

ALASKA LEGISLATURE COMMITTEE FILES

1997-1998

8672

9647 SENATE LABOR & COMMERCE

**Section 55**

**Section 45.55.930(g)**

Language added to clarify that violations referenced in subsection (g) mean violations of AS 45.55.

Old law was not clear.

**Section 56**

**Section 45.55.930(j)-(k)**

New subsection (j) is added to allow a buyer to sue if the buyer accepted a rescission offer and has not been paid. New subsection (k) is added to make it clear to those reading AS 45.55.930 that a rescission offer is an offer of a security subject to registration, unless exempt from registration under AS 45.55.900, as provided in the new exemption at AS 45.55.900(b)(19).

Old law did not mention what happens if a rescission offer is made and accepted but not paid, and it did not specifically state that a rescission offer is an offer under the Act.

**Section 57**

**Section 45.55.935(a)**

Subsection (a)(1) is amended to clarify that orders dealing with proxy rule violations are covered by this section, and (a)(2) adds investment adviser representatives.

Old law only covered persons who filed a notice of intention to sell securities, and did not mention investment adviser representatives.

**Section 58 (Part)**

**Section 45.55.950(a)**

Language is added to include notice filings and adoption of policies. This allows the administrator to adopt policies adopted by NASAA to promote uniformity among states.

Old law did not mention policies or notice filings.

**Section 59 (Part)**

**Section 45.55.950(b)**

Language added to include adoption of policies and cooperation with other states, self-regulatory organizations, and the SEC to promote broader uniformity among the states.

Old law did not refer to policies, notice filings, or self-regulatory organizations, and uniformity was limited to form and content of registration statements and applications.

**Section 61**

**Section 45.55.950(d)**

Subsection (d) is amended to include policies so that persons may rely on adopted policies without fear of liability should they be later amended or rescinded.

Old law does not include policies.

**Section 64**

**Section 45.55.970(e)**

Subsection (e) is amended to clarify that, in accordance with current policy and practice, the administrator may require a fee to be submitted along with requests for interpretative opinions.

Old law does not explicitly state a fee is required.

**Section 67**

**Section 45.55.980(c)**

Subsection (c)(5) is amended to include limited liability companies and limited liability partnerships to clarify the jurisdiction of the Act, in accordance with current policies and practice.

Old law did not include those relatively new entities.

**Section 71**

**Section 45.55.990(3)**

Subsection (3)(E) is amended to make de minimis exemption more workable by focusing on solicited trades and not just offers.

Old law based on offers which are difficult to trace.

**Section 72**

**Section 45.55.990(9)**

Subsection (9) is amended to add these relatively new entities to the definition of person.

Old law did not include these newer entities in the definition.

**Section 74**

**Section 45.55.990(12)**

Subsection (12) is amended to clarify a potential confusion between AS 45.55 and AS 45.08.

Old law did not contain this clarifying language.

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## Comments On Sections Of CS HB 486(L&C)

### Overview

The National Securities Markets Improvement Act (NSMIA), enacted on October 11, 1996, resulted in significant changes to the regulatory landscape of securities markets and people who sell securities or give investment advice.

By preempting certain securities and investment advisers from state registration, NSMIA would result in a loss of annual fee revenue for the State of Alaska of more than \$4 million, unless Alaska adopts the changes described below to preserve its revenues through notice filings and fees, which are allowed by NSMIA. These fees are our primary source of fee revenue available for regulation of securities and investor protection. Without these changes, in addition to losing significant revenue, the State will be hampered significantly in its ability to protect investors from abusive practices of those who provide investment advice.

In particular, NSMIA created a new security, the Federal Covered Security (FCS), which is preempted from the registration requirements of the states. While some FCSs were already exempt from registration under the Alaska Securities Act (the Act), the largest impact of NSMIA in Alaska was the preemption of mutual fund and Regulation D 506 securities registrations. These securities may no longer be registered by Alaska, but Alaska may require the issuers of these securities to file a notice and pay a notice fee in order to sell the security in this state. NSMIA requires states to change their statutes and regulations to provide for these notice filings and notice fees before October 1999, however, in order to preserve the state's ability to require notices and collect fees.

NSMIA also changed the regulatory landscape for broker-dealers and their agents, and for investment advisers and their investment adviser representatives. For example, states may no longer impose certain financial requirements for broker-dealers that are different from those imposed by the United States Securities and Exchange Commission (SEC). More significantly, however, NSMIA ended the dual registration requirements for investment advisers by creating Federal Covered Advisers (FCAs), essentially investment advisers with more than \$25-30 million under management. These FCAs are now registered only with the SEC, while smaller investment advisers, we call State Investment Advisers (SIAs), continue to register with the states. Like FCSs described above, however, FCAs may be required to file notice and pay fees for providing investment advisory services in Alaska, and FCAs remain subject to the anti-fraud provisions of the Act.

Additional language is needed in our Act for SIAs registered with the states because those SIAs are no longer subject to some of the rules of the SEC as they were prior to NSMIA. Further, additional language is needed to specifically license Investment Adviser Representatives (IARs). These are essentially equivalent to agents of broker-dealers. In the past, we have licensed them based on the fact that they met the statutory definition of an investment adviser. NSMIA, however, provided that the SEC would define IARs and

further provided that the states could register IARs of FCAs, if those IARs have a place of business in the state. Thus, it becomes important to treat IARs of SIAs and FCAs more like agents of broker-dealers.

Many of the changes described below are made to bring the Act into conformity with NSMIA and to preserve the ability of the state to provide investor protection for Alaskans and to continue to collect the fees from market participants who seek to provide various investment services to Alaskans. Much of the language proposed in these changes was developed by the North American Securities Administrators Association (NASAA) in order to promote uniformity among states, a major policy of the Act. For the same reason, some other changes are suggested to conform with language adopted by NASAA and essentially similar to that used in other states.

Finally, the language in the Act needs to be flexible enough to adapt to changing conditions in this new environment. In particular, since the SEC now has the authority to define FCSs and IARs, for example, the state's definitions of those have to be able to quickly reflect those changes, or be subject to playing catch up with each revision. NSMIA has made it imperative for states to take into consideration what the federal government and other states are doing in the regulation of securities markets participants.

We have received letters of support for the legislative changes described below from the Investment Company Institute (ICI), the major association for the mutual fund industry, and from the Investment Counsel Association of America, Inc. (ICAA), the major association for investment advisers. These organizations represent the market participants most affected by the changes required in our Act by NSMIA.

#### **Section 1**

##### **Section 14.43.148(h)(1)**

Adds state investment advisers and their representatives to list of those whose license may be revoked for defaulting on a state student loan.

Old law did not specify state-registered investment advisers or their representatives.

#### **Sections 2 and 3**

##### **Section 25.27.244(s)(2)**

Adds state investment advisers and their representatives to list of those whose license may be revoked for noncompliance with child support enforcement requirements.

Old law did not specify state-registered investment advisers or their representatives.

**Section 4**

**Section 37.23.050**

Adds registered state investment advisers and noticed federal covered advisers to list of those entities that can contract to manage investment pools of public entities.

Old law did not differentiate between state investment advisers and federal covered advisers.

**Section 5**

**Section 45.55.010**

Provides that neither exemption by statute nor preemption by NSMIA will exempt a person from this anti-fraud provision.

Old law did not mention preempted federal covered securities.

