Standards with "mixing zones" was DELETED. In Section 5, administrative penalties for water systems serving fewer than 10,000 people were REDUCED, the notice and appeal process was SIMPLIFIED; and the Court Rule section was MODIFIED to allow EITHER party to recover full reasonable attorney fees and costs. Section 8, calling for the review of water quality regulations was DELETED.

NEW version: Section 2 provides STATUTORY authority to enter into "compliance agreements" as defined in Section 4; both sections 2 and 4 are given an immediate effective date in Section 8; and in Section 3, dealing with Administrative Penalties, "person" was changed to "entity" and defined as "the owner or operator of a public water system."

Alaska State Senate
Twentieth Legislature
Second Session

RCS# 1158
Item 13

05-01-98
14:00:26

SCS CSHB 51 (FIN)
Third Reading - Final Passage
Effective Dates
Court Rules

Yeas:	19	Adams, Donley, Duncan, Ellis, Green, Hoffman, Kelly, Leman, Lincoln, Mackie, Miller, Parnell, Pearce, Phillips, Sharp, Taylor, Torgerson, Ward, Wilken
Nays:	1	Halford
Excused:	0	
Absent:	0	

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

APR 14 1997

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Mail Stop 3101

130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

April 14, 1997

SUBJECT: Administrative Penalties in ^{HB51} HB 71

TO: Representative Norm Rokeberg
Attn: Shirley Armstrong

FROM: Terri Lauterbach *TLauterbach*
Legislative Counsel

You have asked whether the levels set for administrative penalties under ^{HB51} HB 71 are the levels required by federal law.

The applicable federal law gives the state some discretion in setting the levels for administrative penalties. HB 71 sets levels that are probably within the state's discretion.

51

DISCUSSION

The applicable federal law, 42 U.S.C. 300g-2(a)(6), requires the state (if the state wants to keep "primacy") to

adopt authority for administrative penalties (unless the constitution of the State prohibits the adoption of the authority) in a maximum amount --

(A) in the case of a system serving a population of more than 10,000, that is not less than \$1,000 per day per violation; and

(B) in the case of any other system, that is adequate to ensure compliance (as determined by the State);

except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation.

51
HB 71 says that an administrative penalty may not exceed \$1,000 per day per violation for systems that serve more than 10,000 persons, so this level meets the requirement of subparagraph (A) in the federal law above. The federal law requires the penalty to be not less than \$1,000; HB 71 requires the penalty to be not more than \$1,000; the two requirements overlap at \$1,000, so the state would be in compliance under HB 71.
51

Representative Norman Rokeberg

April 14, 1997

Page 2

With respect to subparagraph (B) of the federal law, there is discretion for the state to set a level that is "adequate to ensure compliance." HB ~~71~~⁵¹ sets the level for smaller systems at \$750 per day per violation. I have no reason to believe that this would not be sufficient to ensure compliance, so this level probably complies with the federal requirement. It may be that even a lower number would also comply.

As you will note, the federal law also grants discretion to the state to set a maximum limit on the total administrative penalties that may be imposed per violation. HB ~~71~~ does not attempt to exercise the discretion granted under this federal provision. 51

I have enclosed a copy of the relevant federal law. Please let me know if I can be of further assistance.

TML:glc
97-246.glc

Enclosure

Public Water Systems
42 USC 300f to 300j-26
(Safe Drinking Water Act)

Primacy provision

(3) will keep such records and make such reports with respect to its activities under paragraphs (1) and (2) as the Administrator may require by regulation;

(4) if it permits variances or exemptions, or both, from the requirements of its drinking water regulations which meet the requirements of paragraph (1), permits such variances and exemptions under conditions and in a manner which is not less stringent than the conditions under, and the manner in which variances and exemptions may be granted under sections 300g-4 and 300g-5 of this title:

(5) has adopted and can implement an adequate plan for the provision of safe drinking water under emergency circumstances; *and* → (SEE SDWA Amendments)

(b)(1) The Administrator shall, by regulation (proposed within 180 days of December 16, 1974), prescribe the manner in which a State may apply to the Administrator for a determination that the requirements of paragraphs (1), (2), (3), and (4) of subsection (a) of this section are satisfied with respect to the State. the manner in which the determination is made, the period for which the determination will be effective, and the manner in which the Administrator may determine that such requirements are no longer met. Such regulations shall require that before a determination of the Administrator that such requirements are met or are no longer met with respect to a State may become effective, the Administrator shall notify such State of the determination and the reasons therefor and shall provide an opportunity for public hearing on the determination. Such regulations shall be promulgated (with such modifications as the Administrator deems appropriate) within 90 days of the publication of the proposed regulations in the Federal Register. The Administrator shall promptly notify in writing the chief executive officer of each State of the promulgation of regulations under this paragraph. Such notice shall contain a copy of the regulations and shall specify a State's authority under this subchapter when it is determined to have primary enforcement responsibility for public water systems.

§ 300g-2. State primary enforcement responsibility; regulations; notice and hearing; publication in Federal Register; applications [PHSA § 1413]

(a) For purposes of this subchapter, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b) of this section) that such State—

(1) has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 300g-1(a) and 300g-1(b) of this title;

(2) has adopted and is implementing adequate procedures for the enforcement of such State regulations, including conducting such monitoring and making such inspections as the Administrator may require by regulation;

(2) When an application is submitted in accordance with the Administrator's regulations under paragraph (1), the Administrator shall within 90 days of the date on which such application is submitted (A) make the determination applied for, or (B) deny the application and notify the applicant in writing of the reasons for his denial.

(July 1, 1944, c. 373, Title XIV, § 1413, as added Dec. 16, 1974, Pub.L. 93-523, § 2(a), 88 Stat. 1665, as amended June 19, 1986, Pub.L. 99-339, Title I, § 101(c)(2), 100 Stat. 646.)

Administrative Penalty Language

F:\MPB 1996 SDW SAFEDW.CNF

(ii) in subparagraph (C), by striking "paragraph exceeds \$5,000" and inserting "subsection for a violation of an applicable requirement exceeds \$25,000".

(4) By adding at the end the following:

"(h) CONSOLIDATION INCENTIVE. —

"(1) IN GENERAL. —An owner or operator of a public water system may submit to the State in which the system is located (if the State has primary enforcement responsibility under section 1413) or to the Administrator (if the State does not have primary enforcement responsibility) a plan (including specific measures and schedules) for—

"(A) the physical consolidation of the system with 1 or more other systems;

"(B) the consolidation of significant management and administrative functions of the system with 1 or more other systems; or

"(C) the transfer of ownership of the system that may reasonably be expected to improve drinking water quality.

"(2) CONSEQUENCES OF APPROVAL.—If the State or the Administrator approves a plan pursuant to paragraph (1), no enforcement action shall be taken pursuant to this part with respect to a specific violation identified in the approved plan prior to the date that is the earlier of the date on which consolidation is completed according to the plan or the date that is 2 years after the plan is approved.

"(i) DEFINITION OF APPLICABLE REQUIREMENT.—In this section, the term 'applicable requirement' means—

"(1) a requirement of section 1412, 1414, 1415, 1416, 1417, 1441, or 1445;

"(2) a regulation promulgated pursuant to a section referred to in paragraph (1);

"(3) a schedule or requirement imposed pursuant to a section referred to in paragraph (1); and

"(4) a requirement of, or permit issued under, an applicable State program for which the Administrator has made a determination that the requirements of section 1413 have been satisfied, or an applicable State program approved pursuant to this part."

(b) STATE AUTHORITY FOR ADMINISTRATIVE PENALTIES.—Section 1413(a) (42 U.S.C. 300g-2(a)) is amended—

(1) by striking "and" at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting "; and"; and

(3) by adding at the end the following:

"(6) has adopted authority for administrative penalties (unless the constitution of the State prohibits the adoption of the authority) in a maximum amount—

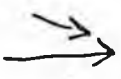
"(A) in the case of a system serving a population of more than 10,000, that is not less than \$1,000 per day per violation; and

"(B) in the case of any other system, that is adequate to ensure compliance (as determined by the State);

except that a State may establish a maximum limitation on the total amount of administrative penalties that may be imposed on a public water system per violation."

August 1, 1996 (5:17 p.m.)

SAFE DRINKING WATER ACT AMENDMENTS OF 1996





CITY OF KENAI

"Oil Capital of Alaska"

210 FIDALGO AVE., SUITE 200 KENAI, ALASKA 99611-7794
TELEPHONE 907-283-7535
FAX 907-283-3014



February 2, 1998

FEB 06 1998

The Honorable Gary Davis
Representative, State of Alaska
Interdepartmental Mail Stop: 3010, Room 513
Juneau, AK 99801-1182

Re: House Bill 71
CS for House Bill No 51 (RLS) AM

Dear Representative Davis:

In both of these bills is a provision that states:

If the Department prevails in a collection action the Court shall order the person to pay full reasonable attorney's fees and costs incurred by the Department in the collection action.

In order to level the playing field between "persons" and D.E.C., if the above language is to be used, the corollary should also be in the bills.

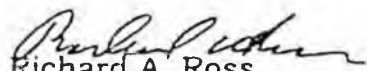
If a person prevails in defending a collection action brought by the Department, the Court shall order the Department to pay full reasonable attorney's fees and cost incurred by the person in defending the collection action.

Legal costs are a big hammer, and the ability of government to use them in a civil action by providing a statutory requirement on the court to order them should be offset by the ability of citizens, businesses and local governments to also recover them if they prevail.

Thank you for your consideration of these comments.

Sincerely,

CITY OF KENAI


Richard A. Ross
City Manager

RAR/kh

Senator Bert Sharp

State Capitol, Room 516

Juneau, AK 99801-1182

Senate Finance Committee, Co-chair



FAX TRANSMITTAL

TO: SHIRLEY FROM: HARRY
POKEBERG Senator Sharp's Juneau Office

FAX #: 2040 (907) 465-2070

PHONE #: 4954 (907) 465-3004

DATE: 4/20 PAGES: TWO

SUBJECT: HB57

Urgent Review Comment Confirm Distribute Action!!

ANY COMMENTS OR SUGGESTIONS?

[Handwritten signature]

*Revised
objection
statement*

0-LS14261A.2
Bannister
4/27/98

AMENDMENT /

OFFERED IN THE HOUSE

TO: HB 486

1 Page 44, lines 4 - 12:

2 Delete all material and insert:

3 "(C) to 10 or fewer persons who are to receive the initial
4 issue of shares of a nonpublicly traded corporation, limited liability
5 company, limited partnership, or limited liability partnership if the
6 requirements of (b)(5)(B)(ii), (iv), (v), and (vii) are met;"

*Report
noted
for discussion
no objection*

CS FOR HOUSE BILL NO. 486(L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTIETH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Securities Act; and providing for an effective**
2 **date."**

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 *** Section 1. AS 14.43.148(h)(1) is amended to read:**

5 (1) "license" [MEANS,]

6 (A) means, except as provided in (B) of this paragraph, a
7 license, certificate, permit, registration, or other authorization that, at the time
8 of issuance, will be valid for more than 150 days and that may be acquired
9 from a state agency to perform an occupation, including the following:

10 (i) license relating to boxing or wrestling under
11 AS 05.10;

12 (ii) authorization to perform an occupation regulated
13 under AS 08;

14 (iii) teacher certificate under AS 14.20;

- 1 (iv) authorization under AS 18.08 to perform emergency
2 medical services;
- 3 (v) asbestos worker certification under AS 18.31;
4 (vi) boiler operator's license under AS 18.60.395;
5 (vii) certificate of fitness under AS 18.62;
6 (viii) hazardous painting certification under AS 18.63;
7 (ix) certification as a correctional, probation, or parole
8 officer under AS 18.65.245;
- 9 (x) security guard license under AS 18.65.400 -
10 18.65.490;
- 11 (xi) license relating to insurance under AS 21.27;
12 (xii) employment agency permit under AS 23.15.330 -
13 23.15.520;
- 14 (xiii) registration as a broker-dealer, an agent, a state
15 [OR] investment adviser, or an investment adviser representative
16 under AS 45.55.030;
- 17 (xiv) certification as a pesticide applicator under
18 AS 46.03.320;
- 19 (xv) certification as a storage tank worker or contractor
20 under AS 46.03.375;
- 21 (xvi) certification as a water and wastewater works
22 operator under AS 46.30; and
- 23 (B) does not include
- 24 (i) a commercial fishing license under AS 16.05.480,
25 including a crewmember fishing license;
- 26 (ii) a vessel license issued under AS 16.05.490 or
27 16.05.530;
- 28 (iii) a license issued under AS 47.35;
29 (iv) a business license issued under AS 43.70;
30 (v) an entry permit or interim-use permit issued under
31 AS 16.43; or

1 (vi) a driver's license issued under AS 28.15;

2 * Sec. 2. AS 25.27.244(s)(2) is amended to read:

3 (2) "license"

4 (A) means, except as provided in (B) of this paragraph, a
5 license, certificate, permit, registration, or other authorization that, at the time
6 of issuance, will be valid for more than 150 days and that may be acquired
7 from a state agency to perform an occupation, including the following:

8 (i) license relating to boxing or wrestling under
9 AS 05.10;

10 (ii) authorization to perform an occupation regulated
11 under AS 08;

12 (iii) teacher certificate under AS 14.20;

13 (iv) authorization under AS 18.08 to perform emergency
14 medical services;

15 (v) asbestos worker certification under AS 18.31;

16 (vi) boiler operator's license under AS 18.60.395;

17 (vii) certificate of fitness under AS 18.62;

18 (viii) hazardous painting certification under AS 18.63;

19 (ix) security guard license under AS 18.65.400 -
20 18.65.490;

21 (x) license relating to insurance under AS 21.27;

22 (xi) employment agency permit under AS 23.15.330 -
23 23.15.520;

24 (xii) registration as a broker-dealer, an agent, a state
25 [OR] investment adviser, or an investment adviser representative
26 under AS 45.55.030;

27 (xiii) certification as a pesticide applicator under
28 AS 46.03.320;

29 (xiv) certification as a storage tank worker or contractor
30 under AS 46.03.375;

31 (xv) certification as a water and wastewater works

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operator under AS 46.30; and

(xvi) commercial crewmember fishing license under AS 16.05.480 other than an entry permit or interim-use permit under AS 16.43;

(B) does not include

(i) a vessel license issued under AS 16.05.490 or 16.05.530;

(ii) a license issued under AS 47.35;

(iii) a business license issued under AS 43.70;

(iv) an entry permit or interim-use permit issued under AS 16.43; or

(v) a driver's license issued under AS 28.15;

* Sec. 3. AS 25.27.244(s)(2), as repealed and reenacted under sec. 148(c), ch. 87, SLA 1997, is amended to read:

(2) "license"

(A) means, except as provided in (B) of this paragraph, a license, certificate, permit, registration, or other authorization that, at the time of issuance, will be valid for more than 150 days and that may be acquired from a state agency to perform an occupation, including the following:

(i) license relating to boxing or wrestling under AS 05.10;

(ii) authorization to perform an occupation regulated under AS 08;

(iii) teacher certificate under AS 14.20;

(iv) authorization under AS 18.08 to perform emergency medical services;

(v) asbestos worker certification under AS 18.31;

(vi) boiler operator's license under AS 18.60.395;

(vii) certificate of fitness under AS 18.62;

(viii) hazardous painting certification under AS 18.63;

(ix) security guard license under AS 18.65.400 -

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18.65.490;

(x) license relating to insurance under AS 21.27;

(xi) employment agency permit under AS 23.15.330 -
23.15.520;

(xii) registration as a broker-dealer, an agent, a state
[OR] investment adviser, or an investment adviser representative
under AS 45.55.030;

(xiii) certification as a pesticide applicator under
AS 46.03.320;

(xiv) certification as a storage tank worker or contractor
under AS 46.03.375; and

(xv) certification as a water and wastewater works
operator under AS 46.30;

(B) does not include

(i) a commercial fishing license under AS 16.05.480,
including a crewmember fishing license;

(ii) a vessel license issued under AS 16.05.490 or
16.05.530;

(iii) a license issued under AS 47.35;

(iv) a business license issued under AS 43.70;

(v) an entry permit or interim-use permit issued under
AS 16.43; or

(vi) a driver's license issued under AS 28.15;

* Sec. 4. AS 37.23.050 is amended to read:

Sec. 37.23.050. Investment management. The public entities participating
in an investment pool under this chapter shall provide for management of investments
in the pool by contracting for investment management and related services with

(1) a securities broker-dealer registered under AS 45.55.030 and under
15 U.S.C. 78o (Securities Exchange Act of 1934);

(2) a state [AN] investment adviser registered under AS 45.55.030 or
a federal covered adviser that has made a notice filing under AS 45.55.040(h)

1 [AND UNDER 15 U.S.C. 80b3 (INVESTMENT ADVISERS ACT OF 1940)];

2 (3) the Department of Revenue; or

3 (4) a financial institution that is a state or federally chartered
4 commercial or mutual bank, savings and loan association, or credit union if the
5 institution's [INSTITUTIONS'S] accounts are insured through the appropriate federal
6 insuring agency of the United States [,] and if the institution has trust powers under
7 state or federal law.

8 * Sec. 5. AS 45.55.010 is amended by adding a new subsection to read:

9 (b) A person may not rely on an exemption from registration under
10 AS 45.55.900 or on a security being a federal covered security to avoid the application
11 of (a) of this section.