**Section 6**

**Section 45.55.020(b)**

These restrictions on contracts are limited to state investment advisers since federal covered advisers are covered by SEC rules. Section 2 deleted since covered by new section 45.55.023(a)(16)(E).

Old law did not mention state investment advisers and federal covered advisers.

**Section 7**

**Section 45.55.020(c)**

Certain state investment adviser contracts may be allowed if they conform to the requirements of Section 205 of the Investment Advisers Act of 1940.

Old law prohibited all contracts based on capital appreciation.

**Section 8**

**Section 45.55.020(e)**

These restrictions on custody are limited to state investment advisers since federal covered advisers are covered by SEC rules.

Old law did not mention state investment advisers and federal covered advisers.

**Section 9**

**Section 45.55.023, 45.55.025, 45.55.027, and 45.55.028**

New sections are added providing investor protection from unethical business practices by persons providing investment advisory and securities business services.

Old law did not contain these provisions since we could rely on SEC rules for advisers, and broker-dealers and agents were covered in our regulations at 3 AAC 08.060 and 061.

**Section 10**

**Section 45.55.030(c)**

Registration limited by NSMIA to state investment advisers and investment adviser representatives, and registration exemptions inserted here rather than in definition section.

Old law did not mention investment adviser representatives, and registration exceptions were treated as exclusion from definition.

**Section 11**

**Section 45.55.030(d)**

Adds reference to notice filings as required by NSMIA so that both registrations and notice filings expire in one year.

Old law did not provide for notice filings.

**Section 12**

**Section 45.55.030(e)-(j)**

New sections require federal covered advisers to file notices (e), and investment advisers to hire registered representatives (g)-(i); also, allow agents to do wrap accounts without registration as investment adviser representatives (j); and prohibit agents from dual registration (f).

Old law did not mention federal covered advisers, notice filings, or investment adviser representatives, and dual registration was part of current regulations.

**Section 13**

**Section 45.55.035**

New section to Uniform Securities Act to provide for reciprocal limited registration of Canadian and US broker-dealers and their agents to serve existing customers.

Old law does not provide for anything less than full registration, limiting the ability of Canadian and US broker-dealers to serve clients temporarily located outside their registered locations.

**Section 14**

**Section 45.55.040(a)**

Provides for the registration of state investment advisers and investment adviser representatives as permitted by NSMIA, deleting fingerprint and photograph requirements, and allowing filing of promotional materials.

Old law did not mention state investment advisers or investment adviser representatives.

**Section 15**

**Section 45.55.040(b)**

Language describing effectiveness dates of registration is deleted since the Division plans to include this language in its regulations.

Old law contained effectiveness language.

**Section 16**

**Section 45.55.040(c)**

Separately provides for registration and notice fees as required by NSMIA to preserve the State's fee base.

Old law did not provide for notice fees.

**Section 17**

**Section 45.55.040(d)**

Language is added allowing state and federal covered advisers the same rights to transfer their representatives from a predecessor advisory business broker-dealers have for agents.

Old law did not mention federal covered advisers or investment adviser representatives, and advisers did not have same rights as broker-dealers regarding successors.

**Section 18**

**Section 45.55.040(e)**

Makes language more flexible to adapt to NSMIA, under which states are restricted in their ability to impose financial requirements on broker-dealers, and state and federal covered advisers.

Old law required bonding and other requirements now prohibited by NSMIA.

**Section 19**

**Section 45.55.040(f)**

Makes language more flexible to adapt to NSMIA, under which states are restricted in their ability to require bonds of broker-dealers, and state and federal covered advisers.

Old law required bonding now largely prohibited by NSMIA.

**Section 20**

**Section 45.55.040(g)**

Provide for notice filings to preserve the State's fee base, and promotes uniformity in filing and securities examinations.

Old law did not provide for notice filings nor mention coordinated examinations.

**Section 21**

**Section 45.55.040(h)-(j)**

Subsection (h) provides for notice filings for federal covered advisers to preserve the State's fee base; subsection (i) provides authority to adopt regulations for fees and other procedures; and subsection (j) provides authority to require certain state investment advisers to post bonds.

Old law did not provide for notice filings or flexibility in bonding requirements, both required by NSMIA.

**Section 22**

**Section 45.55.050(a)**

Section now applies only to broker-dealers, and, pursuant to NSMIA, states may not impose books and records requirements in addition to those imposed by the SEC.

Old law included investment advisers, now covered new section, AS 45.55.050(e).

**Section 23**

**Section 45.55.050(b)**

Makes language more flexible to adapt to NSMIA which limits the financial reporting requirements of states for broker-dealers.

Old language included investment advisers, now covered new section, AS 45.55.050(g).

**Section 24**

**Section 45.55.050(c)**

Language added to require notice filers to update filed material.

Old law did not mention notice filers.

**Section 25**

**Section 45.55.050(d)**

Language added to clarify that the Division may inspect records at any time.

Old law did not clearly state inspections may come at any time.

**Section 26**

**Section 45.55.050(e)-(k)**

Sections added:

(1) to require state investment advisers, located in this state (h), and investment adviser representatives to keep records (e) and file them with the state (g) as allowed by NSMIA (j);

(2) to allow administrator to require state investment advisers to furnish information to the public (f);

(3) to require broker-dealers and agents to file NSMIA-allowed reports (i); and

(4) to require broker-dealers to comply with NASD supervision requirements (k).

Old law did not mention state investment advisers and investment adviser representatives, nor provide for limitations on filing requirements included in NSMIA, nor include language regarding broker-dealer supervision.

**Section 27**

**Section 45.55.060(a)**

Language added

- (1) to exclude federal covered advisers (a);
- (2) to make repeated violations of the Act a basis for administrative action (a)(2);
- (3) to clarify the definition of "convicted" (a)(3);
- (4) to include actions against investment adviser representatives (a)(5) and (a)(6);
- (5) to include dishonest or unethical conduct and to include the investment advisory business (a)(7);
- (6) to broaden insolvency to include lack of safety to customers (a)(8);
- (7) to provide authority to take action against a person who fails to maintain and produce required records (a)(10); and
- (8) to provide authority to take action against persons who default on a student loan or do not comply with child support enforcement laws (a)(11).

Old law did not include state investment advisers and did not refer to the advisory business, nor provide for actions based on AS 14.43 or AS 25.27, but it did require violations of the Act to be wilful to be actionable under this section.

**Section 28**

**Section 45.55.060(b)**

Adds supervision of investment adviser representatives by state investment advisers as basis for administrative action.

Old law did not mention investment adviser representatives or state investment advisers.

**Section 29**

**Section 45.55.060(d)**

Language added to exclude actions against federal covered advisers, and to provide for examinations of investment adviser representatives.

Old law did not mention state investment advisers, federal covered advisers, or investment adviser representatives.

**Section 30**

**Section 45.55.060(f)**

Adds state investment adviser and investment adviser representatives to paragraph dealing with cancellation of a registration or application.

Old law did not mention state investment advisers, federal covered advisers, or investment adviser representatives.

**Section 31**

**Section 45.55.060(g)**

Adds state investment adviser and investment adviser representatives to paragraph dealing with withdrawal of a registration.

Old law did not mention state investment advisers, federal covered advisers, or investment adviser representatives.

**Section 32**

**Section 45.55.070**

Adds a new type of security created by NSMIA, the federal covered security.

Old law did not mention federal covered securities.

**Section 33**

**Section 45.55.075**

Added to provide for the filing of notices and payment of fees with respect to certain federal covered securities, essentially mutual funds and Regulation D 506 securities, to preserve the State's fee base under NSMIA.