12 * Sec. 6. AS 45.55.020(b) is amended to read:

13 (b) A state [AN] investment adviser may not enter into, extend, or renew an
14 investment advisory contract unless the contract [IT] provides in writing that

15 (1) the state investment adviser may not be compensated on the basis
16 of a share of capital gains upon or capital appreciation of the funds or a portion of the
17 funds of the client; and

18 (2) [AN ASSIGNMENT OF THE CONTRACT MAY NOT BE MADE
19 BY THE INVESTMENT ADVISER WITHOUT THE CONSENT OF THE OTHER
20 PARTY TO THE CONTRACT; AND

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

24 * Sec. 7. AS 45.55.020(c) is amended to read:

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

28 The administrator, on request, may waive the provisions of (b)(1) of this section
29 for investment advisory contracts that conform to the limitations of 15 U.S.C. 80b-
30 5 (Investment Advisers Act of 1940).

31 * Sec. 8. AS 45.55.020(e) is amended to read:

1 (e) A state [AN] investment adviser may not take or have custody of the
2 securities or funds of a client if

3 (1) the administrator, by regulation, prohibits custody; [,] or

4 (2) in the absence of regulation, the state investment adviser fails to
5 notify the administrator that the adviser has or may have custody.

6 * **Sec. 9.** AS 45.55 is amended by adding new sections to article 1 to read:

7 **Sec. 45.55.023. Unethical business practices of state investment advisers,**
8 **investment adviser representatives, and federal covered advisers.** (a) A person
9 who is a state investment adviser, investment adviser representative, or federal covered
10 adviser is a fiduciary and has a duty to act primarily for the benefit of the client. The
11 provisions of this section apply to federal covered advisers only to the extent that the
12 conduct alleged is fraudulent or deceptive under AS 45.55.010(a) or AS 45.55.020(a),
13 or to the extent otherwise provided by P.L. 104 - 290, 101 Stat. 3416 - 3440 (National
14 Securities Markets Improvement Act of 1996). While the extent and nature of the duty
15 to act primarily for the benefit of the client varies according to the nature of the
16 relationship between an investment adviser and its clients and the circumstances of
17 each case, a state investment adviser, an investment adviser representative, or a federal
18 covered adviser may not engage in dishonest or unethical business practices in the
19 investment advisory business under AS 45.55.060(a)(7), including

20 (1) recommending to a client to whom investment supervisory,
21 management, or consulting services are provided, the purchase, sale, or exchange of
22 a security without reasonable grounds to believe that the recommendation is suitable
23 for the client on the basis of information furnished by the client after reasonable
24 inquiry concerning the client's investment objectives, financial situation and needs, and
25 other information known to the state investment adviser, investment adviser
26 representative, or federal covered adviser;

27 (2) exercising discretionary power in placing an order for the purchase
28 or sale of securities for a client without obtaining written discretionary authority from
29 the client within 10 business days after the date of the first transaction placed under
30 oral discretionary authority unless the discretionary power relates solely to the price
31 at which or the time when an order involving a definite amount of a specified security

1 will be executed, or both;

2 (3) inducing trading in a client's account that is excessive in size or
3 frequency in view of the financial resources, investment objectives, and character of
4 the account if the state investment adviser, investment adviser representative, or federal
5 covered adviser can directly benefit from the number of securities transactions effected
6 in a client's account;

7 (4) placing an order to purchase or sell a security for the account of a
8 client without authority to do so;

9 (5) placing an order to purchase or sell a security for the account of a
10 client upon the instruction of a third party without first having obtained a written third-
11 party trading authorization from the client;

12 (6) borrowing money or securities from a client unless the client is a
13 financial institution engaged in the business of loaning money or the client is an
14 affiliate of the state investment adviser or federal covered adviser borrowing the money
15 or securities;

16 (7) loaning money to a client unless the state investment adviser or
17 federal covered adviser loaning the money is a financial institution engaged in the
18 business of loaning money or the client is an affiliate of the state investment adviser
19 or federal covered adviser;

20 (8) misrepresenting to an advisory client or prospective advisory client
21 the qualifications of the state investment adviser, an employee of the state investment
22 adviser, the investment adviser representative, the federal covered adviser, or an
23 employee of the federal covered adviser; misrepresenting the nature of the advisory
24 services being offered or fees to be charged for a service; or omitting to state a
25 material fact necessary to make the statements made regarding qualifications, services,
26 or fees not misleading in light of the circumstances under which the statements are
27 made;

28 (9) providing a report or recommendation to an advisory client prepared
29 by someone other than the state investment adviser, the investment adviser
30 representative, or the federal covered adviser without disclosing that the report or
31 recommendation was prepared by someone else, except that this prohibition does not

1 apply to a situation where the state investment adviser, investment adviser
2 representative, or federal covered adviser uses published research reports or statistical
3 analyses to render advice or where a state investment adviser, an investment adviser
4 representative, or a federal covered adviser orders the research reports or statistical
5 analyses in the normal course of providing service;

6 (10) charging a client an unreasonable advisory fee;

7 (11) failing to disclose to clients in writing before any advice is
8 rendered a material conflict of interest relating to the state investment adviser, federal
9 covered adviser, an employee of the state investment adviser or federal covered
10 adviser, or the investment adviser representative that could reasonably be expected to
11 impair the rendering of unbiased and objective advice, including

12 (A) compensation arrangements connected with advisory
13 services to a client if the arrangements are in addition to compensation from
14 the client for those services; and

15 (B) charging a client an advisory fee for rendering advice when
16 a commission for executing securities transactions according to that advice will
17 be received by the adviser or the employees or investment adviser
18 representatives of the adviser;

19 (12) guaranteeing a client that a specific investment result will be
20 achieved with the advice given;

21 (13) publishing, circulating, or distributing an advertisement that does
22 not comply with 17 C.F.R. 275.206(4) - 1 adopted under 15 U.S.C. 80b-1 - 80b-21
23 (Investment Advisers Act of 1940);

24 (14) disclosing the identity, affairs, or investments of a client unless
25 required by law or unless consented to by the client;

26 (15) taking action, directly or indirectly, with respect to securities or
27 funds in which a client has a beneficial interest if the state investment adviser or
28 federal covered adviser has custody or possession of the securities or funds and the
29 adviser's action does not comply with the requirements of 17 C.F.R. 275.206(4) - 2
30 adopted under 15 U.S.C. 80b-1 - 80b-2 (Investment Advisers Act of 1940);

31 (16) entering into, extending, or renewing an investment advisory

1 contract unless the contract is in writing and discloses in substance

2 (A) the services to be provided;

3 (B) the term of the contract;

4 (C) the advisory fee, the formula for computing the fee, whether
5 the fee is negotiable, and the amount of the prepaid fee to be returned in the
6 event of contract termination or nonperformance;

7 (D) whether the contract grants discretionary power to the
8 adviser; and

9 (E) that an assignment of the contract may not be made by a
10 state investment adviser without the consent of the other party to the contract;
11 in this subparagraph, "assignment" includes a direct or indirect transfer or
12 hypothecation of an investment advisory contract by the assignor or of a
13 controlling block of the assignor's outstanding voting securities by a security
14 holder of the assignor, but, if the adviser is a partnership, an assignment of an
15 investment advisory contract is not considered to result from the death or
16 withdrawal of a minority of the partners of the adviser having only a minority
17 interest in the business of the adviser, or from the admission to the adviser of
18 one or more partners who, after admission, will be only a minority of the
19 partners and will have only a minority interest in the business;

20 (17) failing, in violation of 15 U.S.C. 80b-4a (Investment Advisers Act
21 of 1940), to establish, maintain, and enforce written policies and procedures reasonably
22 designed to prevent the misuse of material nonpublic information;

23 (18) entering into, extending, or renewing an advisory contract that
24 would violate 15 U.S.C. 80b-5 (Investment Advisers Act of 1940); this paragraph
25 applies to all advisers registered or required to be registered under this chapter,
26 notwithstanding whether the adviser would be exempt from federal registration under
27 15 U.S.C. 80b-3 (Investment Advisers Act of 1940);

28 (19) including in an advisory contract a condition, stipulation, or
29 provision binding a person to waive compliance with a provision of this chapter or
30 15 U.S.C. 80b-1 - 80b-21 (Investment Advisers Act of 1940); or engaging in a practice
31 that would violate 15 U.S.C. 80b-15 (Investment Advisers Act of 1940);

1 (20) engaging in an act, a practice, or a course of business that is
2 fraudulent, deceptive, or manipulative in contravention of 15 U.S.C. 80b-6(4)
3 (Investment Advisers Act of 1940) and the rules adopted under that act,
4 notwithstanding the fact that the state investment adviser may not be registered or
5 required to be registered under 15 U.S.C. 80b-3 (Investment Advisers Act of 1940);

6 (21) engaging in conduct or an act, indirectly, through or by another
7 person, that would be unlawful for the person to do directly under this chapter or a
8 regulation adopted under this chapter;

9 (22) acting as principal for the person's own account, knowingly selling
10 a security to or purchasing a security from a client, acting as broker for a person other
11 than the client, or knowingly effecting a sale or purchase of a security for the account
12 of the client without disclosing to the client in writing before the completion of the
13 transaction the capacity in which the person is acting and without obtaining the written
14 consent of the client to the transaction; the prohibitions in this paragraph do not apply
15 to a transaction with a customer of a broker or dealer if the broker or dealer is not
16 acting as a state investment adviser or federal covered adviser in relation to the
17 transaction.