Old law did not mention federal covered securities or notice filings.

**Section 34**

**Section 45.55.090**

Clarifies the SEC is the United States Securities and Exchange Commission.

Old law did not specify that the SEC is the US SEC.

**Section 35**

**Section 45.55.110(a)**

Adds notice filings for federal covered securities created by NSMIA.

Old law did not mention federal covered securities or notice filings.

**Section 36**

**Section 45.55.110(b)**

Adds notice filing fees for federal covered securities to preserve the State's fee base, as allowed by NSMIA.

Old law did not provide for notice filing fees.

**Section 37**

**Section 45.55.110(c)**

Clarifies the SEC is the United States Securities and Exchange Commission.

Old law did not specify that the SEC is the US SEC.

**Section 38**

**Section 45.55.110(d)**

Adds reference to notice filings to incorporate documents by reference.

Old law did not mention notice filings.

**Section 39**

**Section 45.55.110(e)**

Adds reference to notice filings to section dealing with omission of information by permission.

Old law did not mention notice filings.

**Section 40**

**Section 45.55.110(i)**

Adds reference to notice filings for federal covered securities and provides that they may have automatic extension of effectiveness for additional year if the fee reflects that extension.

Old law does not mention federal covered securities, and does not explicitly describe the two-year effectiveness of mutual fund filings.

**Section 41**

**Section 45.55.110(k)**

Adds reference to notice filings and provides for amendments to those filings if the fee structure is based on dollar amount of securities offered.

Old law referred to registrations and not to notice filings.

**Section 42**

**Section 45.55.139**

Adds reference to the administrator's designee as provided in the current definition of "administrator" at AS 45.55.990, allowing the administrator to remain at arms' length.

Old law did not mention the administrator's designee.

**Section 43**

**Section 45.55.139(b)**

New subsection (b) clarifies that the administrator may establish regulations and enforce the proxy rules which are currently in place.

Old law does not explicitly state the administrator's authority to establish and enforce certain requirements.

**Section 44**

**Section 45.55.150**

Allows the administrator to establish requirements for specified sales literature and not just for the filing of the literature, excluding persons or securities exempted by NSMIA.

Old law did not mention federal covered securities, state investment advisers, or federal covered advisers, or limit filing requirements to those allowed by NSMIA.

**Section 45**

**Section 45.55.170**

Subsection (a) is amended to cover notice filings for federal covered advisers and federal covered securities, and subsection (b) adds corporations and shareholders of corporations meeting the requirements of AS 45.55.139 to those prohibited from making unlawful representations about filing.

Old law did not mention notice filings, and did not refer to qualifying ANCSA corporations and their shareholders as filers.

**Section 46**

**Section 45.55.900(a)**

(1) Subsection (a) is amended to include exemption from notice filing requirements of federal covered securities.

Old law did not mention federal covered securities.

(2) Subsection (a)(1) is amended to include US territories and the District of Columbia in order to update this exemption to the current uniform language.

Old law did not include US territories and the District of Columbia in this exemption.

(3) Subsection (a)(3) is amended to cover any security issued or guaranteed by a bank or other issuer listed in the subsection and not only a security representing an interest in or debt of the issuer. In addition, obligations of a federal reserve bank are explicitly added to the exemption.

Old law limited the issued security to interests in or debts of the issuer, and did not mention federal reserve banks.

(4) Subsection (a)(4) is amended to expand the types of short-term debt securities that are covered by the exemption from commercial paper to other types of securities that are also eligible for discount by a federal reserve bank.

Old law on covered commercial paper.

(5) Subsection (a)(5) is amended to reflect a provision in NSMIA which excluded certain plans from the definition of an investment company if the assets were used exclusively for the benefit of the beneficiaries, thus putting these plans on the same footing as similar employee benefit plans covered by this exemption.

Old law did not include plans allowed by NSMIA.

(6) Subsection (a)(10) is amended to update the names of stock exchanges and to add the Philadelphia Stock Exchange, which has been accepted by the administrator as having sufficiently high financial standards to be comparable to other exchanges currently covered by the exemption.

Old law did not include the Philadelphia Stock Exchange.

(7) Subsection (a)(11) is amended to include securities of funds excluded from the definition of an investment company. This was added by the Philanthropy Protection Act of 1995 to include pooled funds of charitable organizations. Without this amendment the subsection would not comply with the Philanthropy Protection Act of 1995.

Old law did not include funds exempted by the Philanthropy Protection Act of 1995.

(8) A new subsection (a)(13) is added to provide an exemption from registration of securities issued in connection with the acquisition of a bank by a holding company under specified circumstances which require the holding company to be substantially equivalent to a bank. This amendment puts holding company acquisitions on an equal footing with the current exemption at (a)(3).

Old law did not provide an exemption for a bank holding company to acquire a bank under these limiting circumstances.

**Section 47**

**Section 45.55.900(b)**

(1) Subsection (b) is amended to include exemption from notice filing requirements of federal covered securities.

Old law did not mention federal covered securities.

(2) Subsections (b)(5)(A)(ii) and (b)(5)(B)(iii) have been increased by 50% to \$150,000 and \$750,000 respectively partially to account for inflation without posing a public problem.

Old law limits the exemptions to \$100,000 and \$500,000, respectively.

(3) New subsection (b)(5)(C) is added as a self-executing exemption, without a dollar limitation, to cover initial issuance of securities to up to 10 persons while maintaining disclosure requirements and commission restrictions for investor protection.

Old law requires such persons to register, seek another exemption, or obtain a no-action letter from the Division to avoid violating the Alaska Securities Act.

(4) New subsection (b)(5)(D) is added as a self-executing exemption, without a dollar limitation, for an issuer who sells a business and its assets and liabilities to a buyer, when the transfer of stock is solely incidental to the sale of the business.

Old law requires such persons to register, seek another exemption, or obtain a no-action letter from the Division to avoid violating the Alaska Securities Act.

(5) Subsection (b)(9) is amended to exclude promoters or controlling persons from claiming this exemption and escaping a registration requirement altogether after using the new exemption at (b)(5)(C).

Old law does not make it clear that a "nonissuer" is not a "promoter" or "controlling person."

(6) Old subsection (b)(10) is repealed and replaced by new (b)(17), adopting the new language for the "manual exemption," as (b)(10) was sometimes called, which was developed by NASAA and supported by the Securities Industry Association (SIA). The new language protects investors at least as much as the old language while allowing reliance on publicly available filings with the SEC as well as manuals.

Old law generally required listing in a securities manual.

(7) New subsection (b)(18) is added, as drafted by NASAA, to provide an exemption for qualifying issuers that are limiting sales to accredited investors (essentially, institutions and wealthy natural persons). This will allow Alaska entrepreneurs to use ACE-Net to raise capital electronically.

Old law would require these issuers to register or seek another exemption.

(8) New subsection (b)(19) is added to provide a noticed exemption for rescission offers pursuant to AS 45.55.930.

Old law contains no specific provision for these offers which requires them to either be registered, fit another exemption, or covered by a no-action letter.

(9) New subsection (b)(20) is added to provide a self-executing exemption for transactions that are solely between family members.

Old law contains no exemption for these transactions which requires them to either be registered, fit another exemption, or covered by a no-action letter issued by the Division.

#### **Section 48**

##### **Section 45.55.900(g)**

This section is added to provide an exemption for certain offers on the Internet, as drafted by NASAA and adopted by order of the administrator.

Old law does not provide for offers on the Internet.

#### **Section 49**

##### **Section 45.55.910**

This section, dealing with investigations and subpoenas, is amended by adding a new subsection clarifying that investigative files and materials are confidential until the Administrator determines otherwise.

Old law does not specifically provide for confidential investigative files.

#### **Section 50**

##### **Section 45.55.915**

This section is amended to allow the administrator the option, not the obligation, to require reimbursement for expenses of investigations in addition to examinations. Language is added to include investment adviser representatives, federal covered advisers, and state investment advisers.

Old law covers only examinations, not investigations.

#### **Section 51**

##### **Section 45.55.925**

Language required by NSMIA is added to exclude federal covered advisers and federal covered securities from criminal penalties for not filing notices.

Old law did not mention notices for federal covered advisers and federal covered securities.

**Section 52**

**Section 45.55.930(a)**

Subsection (a) is amended to change the interest rate for rescission offers from 6% to the stated rate of the security if it had a stated, fixed rate or 8% whichever is less, and makes a corrective amendment changing "seller" to "buyer," and excludes federal covered securities which are not subject to registration.

Old law set the interest rate for rescission offers at 6%, and does not mention federal covered securities.

**Section 53**

**Section 45.55.930(b)**

Subsection (b) is amended to change the interest rate associated with damages to 8% or the stated rate of the security, whichever is less.

Old law set damages at 6%.

**Section 54**

**Section 45.55.930(f)**

Subsection (f) is amended to allow more time to bring suit when the violation alleged is that of misrepresentation or fraud, and the rescission rate to prevent suit is raised to 8% or the stated rate of the security, whichever is less.

Old law limits a civil suit to three years from the date of purchase, and sets the rescission rate at 6%.

**Section 55**

**Section 45.55.930(g)**

Clarifies that violations referenced are violations of AS 45.55.

Old law was not clear.

**Section 56**

**Section 45.55.930(j)-(k)**

New subsection (j) is added to allow a buyer to sue if the buyer accepted a rescission offer and has not been paid. New subsection (k) is added to make it clear to those reading AS 45.55.930 that a rescission offer is an offer of a security subject to registration, unless exempt from registration under AS 45.55.900.

Old law did not mention what happens if a rescission offer is made and accepted but not paid, and it did not specifically state that a rescission offer is an offer under the Act.

**Section 57**

**Section 45.55.935(a)**

Subsection (a)(1) is amended to clarify that orders dealing with proxy rule violations are covered by this section, and (a)(2) adds investment adviser representatives.

Old law only covered persons who filed a notice of intention to sell securities, and did not mention investment adviser representatives.

**Section 58**

**Section 45.55.950(a)**

Language is added to include notice filings and adoption of policies. This allows the administrator to adopt policies adopted by NASAA to promote uniformity among states.

Old law did not mention policies or notice filings.

**Section 59**

**Section 45.55.950(b)**

Language added to include adoption of policies and cooperation with other states, self-regulatory organizations, and the SEC to promote broader uniformity among the states.

Old law did not refer to policies, notice filings, or self-regulatory organizations, and uniformity was limited to form and content of registration statements and applications.

**Section 60**

**Section 45.55.950(c)**

Language added to limit section's applicability to financial statements that are required to be filed since NSMIA limits the abilities of the states to establish such rules.

Old language does not contain the NSMIA limitation.

**Section 61**

**Section 45.55.950(d)**

Subsection (d) is amended to include policies so that persons may rely on adopted policies without fear of liability should they be later amended or rescinded.

Old law does not include policies.

**Section 62**

**Section 45.55.970(b)**

Subsection (b) is amended to require that a register of notice filings be maintained as it is for registrations.

Old law does not mention notice filings.

**Section 63**

**Section 45.55.970(c)**

Subsection (c) is amended to add notice filings to the list of materials available to the public.

Old law did not mention notice filings.

**Section 64**

**Section 45.55.970(e)**

Subsection (e) is amended to clarify that the administrator may require a fee to be submitted along with requests for interpretative opinions.

Old law does not explicitly state a fee is required.

**Section 65**

**Section 45.55.980(a)**

Subsection (a) is amended to add the new sections on fraudulent, dishonest and unethical business practices of broker-dealers and agents (45.55.025-028); limited registration of Canadian broker-dealers and agents (45.55.035); and federal covered securities (45.55.075) to cover those who sell or offer to sell.

Old law did not contain these sections.

**Section 66**

**Section 45.55.980(b)**

Subsection (b) is amended to add 45.05.025-028 and 45.55.035 as described in (a) above to cover those who buy or offer to buy.

Old law did not contain those sections.

**Section 67**

**Section 45.55.980(c)**

Subsection (c)(5) is amended to include limited liability companies and limited liability partnerships.

Old law did not include those relatively new entities.

**Section 68**

**Section 45.55.980(f)**

Subsection (f) is amended to include unethical business practices (AS 45.55.023) and the notice filing requirements for federal covered advisers (AS 45.55.030(d) and (e) and 45.55.040(h)) and to include state investment advisers, federal covered advisers, and investment adviser representatives.

Old law did not have these sections or mention state investment advisers, federal covered advisers, and investment adviser representatives.

**Section 69**

**Section 45.55.980(g)**

Language adds notice filings.

Old law did not mention notice filings.

**Section 70**

**Section 45.55.990(2)**

Language adds those excluded from the definition of agent, including agents of issuers of securities exempted by AS 45.55.900(a) and federal covered securities. Also, excludes those preempted by NSMIA in the Securities and Exchange Act of 1934.

Old law limited agent exclusion to exemptions at AS 45.55.900(a)(1)-(5), and did not mention federal covered securities, or the exclusions provided by NSMIA.

**Section 71**

**Section 45.55.990(3)**

Subsection (3)(E) is amended to make de minimis exemption more workable by focusing on solicited trades.

Old law based on offers which are difficult to trace.

**Section 72**

**Section 45.55.990(9)**

Language adds relatively new entities to the definition of person.

Old law did not include these newer entities in the definition.

**Section 73**

**Section 45.55.990(11)**

All federal laws are removed except the Securities Act of 1933.

Old law contains other federal laws which are added below in new sections.

**Section 74**

**Section 45.55.990(12)**

Language is added to definition of security to clarify potential confusion between AS 45.55 and AS 45.08.

Old law did not contain this clarifying language.

**Section 75**

**Section 45.55.990(14)-(37)**

Language adds new definitions to Act, defining existing terms like "advisory services" and defining new terms like "federal covered security." Most of the new definitions are required by NSMIA and deal with investment adviser representatives, state investment advisers, federal covered advisers, and notice filings.

Old law did not mention any of the new categories created by NSMIA.

**Section 76**

Short title of the chapter is the Alaska Securities Act.

**Section 77**

Repeals AS 45.55.020(d) which was moved to AS 45.55.023(16)(E). Repeals AS 45.55.990(6) which was the old definition of investment adviser.

**Section 78**

The Department may begin work on adopting necessary regulations.

**Section 79-81**

Various technical sections.

**Section 82**

Provides the effective date of the Act.