18 (b) The conduct prohibited by (a) of this section is not exclusive. Engaging
19 in other similar conduct, including nondisclosure, incomplete disclosure, or a deceptive
20 practice, is considered an unethical business practice. With respect to a state
21 investment adviser and a registered investment adviser representative of either a state
22 investment adviser or a federal covered adviser, the federal statutory and regulatory
23 provisions referred to in this section apply to the state investment adviser and the
24 registered investment adviser representative regardless of whether the federal provision
25 limits its application to state investment advisers or federal covered advisors subject
26 to federal registration. With respect to a federal covered adviser, the provisions of this
27 section apply only to the extent permitted under P.L. 104 - 290, 101 Stat. 3416 - 3440
28 (National Securities Markets Improvement Act of 1996) and only when the conduct
29 proscribed involves fraud or deceit within the meaning of AS 45.55.010(a) and
30 45.55.020(a).

31 **Sec. 45.55.025. Fraudulent, dishonest, and unethical business practices of**

1 **broker-dealers.** A broker-dealer shall observe high standards of commercial honor
2 and just and equitable principles of trade in the conduct of its business. The acts and
3 practices that are contrary to those standards and principles, that constitute dishonest
4 or unethical practices in the securities business under AS 45.55.060(a), and that are
5 grounds for imposition of administrative fines, censure, denial, suspension, revocation
6 of a registration, or other appropriate disciplinary action include

7 (1) engaging in a pattern of unreasonable and unjustifiable delays in the
8 delivery of securities purchased by the broker-dealer's customers or in the payment
9 upon request of free credit balances reflecting completed transactions of the broker-
10 dealer's customers;

11 (2) inducing in a customer's account trading that is excessive in size
12 or frequency in view of the financial resources and character of the account;

13 (3) recommending to a customer the purchase, sale, or exchange of a
14 security without reasonable grounds to believe that the transaction or recommendation
15 is suitable for the customer based on reasonable inquiry concerning the customer's
16 investment objectives, financial situation, and needs, and other relevant information
17 known by the broker-dealer;

18 (4) executing a transaction on behalf of a customer without
19 authorization to execute the transaction;

20 (5) exercising discretionary power in effecting a transaction for a
21 customer's account without first obtaining written discretionary authority from the
22 customer unless the discretionary power relates solely to the time or price for the
23 execution of orders;

24 (6) executing a transaction in a margin account without securing from
25 the customer a properly executed written margin agreement promptly after the initial
26 transaction in the account;

27 (7) failing to segregate a customer's free securities or securities held in
28 safekeeping;

29 (8) hypothecating a customer's securities without having a lien on the
30 securities unless the broker-dealer receives from the customer a properly executed
31 written consent promptly after the initial transaction, except as permitted by the rules

1 of the United States Securities and Exchange Commission;

2 (9) entering into a transaction with or for a customer at a price not
3 reasonably related to the current market price of the securities or receiving an
4 unreasonable commission or profit;

5 (10) failing to furnish to a customer purchasing securities in a
6 registered offering a final or preliminary prospectus no later than the date of
7 confirmation of the transaction and, if the prospectus is preliminary, failing to furnish
8 a final prospectus within a reasonable time after the effective date of the offering;

9 (11) charging unreasonable or inequitable fees for services performed,
10 including fees for miscellaneous services, such as the collection of money due for
11 principal, dividends, or interest, the exchange or transfer of securities, appraisals,
12 safekeeping, the custody of securities, and other services related to the broker-dealer's
13 securities business;

14 (12) offering to buy from or sell to a person a security at a stated price
15 unless the broker-dealer is prepared to purchase or sell at that price and under the
16 conditions that are stated at the time of the offer to buy or sell;

17 (13) representing that a security is being offered to a customer at
18 market price or at a price relevant to the market price unless the broker-dealer knows
19 or has reasonable grounds to believe that a market for the security exists other than
20 that made, created, or controlled by

21 (A) the broker-dealer;

22 (B) a person for whom the broker-dealer is acting or with whom
23 the broker-dealer is associated in the distribution of the security; or

24 (C) a person controlled by, controlling, or under common
25 control with the broker-dealer;

26 (14) effecting a transaction in, or inducing the purchase or sale of, a
27 security by means of a manipulative, deceptive, or fraudulent device, practice, plan,
28 program, design, or contrivance, including

29 (A) effecting a transaction in a security that does not involve
30 a change in the beneficial ownership;

31 (B) entering an order for the purchase or sale of security with

1 the knowledge that another order of substantially the same price for the sale of
2 the same security has been or will be entered by or for the same or different
3 parties for the purpose of creating a false or misleading appearance of active
4 trading in the security or a false or misleading appearance with respect to the
5 market for the security; nothing in this subparagraph prohibits a broker-dealer
6 from entering a bona fide agency cross transaction for its customers as long as
7 the cross transaction is noted on the confirmation and monthly account
8 statements;

9 (C) effecting alone or with one or more other persons a series
10 of transactions in a security creating actual or apparent active trading in the
11 security or raising or depressing the price of the security for the purpose of
12 inducing the purchase or sale of the security by others;

13 (15) guaranteeing a customer against risk or loss in a securities account
14 of the customer carried by the broker-dealer or in a securities transaction effected by
15 the broker-dealer with or for the customer;

16 (16) publishing or circulating or causing to be published or circulated
17 a notice, a circular, an advertisement, a newspaper article, an investment service, or
18 a communication of any kind that purports to

19 (A) report a transaction as a purchase or sale of a security
20 unless the broker-dealer believes that the transaction described was a bona fide
21 purchase or sale of the security; or

22 (B) quote the bid price or asked price for a security unless the
23 broker-dealer believes that the quotation represents a bona fide bid for, or offer
24 of, the security;

25 (17) making a written or oral advertising or sales presentation that is
26 in any manner deceptive or misleading, including

27 (A) distributing nonfactual data or material, or making a
28 presentation that is based on conjecture or unfounded or unrealistic claims or
29 assertions, in a brochure, flyer, or other display by words, pictures, graphs, or
30 other method designed to supplement, detract from, supersede, or defeat the
31 purpose or effect of a prospectus or disclosure;

1 (B) using supplementary material in connection with the offer
2 of a particular security if the information in the material is not consistent with
3 or adequately supported by the prospectus or is not filed as part of the
4 registration statement;

5 (C) using supplementary material not authorized by the issuer
6 in connection with the offer of a particular security when a prospectus or other
7 offering document required to be delivered in connection with the offer
8 specifically states that supplementary material is not authorized;

9 (18) failing to disclose that the broker-dealer is affiliated with the issuer
10 of a security before entering into a contract with or for a customer for the purchase or
11 sale of the security and, if the disclosure is made orally, failing to provide to the
12 customer written disclosure before the completion of the transaction;

13 (19) failing to make a bona fide offering of all of the securities allotted
14 to a broker-dealer for distribution whether acquired as an underwriter or a selling
15 group member, or from an underwriting or a selling group member participating in the
16 distribution as an underwriter or selling group member;

17 (20) failing or refusing to furnish to a customer, upon reasonable
18 request, information to which the person is entitled or failing or refusing to respond
19 to a formal written request, demand, or complaint;

20 (21) being found by a court or an administrative proceeding of
21 competent jurisdiction to have violated the anti-fraud or registration provisions of
22 federal or any state's securities laws;

23 (22) marking an order ticket or confirmation as unsolicited when, in
24 fact, the transaction was solicited;

25 (23) in connection with the solicitation of a sale or purchase of an over-
26 the-counter non-NASDAQ security, failing to provide promptly the most current
27 prospectus or the most recent periodic report filed under 15 U.S.C. 78m (Securities
28 Exchange Act of 1934), when requested to do so by a customer;

29 (24) failing to provide to a customer for a month in which activity has
30 occurred in a customer's account, but in no event less than every three months, a
31 statement of account that contains a value for each over-the-counter non-NASDAQ

1 equity security based on the closing market bid on a certain date; this paragraph
2 applies only if the broker-dealer has been a market maker in that security at any time
3 during the month in which the monthly or quarterly statement is issued;

4 (25) failing to maintain lists of persons who have informed the broker-
5 dealer that the persons do not want to be solicited;

6 (26) conducting business by telephone at unreasonable times;

7 (27) failing to disclose to a person purchasing shares of an investment
8 company on the premises of an insured depository institution that the investment is not
9 covered by the Federal Deposit Insurance Corporation; or

10 (28) failing to comply with an applicable provision of the Conduct
11 Rules of the National Association of Securities Dealers, Inc., or applicable fair
12 practices or ethical standards adopted by the United States Securities and Exchange
13 Commission or by a self-regulatory organization approved by the United States
14 Securities and Exchange Commission.