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

*DIVISION OF BANKING, SECURITIES, AND CORPORATIONS*

TONY KNOWLES, GOVERNOR

333 Willoughby Avenue, 9<sup>th</sup> Floor  
P.O. BOX 110807  
JUNEAU, ALASKA 99811-0807  
Banking & Securities (907) 465-2521  
Corporation Section (907) 465-2530

ANCHORAGE  
Corporation Information (907) 269-8140  
TDD: (907) 465-5437

May 1, 1998

The Honorable Loren Leman  
Chairman, Senate Labor and Commerce Committee  
Alaska Senate  
State Capitol Room 113  
Juneau, AK 99801-1182

Dear Chairman Leman:

Re: CSHB 486(L&C)

The Division of Banking, Securities and Corporations respectfully requests that Senate Labor and Commerce Committee schedule for consideration as soon as possible CSHB 486(L&C), an Act to Amend the Alaska Securities Act. This legislation is necessary to preserve more than \$4 million in annual General Fund revenues from securities fees and to conform Alaska law to the changes Congress made in federal securities law. All states are in the process of making the necessary changes to their securities laws. Thirty-nine other states have already amended their laws, and a fortieth is in the legislative process this spring. If this bill passes, Alaska will be the 41<sup>st</sup> state to amend its laws as required by changes in federal law. Other provisions in the bill address other improvements to the Act.

The bill is a result of the National Securities Markets Improvement Act (NSMIA) passed in October 1996. Two major impacts of NSMIA on Alaska are preemption from registration of a new class of securities, Federal Covered Securities, and changes to registration requirements of Investment Advisers and their agents, called Investment Adviser Representatives.

Federal Covered Securities, for the most part Mutual Funds, are no longer required to register in Alaska. However, in an attempt to have a revenue-neutral impact on the states and to preserve local investor protection, **congress allowed the states to require Notice filings and fees.** NSMIA provides a three-year window for the states to amend their statutes to provide for Notice filings and Notice fees or lose the authority to require them. Without this legislation by October 1999, Alaska would lose more than \$4 million in annual revenue funds, some of which are used for the purpose of investor protection.

NSMIA also altered the registration and regulation of investment advisers. Investment advisers were previously registered with the Securities and Exchange Commission (SEC) and each state in which they offered their services. NSMIA created two kinds of advisers: Federal Covered Advisers, those who manage assets in excess of \$25-30 million, must register with the SEC, and State Investment Advisers must register with the states. States may require Federal Covered

Advisers to file a Notice and pay a Notice fee in order to provide services in the state. Although Federal Covered Advisers are exempt from registration, the states will retain regulatory authority over them for violations of the anti-fraud provisions of state law. Finally, NSMIA allows the states to require registration of the Investment Adviser Representatives, of State Investment Advisers and of Federal Covered Advisers if they have a place of business in the state. These are the persons who actually provide the investment advice to Alaskans.

The affects of NSMIA on broker-dealers and their agents are less than the effects on investment advisers and securities registration. NSMIA preempts states from imposing books and records and financial requirements on broker-dealers in addition to those imposed by the U.S. Securities and Exchange Commission (SEC). As a result, Alaska discontinued the requirement for filing a bond with broker-dealer registrations. This bill amends those sections dealing with broker-dealers to reflect the NSMIA preemptions. In addition, because we needed to include a section in the statute covering unethical conduct by investment advisers and their representatives, we included sections covering unethical conduct by broker-dealers and their agents. By and large, these are restrictions already included in our regulations at 3 AAC 08.060 and 061 that are added to statute and reorganized to improve comprehension.

The changes in federal law require significant and numerous amendments to the Alaska Securities Act. These amendments must provide for Federal Covered Securities, Federal Covered Advisers, Investment Adviser Representatives, and Notices and Notice fees. Provisions must also be added to specify fraudulent and unethical behavior that may lead to action not only against a registered person but now, also against a person who filed a Notice in Alaska. Language for the amendments was, for the most part, drafted by the North American Securities Administrators Association (NASAA), an organization of state and provincial securities regulators, including every state, the District of Columbia, Puerto Rico, the provinces of Canada, and Mexico. Division staff also worked with industry and this bill has the support of the Investment Company Institute, representing the mutual fund industry, and the Investment Counsel Association of America, Inc., representing the investment adviser industry. Those are the people most affected by changes in the law, so their support illustrates the need for this legislation.

In addition to NSMIA changes, other amendments would improve access to the capital market without weakening investor protection. The following changes to the Act are included in the bill:

1. AS 45.55.900(b)(5)(A) and (b)(5)(B). The dollar limits and exemptions are increased from \$100,000 to \$150,000 and from \$500,000 to \$750,000, respectively. This will benefit smaller issuers to qualify for exemption from registration.
2. AS 45.55.900(b)(5)(C). A new self-executing exemption is added for initial issuance of securities with no dollar limit to 10 or fewer persons. Disclosure requirements and commission limitations are maintained for investor protection, but there will not be any requirement to file anything with the division.
3. AS 45.55.900(b)(5)(D). A new self-executing exemption is added for transfer of stock solely incidental to the sale of a business (usually a relatively small business). Currently, if a person buys another person's business and the seller of the business transfers stock to the

buyer, the seller may be liable to the buyer under AS 45.55.930 if the seller neglects to either register the stock or obtain an exemption. Often the limits of the current exemption make such transactions difficult to qualify. The proposed exemption has no limitations as long as the transfer is incidental to the sale of the business.

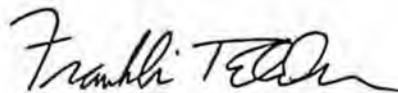
4. AS 45.55.900(b)(17). The exemption from registration section is amended (old paragraph (b)(10)) to provide investors with information currently required, but, in addition, allowing issuers to use reports filed with the SEC as well as the standard manuals now allowed. The Securities Industry Association encouraged states to adopt this NASAA-drafted exemption along with the NSMIA amendments.
5. AS 45.55.900(b)(18). This is a new exemption that allows a Notice-filing exemption for issuers who are not in the development stage and who are limiting the offering to accredited (qualified) investors. This should allow Alaska issuers to take part in programs like ACE-Net (Angel Capital Electronic Network) where issuers and accredited investors can be listed electronically. This may assist in providing a source for capital.
6. AS 45.55.900(b)(20). This new exemption covers transactions involving only family members, so if one family member wishes to assist another in starting a business, there is no requirement to file anything with the state.
7. AS 45.55.035. This is a new section to allow Canadian broker-dealers a limited license to serve their existing Canadian clients who are in Alaska temporarily, if the broker-dealers' Canadian Province allows reciprocal rights to U.S. broker-dealers. This language was also drafted by NASAA and supported by the Securities Industry Association.
8. AS 45.55.910 is amended to provide the Administrator the authority to charge respondents for investigations as well as examinations. The division should never be in a position where it cannot take action to protect investors because it lacks the funds to investigate a violation. This would provide the authority to recoup the costs of investigation.
9. AS 45.55.139 and .170 are amended to add language providing a clear basis for current proxy regulations for qualifying ANCSA corporations. There is no increase in division authority in these proposals, only improved clarity in the statutory provisions.
10. AS 45.55.930(d) is amended to allow buyers of securities more time to file civil suit against the sellers in those cases where the sellers violated the anti-fraud provisions of the Act. The change is from the current three years from the date of purchase to the later of that date or two years after the fraud was known or should have been known. This provides additional investor protection in cases where the fraud may not be discovered until after the three-year limit has expired.
11. AS 45.55.060(11). A subsection is added to give authority for action against registrants who have failed to meet their child support or Alaska student loan obligations. This provision gives the division authority to take action against the registrants or applicants.

The Honorable Loren Leman  
Chairman, Senate Labor and Commerce Committee

Page 4

We will be pleased to work with the committee in any way to accomplish passage of this essential legislation. Not only is time of the essence in this session and in the time to conform with NSMIA to preserve over \$4 million in annual general fund revenues, but the other improvements described above will improve investor protection and issuer access to capital. We appreciate the committee's consideration of our request.

Yours truly,

A handwritten signature in cursive script, appearing to read "Franklin T. Elder".

Franklin T. Elder  
Senior Securities Examiner

Enclosure (1)

## Some Terms Often Used in Discussing the Alaska Securities Act

**Agent** is the person representing the broker-dealer (you meet when you go into a broker's office) or the person representing an issuer of securities. Some agents represent issuers of securities.

**Alaska Securities Act (the Act)** is AS 45.55.

**Broker-dealer** is a person (like Merrill Lynch, Dean Witter, Smith Barney and others, for example) in the business of completing securities transactions for others.

**Division of Banking, Securities and Corporations (the Division)** is the division in Commerce and Economic Development that administers the Alaska Securities Act.

**Exemption of securities** (under AS 45.55.900) means the issuer or seller does not have to register under the Alaska Securities Act.

**Federal Covered Advisers (FCAs)** are large (\$25 million under management) investment advisers that NSMIA requires to register with the SEC and preempts from State registration.

**Federal Covered Securities (FCSs)** are securities NSMIA preempted from State registration (largest group includes mutual fund filings).

**Investment Adviser Representative (IARs)** is the person representing the investment adviser who gives the investment advice and that NSMIA allows the states to register.

**National Securities Markets Improvement Act of 1996 (NSMIA)** which changed federal securities laws and necessitated changes in our Act.

**No-action letters** are letters issued by the Division to persons stating that the Division will not take an administrative action against those persons under agreed-to circumstances.

**North American Securities Administrators Association (NASAA)** is the organization of securities administrators (like our Director who is the Commissioner's designee) of the 50 states, District of Columbia, Puerto Rico, the Provinces of Canada, and Mexico. This organization drafts uniform securities act language for states to adopt to promote uniformity.

**Notice filings** are the filings and their fees made with the Division as allowed by NSMIA. These filings may be for Federal Covered Securities or Federal Covered Advisers. These must be provided for in our Act to avoid preemption in 1999.

**Registration of market participants** includes registering broker-dealers and their agents, state investment advisers and agents of investment advisers (called investment adviser representatives).

**Registration of securities** means filing registration documents making full disclosure under AS 45.55.

**Rescission offers** are offers made by sellers of securities to buy back those securities from previous buyers for what the buyers paid plus interest less income.

**State Investment Advisers (SIAs)** are smaller investment advisers that NSMIA requires to register with the States and not the SEC.

**HB**

**499**

# FISCAL NOTE

Version: CSHB 449 (STA)  
 (H) Publish Date: 3/11/98

STATE OF ALASKA  
 1998 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_  
 Title: Roth IRA Exemptions

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

Sponsor: Rep. Therriault  
 Requestor: House State Affairs

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						
<b>TOTAL OPERATING</b>	0.0	0.0	0.0	0.0	0.0	0.0

<b>CAPITAL EXPENDITURES</b>	0.0	0.0	0.0	0.0	0.0	0.0
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<b>CHANGE IN REVENUES</b>	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						
1006 GF/Mental Health						
Other						
<b>TOTAL</b>	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)

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: 3-6-98  
 Date: 3-6-98

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# SENATE COMMITTEE REPORT

DATE: 4/9/98

FURTHER:

DATE TURNED  
IN TO OFFICE: 4-21-98

Labor and Commerce Committee considered

CS FOR HOUSE BILL NO. 449(STA)

"An Act relating to certain individual retirement accounts; and providing for an effective date."

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous ~~House~~ CS 449 ( STA )
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

Senate Bill:

- same title
- new title
- House Bill:
- same title
- technical title
- new: SCR# \_\_\_\_\_

SIGNING <u>DO</u> PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tom Kelly</i>	✓				
<i>Jim Miller</i>	✓				
<i>Chick Miller</i>	✓				
<i>Byron Hoffman</i>					
<i>Chair: Steve D. Leman</i>	✓	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
DC&ED	3/1/98	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# Alaska State Legislature

REPRESENTATIVE  
GENE THERRIAULT

Mailing Address:  
119 N. Cushman, Suite 101  
Fairbanks, Alaska 99701  
(907) 488-0857  
FAX: (907) 488-4271


While in Session  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4797  
Fax: (907) 465-3884

House District 33

## House Of Representatives

### Memorandum

TO: Senator Loren Leman  
Senate Labor & Commerce Committee

FROM: Representative Gene Therriault 

DATE: April 8, 1998

SUBJECT: Scheduling of CSHB 449 (STA)

---

I respectfully request that HB 449 be scheduled for a hearing in the Senate Labor & Commerce Committee.

The creation of Roth IRAs last year by Congress provides future tax relief to low and middle income taxpayers. However, Alaska's statutes that protect retirement savings are structured in a way that leaves this new category of IRAs unprotected. The bill will allow Alaskans to take advantage of tax relief while maintaining protection against creditor claims.

The window of opportunity for tax deferred rollovers of existing IRAs into Roth IRAs expires at the end of 1998. For this reason, legislation must be passed during the current session if Alaskans are to maximize the tax deferred benefits offered by Congress.

This bill is supported by the administration and passed the House on March 19 with a vote of 37 yeas, one excused, two absent, and zero nays. It passed out of Senate State Affairs on Tuesday, April 7.

Please contact me if you have any additional questions

attachments

# STATE OF ALASKA

TONY KNOWLES, GOVERNOR

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

P.O. BOX 110800  
JUNEAU, ALASKA 99811-0800  
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FAX: (907) 465-5442  
TDD: (907) 465-5437

March 11, 1998

The Honorable Gene P. Therriault  
House of Representatives  
State Capitol, Room 511  
Juneau, AK 99801-1182

Dear Representative Therriault:

Re: HB 449: An Act relating to certain individual retirement accounts

The Department of Commerce and Economic Development has been asked its position on HB 449.

It is the position of the department that HB 449 should be passed into law. Currently the Alaska Exemptions Act, AS 09.38, provides exemptions for federally qualified retirement plans (AS 09.38.017(e)(3)). In Congress' action to enact 26 U.S.C. 408A, they provided for a new qualified retirement plan commonly known as a Roth IRA. The Roth IRA plan offers opportunities not found in the present IRA. It is the department's position that Roth IRAs should be included with other federally qualified retirement plans.

Those who have IRAs are given a window (1998) to convert their IRAs to a Roth IRA. Without passage of HB 449, this year would have the effect of the public unknowingly transferring their individual retirement accounts from an "exempt" plan to a non-exempt status. This, also, is another reason why the department supports this legislation.