15 **Sec. 45.55.027. Fraudulent, dishonest, and unethical business practices of**
16 **agents.** An agent shall observe high standards of commercial honor and just and
17 equitable principles of trade in the conduct of the agent's business. The acts and
18 practices that are contrary to those standards and principles, that constitute dishonest
19 or unethical practices in the securities business under AS 45.55.060(a), and that are
20 grounds for imposition of administrative fines, censure, denial, suspension, revocation
21 of a registration, or other appropriate disciplinary action include

22 (1) engaging in the practice of lending to or borrowing money or
23 securities from a customer or acting as a custodian for money, securities, or an
24 executed stock power of a customer;

25 (2) effecting securities transactions not recorded on the regular books
26 and records of the broker-dealer that the agent represents unless the transactions are
27 authorized in writing by the broker-dealer before execution of the transactions;

28 (3) establishing or maintaining an account containing fictitious
29 information in order to execute transactions that would otherwise be prohibited;

30 (4) sharing directly or indirectly in profits and losses in the account of
31 a customer without the written authorization of the customer and the broker-dealer that

1 the agent represents;

2 (5) dividing or otherwise splitting the agent's commissions, profits, or
3 other compensation from the purchase and sale of securities with a person who is not
4 also registered in this state as an agent for the same broker-dealer or as a broker-dealer
5 under direct or indirect common control of the broker-dealer or agent unless the person
6 is not required to be registered in order to engage in the securities business in this
7 state;

8 (6) failing to disclose to a customer or prospective customer at the time
9 of the first contact with the customer or prospective customer the name of the principal
10 if different from the name under which the agent is doing business;

11 (7) contacting a person who has requested to be placed on a list of
12 persons who do not want to be contacted by the broker-dealer;

13 (8) conducting business by telephone at unreasonable times.

14 **Sec. 45.55.028. Fraudulent, dishonest, and unethical business practices of**
15 **broker-dealers and agents.** Acts and practices of broker-dealers or agents that are
16 considered fraudulent or deceitful acts, practices, or courses of business under
17 AS 45.55.010(a) include

18 (1) entering into a transaction with a customer with regard to a security
19 at an unreasonable price or at a price not reasonably related to the current market price
20 of the security or receiving an unreasonable commission, markup, or profit;

21 (2) contradicting or negating the importance of information contained
22 in a prospectus or other offering material with the intent to deceive or mislead or using
23 an advertising or sales presentation in a deceptive or misleading manner, including
24 using supplementary material that does not consistently reflect or is not supported by
25 information presented in prospectus or offering material required to be delivered in
26 connection with the offer;

27 (3) in connection with the offer, sale, or purchase of a security, falsely
28 misleading a customer to believe that the broker-dealer or agent possesses material,
29 nonpublic information that would affect the value of the security;

30 (4) in connection with the solicitation of a sale or purchase of a
31 security, engaging in a pattern or practice of making contradictory recommendations

1 to different investors with similar investment objectives for some to sell and others to
2 purchase the same security, at or about the same time, when not justified by the
3 particular circumstances of each investor;

4 (5) failing to make a bona fide public offering in accordance with an
5 underwriting agreement of all the securities allotted to a broker-dealer for distribution
6 by using methods such as

7 (A) transferring securities to a customer, another broker-dealer,
8 or a fictitious account with the understanding that the securities will be returned
9 to the broker-dealer or its nominees; or

10 (B) parking or withholding securities;

11 (6) with respect to transactions in securities sold in the over-the-counter
12 market other than those securities listed in the NASDAQ National Market System,

13 (A) conducting sales contests in a particular security;

14 (B) failing or refusing to promptly execute sell orders after a
15 solicited purchase by a customer;

16 (C) soliciting a secondary market transaction when there has not
17 been a bona fide distribution in the primary issuer market;

18 (D) engaging in a pattern of compensating an agent in different
19 amounts for effecting sales and purchases in the same security;

20 (7) effecting a transaction in or inducing the purchase or sale of a
21 security by means of any manipulative, deceptive, or other fraudulent device or
22 contrivance, including the use of boiler room tactics or the use of fictitious accounts;
23 in this paragraph, "boiler room tactics" includes high-pressure sales tactics that have
24 the effect of creating an artificially short period in which the investor must make a
25 decision or that are designed to overcome a customer's reluctance to make an
26 investment, including

27 (A) the use of intensive telephone campaigns or unsolicited calls
28 to persons who are not known by or who do not have an account with the
29 agent or broker-dealer and in which the person is encouraged to make a hasty
30 decision to buy without regard to the person's investment needs and objectives;

31 (B) the use of scripts designed to meet the customer's

1 objections;

2 (C) repeated phone calls;

3 (D) phone calls designed to entrap the customer;

4 (E) threatening tones on the telephone informing the customer

5 that there is little time within which to make a decision;

6 (8) failing to comply with a prospectus delivery requirement adopted
7 under federal law;

8 (9) making a false, misleading, deceptive, or exaggerated representation
9 or prediction in the solicitation or sale of a security, including a statement that

10 (A) the security will be resold or repurchased;

11 (B) the security will be listed or traded on an exchange or
12 established market;

13 (C) purchasing the security will result in an assured, immediate,
14 or extensive increase in value, future market price, or return on investment; or

15 (D) refers to the issuer's financial condition, anticipated
16 earnings, potential growth, or success;

17 (10) failing to disclose a dual agency capacity; or

18 (11) effecting a transaction on terms and conditions other than those
19 stated by the confirmation.

20 * Sec. 10. AS 45.55.030(c) is repealed and reenacted to read:

21 (c) A person may not transact business in this state as a state investment
22 adviser or an investment adviser representative unless

23 (1) the person is registered as required under this chapter; or

24 (2) the person does not have a place of business in this state and

25 (A) the person's only clients in this state are investment
26 companies as defined in 15 U.S.C. 80a-3 (Investment Company Act of 1940),
27 other state investment advisers, federal covered advisers, broker-dealers, banks,
28 trust companies, savings and loan associations, insurance companies, employee
29 benefit plans with assets of not less than \$1,000,000, governmental agencies or
30 instrumentalities whether acting for themselves or as trustees with investment
31 control, or other institutional investors that are designated by regulation or

1 order of the administrator; or

2 (B) during the preceding 12 months has not had more than five
3 clients who are residents of this state other than those specified in (A) of this
4 paragraph; in this subparagraph, the number of the person's clients shall be
5 determined under 17 C.F.R. 275.203(b)(3)-1 and 17 C.F.R. 275.222-2.

6 * Sec. 11. AS 45.55.030(d) is amended to read:

7 (d) A [EVERY] registration or notice filing expires one year from its effective
8 date unless renewed earlier.

9 * Sec. 12. AS 45.55.030 is amended by adding new subsections to read:

10 (e) Except with respect to a federal covered adviser whose only clients are
11 those described in (c)(2) of this section, a federal covered adviser may not conduct an
12 investment advisory business in this state unless the federal covered adviser complies
13 with AS 45.55.040(h).

14 (f) A person may not be registered concurrently as an agent of more than one
15 broker-dealer or issuer. The administrator may waive this requirement if the
16 administrator determines that it would not interfere with effective supervision of the
17 agent by the broker-dealer or issuer and the waiver is in the public interest.

18 (g) A person who is registered or required to be registered as a state
19 investment adviser under this chapter may not employ an investment adviser
20 representative who provides advisory services in or emanating from this state unless
21 the investment adviser representative is registered under this chapter or is exempt from
22 registration, except that the registration of the investment adviser representative is not
23 effective during any period when the representative is not employed by a state
24 investment adviser registered under this chapter.

25 (h) A federal covered adviser who has filed notice under this chapter may not
26 employ, supervise, or associate with an investment adviser representative having a
27 place of business located in this state unless the investment adviser representative is
28 registered under this chapter or is exempt from registration, except that the registration
29 of the investment adviser representative is not effective during any period when the
30 representative is not employed by a federal covered adviser.

31 (i) If an investment adviser representative terminates employment with a state

1 investment adviser or federal covered adviser, the state investment adviser or federal
2 covered adviser shall promptly notify the administrator.

3 (j) A registered broker-dealer or agent is not considered to be soliciting,
4 offering, or negotiating for the sale or selling advisory services if the registered broker-
5 dealer or agent refers, as part of a wrap fee, asset allocation, or market-timing
6 program, customers who are residents of this state to a state investment adviser or
7 federal covered adviser that is registered or has made a notice filing in this state.

8 * Sec. 13. AS 45.55 is amended by adding a new section to read:

9 **Sec. 45.55.035. Limited registration of Canadian broker-dealers and**
10 **agents.** (a) If a broker-dealer is registered under this section and its principal office
11 is located in a province or territory of Canada that provides at least equivalent
12 registration for a broker-dealer that is resident in the United States, a broker-dealer that
13 is resident in Canada and does not have an office or other physical presence in this
14 state may effect transactions in securities with or for or induce or attempt to induce
15 the purchase or sale of a security by a person from Canada who is

16 (1) temporarily resident in this state and with whom the Canadian
17 broker-dealer had a bona fide broker-dealer-client relationship before the person
18 entered the United States; or

19 (2) resident in this state and whose transactions are in a self-directed
20 tax-advantaged retirement plan in Canada of which the person is the holder or
21 contributor.

22 (b) An agent who represents a Canadian broker-dealer registered under this
23 section may, if the agent is registered under this section, effect transactions in
24 securities in this state as permitted for the broker-dealer under (a) of this section.

25 (c) Subject to the requirements in (a) of this section, a Canadian broker-dealer
26 may register under this section if the broker-dealer

27 (1) files an application in the form required by the jurisdiction in which
28 the broker-dealer has its principal office;

29 (2) files a written consent to service of process under AS 45.55.980(g);

30 (3) is registered as a broker or dealer in good standing in the
31 jurisdiction from which the broker-dealer is effecting transactions into this state and

1 files evidence of the registration; and

2 (4) is a member of a self-regulating organization or stock exchange in
3 Canada.

4 (d) An agent may register under this section in order to effect transactions in
5 securities in this state if the agent represents a Canadian broker-dealer that is registered
6 under this section, and the agent

7 (1) files an application in the form required by the jurisdiction in which
8 the broker-dealer has its principal office;

9 (2) files a written consent to service of process under AS 45.55.980(g);
10 and

11 (3) is registered and files evidence of good standing in the jurisdiction
12 from which the agent is effecting transactions into this state.

13 (e) Registration under this section becomes effective on the 30th day after an
14 application is filed unless it is made effective earlier by the administrator or a denial
15 order is in effect and a proceeding is pending under AS 45.55.060.

16 (f) A Canadian broker-dealer registered under this section shall

17 (1) maintain provincial or territorial registration and membership in
18 good standing in a self-regulating organization or stock exchange;

19 (2) provide the administrator on request with books and records relating
20 to its business in the state as a broker-dealer;

21 (3) inform the administrator promptly of any criminal action taken
22 against the broker-dealer or of any finding or sanction imposed on the broker-dealer
23 as a result of regulatory action, including that of a self-regulating organization,
24 involving fraud, theft, deceit, misrepresentation, or similar conduct; and

25 (4) disclose to its clients in this state that the broker-dealer and its
26 agents are not subject to the full regulatory requirements of this chapter.

27 (g) An agent of a Canadian broker-dealer registered under this section shall

28 (1) maintain provincial or territorial registration in good standing; and

29 (2) inform the administrator promptly of any criminal action taken
30 against the agent or of any finding or sanction imposed on the broker-dealer or agent
31 as a result of regulatory action, including that of a self-regulating organization,

1 involving fraud, theft, deceit, misrepresentation, or similar conduct.

2 (h) Renewal applications for Canadian broker-dealers and agents under this
3 section must be filed before December 1 each year and may be made by filing the
4 most recent renewal application, if any, filed in the jurisdiction in which the broker-
5 dealer has its principal office or, if a renewal application is not required, the most
6 recent application filed under (c)(1) or (d)(1) of this section.

7 (i) An applicant for registration or renewal registration under this section shall
8 pay the fee for broker-dealers and agents required by this chapter.

9 (j) A Canadian broker-dealer or agent registered under this section may not
10 effect transactions in this state except

11 (1) as permitted under (a) or (b) of this section;

12 (2) with or through

13 (A) the issuers of the securities involved in the transactions;

14 (B) other broker-dealers; or

15 (C) banks, savings institutions, trust companies, insurance
16 companies, investment companies as defined in 15 U.S.C. 80a-3 (Investment
17 Company Act of 1940), pension or profit-sharing trusts, or other financial
18 institutions or institutional buyers, whether acting for themselves or as trustees;
19 or

20 (3) as otherwise permitted by this chapter.

21 (k) A Canadian broker-dealer or agent registered under this section and acting
22 in accordance with the limitations in (j) of this section is exempt from all of the
23 requirements of this chapter except the anti-fraud provisions under AS 45.55.010 and
24 the requirements of this section. The registration of a Canadian broker-dealer or agent
25 under this section may not be denied, suspended, or revoked except in accordance with
26 the provisions of AS 45.55.060 for a breach of the anti-fraud provisions under
27 AS 45.55.010 or the requirements of this section.

28 (l) In this section, "Canadian broker-dealer" means a broker-dealer that has its
29 principal office in a province or territory of Canada.

30 * Sec. 14. AS 45.55.040(a) is amended to read:

31 (a) A broker-dealer, agent, [OR] investment adviser representative, or state

1 investment adviser may obtain an initial or renewal registration by filing with the
2 administrator or the administrator's designee an application together with a consent
3 to service of process under AS 45.55.980(g). The application must [SHALL BE
4 ACCOMPANIED BY THE FINGERPRINTS AND A PHOTOGRAPH OF THE
5 APPLICANT AND MUST] contain whatever information the administrator by
6 regulation may require [REQUIRES] concerning such matters as

7 (1) the applicant's form and place of organization;

8 (2) the applicant's proposed method of doing business;

9 (3) the qualifications and business history of the applicant; in the case
10 of a broker-dealer or state investment adviser, the qualifications and business history
11 of a partner, officer, or director, any [A] person occupying a similar status or
12 performing similar functions, or any [A] person directly or indirectly controlling the
13 broker-dealer or state investment adviser; [AND, IN THE CASE OF AN
14 INVESTMENT ADVISER, THE QUALIFICATIONS AND BUSINESS HISTORY OF
15 AN EMPLOYEE;]

16 (4) an injunction or administrative order or conviction of a
17 misdemeanor involving a security or any aspect of the securities business and any
18 conviction of a felony; [AND]

19 (5) the applicant's financial condition and history; and

20 (6) if the applicant is a state investment adviser, any information
21 to be furnished or disseminated to a client or prospective client.

22 * Sec. 15. AS 45.55.040(b) is amended to read:

23 (b) The administrator may by regulation or order require an applicant for initial
24 registration to publish an announcement of the application in one or more specified
25 newspapers published in this state. [IF NO DENIAL ORDER IS IN EFFECT AND
26 NO PROCEEDING IS PENDING UNDER AS 45.55.060, REGISTRATION
27 BECOMES EFFECTIVE AT NOON ON THE 30TH DAY AFTER AN
28 APPLICATION IS FILED. THE ADMINISTRATOR MAY BY REGULATION OR
29 ORDER SPECIFY AN EARLIER EFFECTIVE DATE, AND THE
30 ADMINISTRATOR MAY BY ORDER DEFER THE EFFECTIVE DATE UNTIL
31 NOON OF THE 30TH DAY AFTER THE FILING OF AN AMENDMENT.]

1 * **Sec. 16.** AS 45.55.040(c) is repealed and reenacted to read:

2 (c) A broker-dealer, an agent, an investment adviser representative, and a state
3 investment adviser applicant for initial or renewal registration shall pay a registration
4 fee established by the department by regulation. A person acting as a federal covered
5 adviser in this state shall pay a fee for an initial and renewal notice filing under (h)
6 of this section as required by the administrator by regulation.

7 * **Sec. 17.** AS 45.55.040(d) is repealed and reenacted to read:

8 (d) A registered broker-dealer, state investment adviser, or a federal covered
9 adviser who has filed notice under this chapter may file an application for registration
10 or notice filing, as applicable, of a successor for the unexpired portion of the year
11 regardless of whether the successor is then in existence. A broker-dealer may file a
12 request to transfer from a previous broker-dealer an agent's unexpired portion of the
13 registration if the provisions of AS 45.55.030(b) have been met. A state investment
14 adviser may file an application to transfer from a predecessor state investment adviser
15 or federal covered adviser the investment adviser representative's unexpired portion
16 of the registration. The filing fee for filing applications under this subsection shall be
17 established by the department by regulation.

18 * **Sec. 18.** AS 45.55.040(e) is repealed and reenacted to read:

19 (e) The administrator may by regulation or order require a minimum level of
20 capitalization for registered broker-dealers, subject to the limitations of 15 U.S.C. 78o
21 (Securities Exchange Act of 1934), and establish minimum financial requirements for
22 state investment advisers, subject to the limitations of 15 U.S.C. 80b-18a (Investment
23 Advisers Act of 1940). The financial requirements may differ for those state
24 investment advisers who have discretionary authority over or maintain custody of
25 clients' funds or securities and those who do not.