Sincerely,



Deborah B. Sedwick  
Commissioner

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031198a

cc: Division of Banking, Securities  
and Corporations

# 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

March 16, 1998

**SUBJECT:** Coverage of Roth IRAs by AS 09.38.017 (Work Order 20-LS1637)

**TO:** Representative Norman Rokeberg  
Chair, House Labor and Commerce Committee  
Attn: Shirley

**FROM:**   
Theresa Bannister  
Legislative Counsel

You have asked whether AS 09.38.017, the section that exempts retirement plan interests and payments from creditors, needs to be amended if it is to cover Roth IRAs. I believe it does need to be amended. The present language of the definition of "retirement plan" under that section describes a retirement plan that is "qualified" under the federal tax statutes that are listed in AS 09.38.017(e)(3). These listed sections do not include 26 U.S.C. 408A, which is the federal statute that authorizes and describes the requirements for Roth IRAs. Although 26 U.S.C. 408A indicates that Roth IRAs are to be treated as individual retirement plans, the section also qualifies that statement by adding, "Except as provided in this section." A retirement plan cannot qualify as a Roth IRA under the federal statutes listed in AS 09.38.017, because it must meet the criteria of 26 U.S.C. 408A. Therefore, it is my opinion that it would be necessary to amend AS 09.38.017 to reference 26 U.S.C. 408A before a Roth IRA would be covered as a "retirement plan" under the section.

If I may be of further assistance, please advise.

TLB:pl  
98-056.plm

lsh  
her  
arp

January 30, 1998

The Honorable Gene Therriault  
119 North Cushman  
Fairbanks, AK 99701

Dear Mr. Therriault:

We need your help to sponsor a bill which will benefit many Alaskans. Specifically we need you to sponsor a bill to amend Alaska statute 09.38.017 to include Internal Revenue Code Section 408A.

The Alaska statutes provide various "homestead" type exemptions, listing the amounts and types of assets which may not be attached by creditors. The Alaska statute specifically exempts retirement plan interests from creditor claims. Unfortunately, it does so by listing each type of retirement plan by reference to the Internal Revenue Code section governing that type of plan. Individual Retirement Accounts (IRA's) are described and governed by Internal Revenue Code Section 408. When Congress made changes to IRA's in 1997 they did so by adding the changes to a new section, IRC 408A. However by definition, 408A is a separate code section and currently is not included in the definition of retirement plans listed as exempt in A.S. 09.38.017.

The 1997 Taxpayer Relief Act created the Roth IRA account under code section 408A. This section will allow taxpayers to make nondeductible contributions to a Roth IRA and then later take all distributions from the account tax free subject to certain specified conditions. These qualified distributions must be included in gross income but, for 1998 only, the distributions will be taken into income over four years rather than the customary one year. This is a great opportunity to convert all future IRA account earnings into tax free income and spread the current tax bite over four years. This option is available only during 1998. Beginning in 1999 distributions from regular IRA accounts that are rolled into Roth IRAs will be fully taxed in the year of the rollover.

Because of the unique opportunity available in 1998 to spread these distributions over four years, it is imperative that legislation be passed as soon as possible in 1998 giving Roth IRA's the same creditor protection as regular IRA's and all other retirement plans. In many cases IRA accounts represent a person's major retirement savings. While a Roth IRA is a great tax planning tool it would be unwise to convert creditor protected assets into unprotected assets.

Mr. Gene Theirrault  
January 30, 1998  
page 2

Roth IRA's are not allowed to high income individuals. This is a provision which was intended by Congress to benefit the low and middle income taxpayer. As such it will have broad appeal to many Alaskans.

We are concerned that many people will be converting their existing IRA's to Roth IRA's without knowing that they are removing these assets from the list of those protected under state law. The popular press and many financial advisors who are not familiar with Alaskan creditor protection law will be advising taxpayers to start or convert to Roth IRA's.

We need legislation now. The window of opportunity will have passed come January 1, 1999 when those same distributions will become taxable all in one year instead of four years. Please take steps to amend the A.S. 09.38.017(e)(3) (copy enclosed) as soon as possible.

If you need any further information please let me know.

Sincerely,

Walsh, Kelliher and Sharp, APC



Kevin J. Walsh, CPA

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# LAWYERS WEEKLY USA

The National Newspaper for Practicing Lawyers

Feb. 9, 1998

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## 'Roth IRA' May Lack Protection From Creditors

By James L. Dam

The popular new Roth IRA has a serious danger -- it may not be protected from creditors, experts tell *Lawyers Weekly USA*.

This is true for two reasons:

- Many state statutes that protect IRAs refer to Sect. 408 of the Tax Code. Roth IRAs are covered by Sect. 408A. Section 408A is *not* a subsection of Sect. 408, but stands alone as a separate section, says Seymour Goldberg of Garden City, N.Y., author of *J.K. Lasser's How to Pay Less Tax on Your Retirement Savings* and apparently the first person to discover this problem.
- Some state statutes that protect IRAs don't protect "non-deductible contributions" to an IRA or the earnings on those contributions. With a Roth IRA, *all* contributions are non-deductible, says Natalie Choate of Boston, author of *Life and Death Planning for Retirement Benefits*.

It appears that 24 states have the first of these two problems and 10 have the second, including five that have both.

In those states, the potential lack of protection will be a major factor in deciding whether to convert a regular IRA to a Roth IRA, says Goldberg.

For example, a doctor in a high-risk practice probably won't want to convert, he says.

Anybody who faces a high risk of being sued "should think twice about it," says Gideon Rothschild, an estate planning attorney in New York.

Clients may want to wait until the end of 1998 before converting, since they won't lose much by waiting, and by the end of the year their state's statute may have been amended, suggests New York estate planning attorney Bruce Steiner.

Most states will probably amend their laws to correct these problems, lawyers say. But of course that won't happen

immediately, and there's no guarantee it will happen at all.

If a state's statute isn't amended by the end of 1998, the client could face a dilemma. That's because a client who waits to convert until Jan. 1, 1999 will lose a special tax break that allows the income generated by the conversion to be spread out over four years for tax purposes.

Of course, if a client's IRA is just a small portion of his or her overall wealth, protection from creditors is probably not an issue, notes Steiner. For example, it probably wouldn't be an issue if the client has a \$20,000 IRA and \$3 million of other assets.

It probably isn't an issue if a client is just looking to set up a Roth IRA and make annual contributions, instead of converting an existing IRA, says Marvin Rotenberg, national director of retirement services at BankBoston.

Roth IRAs became available on Jan. 1, 1998. Apart from the asset protection issue, they have a number of tax advantages over regular IRAs that make them a much better deal for many people. These advantages were discussed in detail at 97 LWUSA 733; [Search words for LWUSA Archives: Juggle and Grapes.](#)

### 'A Fighting Issue'

It's not absolutely clear that a Roth IRA won't be protected from creditors even if your state has one of the "problem" statutes.

If a statute refers to Sect. 408, there's an argument that it impliedly covers Roth IRAs under Sect. 408A, says James Caher of Eugene, Ore., who has written two books on bankruptcy law.

This argument is supported by language in Section Sect. 408A which defines "Roth IRA" by referring to Sect. 7701(a)(37) of the Tax Code, which in turn refers to Sect. 408, says Noel Ice of Fort Worth, Texas, the author of an IRA planning manual.

If a statute covers only deductible contributions and their earnings, there's an argument that money rolled over from a regular IRA to a Roth IRA is covered because the original contributions to the regular IRA were deductible, says Goldberg.

However, whether Roth IRAs are covered will "certainly be a fighting issue that creditors can raise and possibly win on," says Caher.

### What the Statutes Say

Most of the states provide some creditor-protection to regular IRAs, although the level of protection varies a lot.

In general, they exempt the IRA assets and payments from attachment, execution or garnishment by creditors of the IRA owner or beneficiaries.

Some states limit the exemption to a dollar amount; others limit it to an amount "reasonably necessary for the support" of the debtor and his or her dependents. Some say the exemption doesn't apply to debts for child or spousal support.