26 * **Sec. 19.** AS 45.55.040(f) is repealed and reenacted to read:

27 (f) The administrator may by regulation or order require registered broker-
28 dealers and agents to post a bond in an amount the administrator may prescribe subject
29 to the limitations provided in 15 U.S.C. 78o (Securities Exchange Act of 1934). The
30 administrator may determine the conditions of the bond. Any appropriate deposit of
31 cash or securities shall be accepted in place of a required bond. A bond may not be

1 required of a registrant whose net capital exceeds the amounts required by the
2 administrator. A bond must provide for suit on it by a person who has a cause of
3 action under AS 45.55.930 and, if required by the administrator by regulation, by a
4 person who has a cause of action not arising under this chapter. A bond must provide
5 that a suit may not be maintained to enforce a liability on the bond unless brought
6 within three years after the sale or other act on which it is based.

7 * Sec. 20. AS 45.55.040(g) is amended to read:

8 (g) The administrator may permit initial and renewal registration and notice
9 filings required for state investment advisers, federal covered advisers, investment
10 adviser representatives, broker-dealers, and agents under this chapter to be filed
11 with the United States Securities and Exchange Commission, the National Association
12 of Securities Dealers, or other similar authority [AUTHORITIES]. The administrator
13 may accept uniform securities examinations or other procedures designed to implement
14 a uniform national securities regulatory system or facilitate common practices and
15 procedures among the states, including participation in joint, coordinated securities
16 examinations with other states.

17 * Sec. 21. AS 45.55.040 is amended to adding new subsections to read:

18 (h) Except with respect to federal covered advisers whose only clients are
19 those described in AS 45.55.030(c)(2), a federal covered adviser shall file with the
20 administrator, before acting as a federal covered adviser in this state, those documents
21 that have been filed with the United States Securities and Exchange Commission as
22 the administrator, by regulation, by order, or otherwise, may require.

23 (i) The administrator shall by regulation or order specify procedures, fees, and
24 an effective date for registrations, notice filings under this section, transfers of agents,
25 and other registrations or notice filings allowed or required under this chapter.

26 (j) The administrator may by regulation or order require registered state
27 investment advisers who have custody of or discretionary authority over clients' funds
28 or securities to post a bond in an amount the administrator may establish subject to the
29 limitations provided in 15 U.S.C. 80b-18a (Investment Advisers Act of 1940). The
30 administrator may determine the conditions of the bond. Any appropriate deposit of
31 cash or securities shall be accepted in place of a required bond. A bond may not be

1 required of a registrant whose minimum financial condition, which may be defined by
2 regulation, or net capital exceeds the amounts required by the administrator. A bond
3 must provide for suit on it by a person who has a cause of action under AS 45.55.930
4 and, if required by the administrator by regulation, by a person who has a cause of
5 action not arising under this chapter. A bond must provide that a suit may not be
6 maintained to enforce a liability on the bond unless brought within three years after
7 the sale or other act on which it is based.

8 * Sec. 22. AS 45.55.050(a) is amended to read:

9 (a) Except as provided under 15 U.S.C. 78o (Securities Exchange Act of
10 1934), a [EVERY] registered broker-dealer [AND INVESTMENT ADVISER] shall
11 make and keep the accounts, correspondence, memoranda, papers, books, and other
12 records that the administrator establishes [PRESCRIBES BY REGULATION]. All
13 required records [SO REQUIRED] shall be preserved for three years unless the
14 administrator by regulation prescribes otherwise [FOR PARTICULAR TYPES OF
15 RECORDS].

16 * Sec. 23. AS 45.55.050(b) is repealed and reenacted to read:

17 (b) Subject to 15 U.S.C. 78o (Securities Exchange Act of 1934), a registered
18 broker-dealer shall file the financial reports the administrator requires.

19 * Sec. 24. AS 45.55.050(c) is amended to read:

20 (c) If the information contained in a document filed with the administrator is
21 or becomes inaccurate or incomplete in a material respect, the person who made the
22 filing [REGISTRANT] shall promptly file a correcting amendment unless notification
23 of the correction is given under AS 45.55.030(b). If the document is filed with
24 respect to a federal covered adviser, the amendment shall be filed when it is
25 required to be filed with the United States Securities and Exchange Commission
26 unless notification of the correction is given under AS 45.55.030(b).

27 * Sec. 25. AS 45.55.050(d) is amended to read:

28 (d) All the records referred to in [(a) OF] this section are subject at any time
29 to reasonable periodic, special, or other examinations by representatives of the
30 administrator, inside or outside this state, as the administrator considers necessary or
31 appropriate in the public interest or for the protection of investors. For the purpose

1 of avoiding unnecessary duplication of examinations, the administrator, insofar as the
2 administrator considers it practicable in administering this subsection, may cooperate
3 with the securities administrators of other states, the United States Securities and
4 Exchange Commission, and any national securities exchange or national securities
5 association registered under 15 U.S.C. 78a - 78lll ([THE] Securities Exchange Act of
6 1934).

7 * **Sec. 26.** AS 45.55.050 is amended by adding a new subsections to read:

8 (e) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), an
9 investment adviser representative or state investment adviser shall make and keep the
10 accounts, correspondence, memoranda, papers, books, and other records that the
11 administrator prescribes. All required records shall be preserved for three years unless
12 the administrator by regulation prescribes otherwise.

13 (f) The administrator may by regulation or order require that certain
14 information be furnished or disseminated by persons registered or required to be
15 registered as state investment advisers as necessary or appropriate in the public interest
16 or for the protection of investors and advisory clients. The administrator may
17 determine that certain information may be used in whole or partial satisfaction of this
18 requirement if the information complies with 15 U.S.C. 80b-1 - 80b-21 (Investment
19 Advisers Act of 1940) and the rules adopted under that act.

20 (g) Subject to 15 U.S.C. 80b-18a (Investment Advisers Act of 1940), a state
21 investment adviser shall file the financial reports the administrator prescribes.

22 (h) A state investment adviser that has its principal place of business in a state
23 other than this state and the investment adviser representatives of that state investment
24 adviser are exempt from the requirements of (e) of this section if the state investment
25 adviser is registered as an investment adviser in the state where the state investment
26 adviser has its principal place of business and is in compliance with that state's
27 requirements relating to accounts and records.

28 (i) A broker-dealer and an agent of a broker-dealer shall file with the
29 administrator only the financial reports or other information required to be filed with
30 the United States Securities and Exchange Commission under 15 U.S.C. 78a - 78lll
31 (Securities Exchange Act of 1934).

1 (j) A state investment adviser that has its principal place of business in a state
2 other than this state and the investment adviser representatives of that state investment
3 adviser shall file with the administrator only the financial reports or other information
4 required by the state in which the state investment adviser maintains its principal place
5 of business if the state investment adviser is licensed in that state and is in compliance
6 with that state's reporting requirements.

7 (k) A broker-dealer shall comply with the supervision requirements set out in
8 Conduct Rule 3010 of the National Association of Securities Dealers, Inc.

9 * Sec. 17. AS 45.55.060(a) is amended to read:

10 (a) The administrator may by order deny, suspend, or revoke a registration if
11 the administrator finds that the order is in the public interest and that the applicant or
12 registrant or, in the case of a broker-dealer or state investment adviser, a partner,
13 officer, or director, a person occupying a similar status or performing similar functions,
14 or a person directly or indirectly controlling the broker-dealer or state investment
15 adviser

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

21 (2) has wilfully or repeatedly violated or [WILFULLY] failed to
22 comply with a provision of this chapter or a regulation or order under this chapter;

23 (3) has been convicted, within the past 10 years, of a misdemeanor
24 involving a security or an aspect of the securities business [,] or a felony; in this
25 paragraph, "convicted" includes a finding of guilt based on a verdict, judgment,
26 plea of guilty, or plea of nolo contendere, if the verdict, judgment, or plea has not
27 been reversed, set aside, or withdrawn, regardless of whether sentence has been
28 imposed;

29 (4) is permanently or temporarily enjoined by a court from engaging
30 in or continuing [A] conduct or a practice involving an aspect of the securities
31 business;

1 (5) is the subject of an order of the administrator denying, suspending,
2 or revoking registration as a broker-dealer, agent, state [OR] investment adviser, or
3 investment adviser representative;

4 (6) is the subject of an order entered within the past five years by the
5 securities administrator of another state or by the United States Securities and
6 Exchange Commission denying or revoking registration as a broker-dealer, agent, state
7 [OR] investment adviser, investment adviser representative, or the substantial
8 equivalent of those terms as defined in this chapter, or is the subject of an order of the
9 United States Securities and Exchange Commission suspending or expelling the
10 person from a national securities exchange or national securities association registered
11 under 15 U.S.C. 78a - 78III ([THE] Securities Exchange Act of 1934), or is the
12 subject of a United States Post Office fraud order; but the administrator may not

13 (A) institute a revocation or suspension proceeding under this
14 paragraph more than one year from the date of the order relied on; and

15 (B) enter an order under this paragraph on the basis of an order
16 under another state act unless that order was based on facts that [WHICH]
17 would currently constitute a ground for an order under this section;

18 (7) has engaged in dishonest or unethical practices or conduct in the
19 securities or investment advisory business;

20 (8) is insolvent, [EITHER] in the sense that liabilities exceed assets,
21 [OR IN THE SENSE] that the person cannot meet obligations as they mature, or that
22 the person cannot continue in business safely for the customers of the applicant
23 or registrant, [;] but the administrator may not enter an order against a broker-dealer
24 or state investment adviser under this paragraph [CLAUSE] without a finding of
25 insolvency as to the broker-dealer or state investment adviser; [OR]

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

29 (10) has failed to comply with the requirements of AS 45.55.050 to
30 make, keep, or produce records required by the administrator, or to file financial
31 reports or other information the administrator by regulation or order may

1 **require: or**

2 **(11) is a person whose license renewal is denied under AS 14.43.148**
3 **or whose license issuance or renewal is denied under AS 25.27.244.**

4 * Sec. 28. AS 45.55.060(b) is amended to read:

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

8 (1) has failed reasonably to supervise agents if the applicant or
9 registrant is a broker-dealer, or **has failed reasonably to supervise employees and**
10 **investment adviser representatives** if the applicant or registrant is **a state** [AN]
11 investment adviser; or

12 (2) has failed to pay the proper filing fee; but the administrator may
13 enter only a denial order under this **paragraph** [CLAUSE], and the administrator shall
14 vacate the order when the deficiency is corrected.

15 * Sec. 29. AS 45.55.060(d) is amended to read:

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

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

19 (A) the broker-dealer if the broker-dealer is an individual; or

20 (B) an agent of the broker-dealer;

21 (2) the administrator may not enter an order against **a state** [AN]
22 investment adviser on the basis of the lack of qualification of **a** [ANY] person other
23 than

24 (A) the **state** investment adviser if the **state** investment adviser
25 is an individual; or

26 (B) **an investment adviser representative** [ANOTHER
27 PERSON] who represents the **state** investment adviser in doing any of the acts
28 **that** [WHICH] make the **state** investment adviser **a state** [AN] investment
29 adviser;

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

1 both;

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

5 (5) the administrator shall consider that a state [AN] investment adviser
6 is not necessarily qualified solely on the basis of experience as a broker-dealer or
7 agent; if [WHEN] the administrator finds that an applicant for initial or renewal
8 registration as a broker-dealer is not qualified as a state [AN] investment adviser, the
9 administrator may by order condition the applicant's registration as a broker-dealer
10 upon the applicant's not transacting business in this state as a state [AN] investment
11 adviser;

12 (6) the administrator may by regulation provide for an examination,
13 which may be written or oral or both, to be taken by any class of or all applicants,
14 including applicants for registration as investment adviser representatives, if [AS
15 WELL AS PERSONS WHO REPRESENT OR WILL REPRESENT AN
16 INVESTMENT ADVISER IN DOING ANY OF THE ACTS WHICH MAKE THE
17 INVESTMENT ADVISER AN INVESTMENT ADVISER, PROVIDED THAT]
18 examinations required by this paragraph are not required of a registrant under this
19 chapter who was doing business in this state and was a resident of this state on May 9,
20 1959.

21 * Sec. 30. AS 45.55.060(f) is amended to read:

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

28 * Sec. 31. AS 45.55.060(g) is amended to read:

29 (g) Withdrawal from registration as a broker-dealer, agent, state investment
30 adviser, or investment adviser representative becomes effective 30 days after receipt
31 of an application to withdraw or within a shorter period of time as the administrator

1 may determine, unless a revocation or suspension proceeding is pending when the
2 application is filed or a proceeding to revoke or suspend or to impose conditions upon
3 the withdrawal is instituted within 30 days after the application is filed. If a proceeding
4 is pending or instituted, withdrawal becomes effective at the time and upon the
5 conditions as the administrator by order determines. If a [NO] proceeding is not
6 pending or instituted and withdrawal automatically becomes effective, the administrator
7 may nevertheless institute a revocation or suspension proceeding under (a)(2) of this
8 section within one year after withdrawal is effective and enter a revocation or
9 suspension order as of the last date on which registration was effective.

10 * Sec. 32. AS 45.55.070 is amended to read:

11 **Sec. 45.55.070. Registration requirement.** A person may not offer or sell a
12 security in this state unless

13 (1) it is registered under this chapter; [OR]

14 (2) the security or transaction is exempted under AS 45.55.900; or

15 (3) it is a federal covered security.

16 * Sec. 33. AS 45.55 is amended by adding a new section to read:

17 **Sec. 45.55.075. Federal covered securities.** (a) Unless otherwise exempt
18 under AS 45.55.900, a security that is a federal covered security under 15 U.S.C.
19 77r(b)(2), as amended (Securities Act of 1933), may only be offered for sale and sold
20 into, from, or within the state upon the administrator's receipt of

21 (1) a copy of the registration statement filed by the issuer with the
22 United States Securities and Exchange Commission, or in place of the registration
23 statement, the Uniform Investment Company Notice Filing Form adopted by North
24 American Securities Administrators Association, Inc., or a similar notice filing form;

25 (2) a consent to service of process signed by the issuer; and

26 (3) a notice filing fee as prescribed by the administrator for a notice
27 filing under this section and, if necessary to compute the fee, a report of the value of
28 the federal covered securities offered or sold in this state.

29 (b) A notice filing under this section may be renewed by filing, before the
30 expiration of an effective notice filing, a renewal notice and filing fee as prescribed
31 by the administrator, and, if necessary to compute the fee, a report of the value of the

1 federal covered securities offered or sold in this state. A renewal notice filing is
2 effective on the expiration date of the previous notice filing.

3 (c) A notice filing under this section may be amended as provided by the
4 administrator by regulation or order. A notice filing may be terminated by an issuer
5 upon providing the administrator with notice of the termination.

6 (d) With respect to a security that is a covered security under 15 U.S.C.
7 77r(b)(4)(D), as amended (Securities Act of 1933), the administrator, by regulation or
8 otherwise, may require the issuer to file a notice on United States Securities and
9 Exchange Commission's Form D and a consent to service of process signed by the
10 issuer no later than 15 days after the first sale of a covered security in this state and
11 a fee established by the administrator for a notice filing under this section.

12 (e) The administrator, by regulation or order, may require the filing of any
13 document filed with the United States Securities and Exchange Commission under 15
14 U.S.C. 77a - 77bbbb, as amended (Securities Act of 1933), with respect to a covered
15 security under 15 U.S.C. 77r(b)(3) or (4), as amended (Securities Act of 1933).

16 (f) The administrator may issue a stop order suspending the offer and sale of
17 a federal covered security, except a federal covered security under 15 U.S.C. 77r(b)(1),
18 as amended (Securities Act of 1933), if the administrator finds that

19 (1) the order is in the public interest; and

20 (2) there is a failure to comply with a condition established under this
21 section.

22 (g) The administrator, by regulation or order, may waive any or all of the
23 provisions of this section.

24 * Sec. 34. AS 45.55.090(b) is amended to read:

25 (b) A registration statement under this section must contain the following
26 information and be accompanied by the following documents in addition to the
27 information specified in AS 45.55.110(c) and the consent to service of process required
28 by AS 45.55.980(g):

29 (1) one copy of the latest form of prospectus filed under 15 U.S.C. 77a
30 - 77bbbb ([THE] Securities Act of 1933);

31 (2) if the administrator requires, copies of the articles of incorporation

1 and bylaws, or their substantial equivalent, currently in effect; a copy of an agreement
2 with or among underwriters; a copy of an indenture or other instrument governing the
3 issuance of the security to be registered; and a specimen or copy of the security;

4 (3) if the administrator requests, any other information, or copies of any
5 other documents, filed under 15 U.S.C. 77a - 77hbbb ([THE] Securities Act of 1933);
6 and

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

12 * Sec. 35. AS 45.55.110(a) is amended to read:

13 (a) A registration statement or a notice filing under AS 45.55.075 may be
14 filed by the issuer, another person on whose behalf the offering is to be made, or a
15 registered broker-dealer.

16 * Sec. 36. AS 45.55.110(b) is amended to read:

17 (b) A [EVERY] person filing a registration statement or a notice filing under
18 AS 45.55.075 shall pay a filing fee and a registration or notice filing fee in amounts
19 established by the department by regulation. If [WHEN] a registration statement is
20 withdrawn before the effective date or a pre-effective stop order is entered under
21 AS 45.55.120, the administrator shall retain the filing fee. If a notice filing is
22 withdrawn before the effective date, the administrator shall retain the notice filing
23 fee.

24 * Sec. 37. AS 45.55.110(c) is amended to read:

25 (c) A [EVERY] registration statement must specify

26 (1) the amount of securities to be offered in this state;

27 (2) the states in which a registration statement or similar document in
28 connection with the offering has been or is to be filed; and

29 (3) an adverse order, judgment, or decree entered in connection with
30 the offering by the regulatory authorities in each state or by any court or the United
31 States Securities and Exchange Commission.