The 24 states that refer specifically to Sect. 408 typically do so with language such as that in Florida's statute, which covers only "a retirement or profit-sharing plan that is qualified under S. 401(a), S. 403(a), S. 403(b), S. 408, or S. 409 of the Internal Revenue Code."

They go beyond providing that the plans covered *include* plans under Sect. 408, says Goldberg.

The 10 states that limit protection to deductible contributions (and earnings on those contributions) generally say they don't protect contributions that weren't "exempt from federal income tax" or that "exceeded the deductible amount allowed under Sect. 408." Some also say this limitation doesn't apply to amounts that weren't deductible because they were rolled over to the IRA from another IRA.

However, the language in the statutes varies greatly, and the effect of it on the protection of Roth IRAs may vary even more, lawyers say.

### **The Federal Exemption**

In a number of states, a debtor who goes bankrupt can choose between the state's exemptions and those in the Bankruptcy Code. And the Code has an exemption (Sect. 522(d)(10)(E)) that some courts have said protects regular IRAs, although others have disagreed.

If a court has held that the exemption covers regular IRAs, it will probably say that it also covers Roth IRAs, because the language in the exemption is broad enough to cover both, says Boston bankruptcy attorney Mark DeGiacomo.

The exemption covers a "stock bonus, pension, profitsharing, annuity, or similar plan or contract."

The courts that have held that this exemption covers regular IRAs have focused on the phrase "similar plan or contract," says DeGiacomo.

However, the federal exemption allows a debtor to keep only as much as is "reasonably necessary for the support of the debtor and any dependent of the debtor." So even if it covers Roth IRAs, it may not be much help.

---

### **The States That Have a 'Problem' Statute**

Here are the state exemption statutes covering IRAs and other retirement benefits, listed according to whether they appear to have one, both or neither of the problems that may cause Roth IRAs to be

unprotected:

**States That Refer to Sect. 408**

Alaska: Alaska Stat. Sect. 09.38.017.  
Arizona: Ariz. Rev. Stat. Ann. Sect. 33-1126(C).  
Connecticut: Conn. Gen. Stat. Sect. 52-321a.  
Delaware: Del. Code Ann. tit. 10, Sect. 4915.  
Florida: Fla. Stat. Ann. Sect. 222.21.  
Hawaii: Haw. Rev. Stat. Sect. 651-124.  
Idaho: Idaho Code Sect. 55-1011.  
Kansas: Kan. Stat. Ann. Sect. 60-2308.  
Minnesota: Minn. Stat. Sect. 550.37.  
Missouri: Mo. Rev. Stat. Sect. 513.430.  
Nebraska: Neb. Rev. Stat. Sect. 25-1563.01.  
Nevada: Nev. Rev. Stat. Sect. 21.090(1)(q).  
New York: N.Y. Civ. Prac. L. & R. Sect. 5205(c).  
North Dakota: N.D. Cent. Code Sect. 28-22-03.1(3).  
Oregon: Or. Rev. Stat. Sect. 23.170.  
Tennessee: Tenn. Code Ann. Sect. 26-2-104.  
Utah: Utah Code Ann. Sect. 78-23-5(1).  
Virginia: Va. Code Ann. Sect. 34-34.  
Washington: Wash. Rev. Code Sect. 6.15.020.

**States That Protect Only Deductible Contributions**

Arkansas: Ark. Code Ann. Sect. 16-66-220.  
Indiana: Ind. Code Sect. 34-2-28-1.  
Kentucky: Ky. Rev. Stat. Ann. Sect. 427.150(2)(f).  
Oklahoma: Okla. Stat. tit. 31, Sect. 1(A)(20).  
Texas: Tex. Prop. Code Ann. Sect. 42.0021.

**States With Both Problems**

Louisiana: La. Rev. Stat. Ann. Sects. 20-33(1) and 13-3881(D).  
Maryland: Md. Code Ann. Cts. & Jud Proc. Sect. 11-504(h).  
Michigan: Mich. Comp. Laws 600.6023.  
Pennsylvania: 42 Pa. Cons. Stat. Sect. 8124.  
Rhode Island: R.I. Gen. Laws Sect. 9-26-4.

**States With Neither Problem**

These are the remaining states. They vary greatly as to the protection they give to regular IRAs -- some may give none. But all appear to give the same protection (or lack thereof) to Roth IRAs that they give to regular IRAs.

(Some refer to Sect. 408, but just say that they cover retirement plans *including* plans under Sect. 408.)

Alabama: Ala. Code Sect. 19-3-1(b).  
California: Cal. Stat. Sect. 704.115.  
Colorado: Colo. Rev. Stat. Sect. 13-54-102.  
District of Columbia: D.C. Code Ann. Sect. 15-503.  
Georgia: Ga. Code Ann. Sect. 44-13-100.  
Illinois: Ill. Rev. Stat. ch. 735, para. 5/12-1006.

Iowa: Iowa Code Sect. 627.6.  
Maine: Me. Rev. Stat. Ann. tit. 14, Sect. 4422(13)(E).  
Massachusetts: Mass. Gen. L. ch. 235, Sect. 34A.  
Mississippi: Miss. Code Ann. Sect. 85-3-1.  
Montana: Mont. Code Ann. Sect. 31-2-106(3).  
New Hampshire: (No exemption statute).  
New Jersey: N.J. Stat. Ann. Sect. 25:2-1(b).  
New Mexico: N.M. Stat. Ann. Sect. 42-10-1 and 42-10-2.  
North Carolina: (No exemption statute).  
Ohio: Ohio Rev. Code Ann. Sect. 2329.66(A)(10).  
South Carolina: S.C. Code Ann. Sect. 15-41-30.  
South Dakota: (No exemption statute).  
Vermont: Vt. Stat. Ann. tit. 12, Sect. 2740(19)(J).  
West Virginia: W. Va. Code Sect. 38-10-4.  
Wisconsin: Wis. Stat. Sect. 815.18(3)(j).  
Wyoming: Wyo. Stat. Sect. 1-20-110.

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[GO TO TOP OF PAGE](#)

**HJR**

**31**

# SENATE COMMITTEE REPORT

DATE: 4/21/97

FURTHER:

DATE TURNED IN TO OFFICE: 5-6-97

Labor and Commerce Committee considered HOUSE JOINT RESOLUTION NO. 31

Requesting the United States Congress to amend the Federal Food, Drug, and Cosmetic Act.

and recommends:

be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)

attached amendment(s)

adopt Letter of Intent by \_\_\_\_\_ Committee

further referral to the \_\_\_\_\_ Committee

**Senate Bill:**

same title

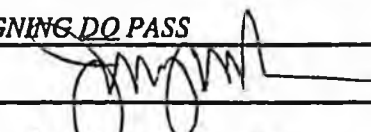
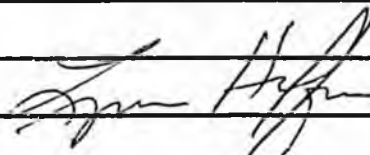
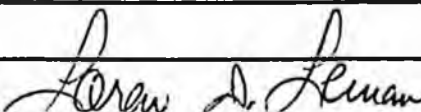
new title

**House Bill:**

same title

technical change

new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
	✓				
Mike Miller	✓		✓		
<b>CHAIR:</b> 	✓	<b>CHAIR:</b>			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
Legislature	4/4/97	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

**FISCAL NOTE**

No. 1

Version: HJR 31

(H) Publish Date: 4/4/97

**STATE OF ALASKA  
1997 LEGISLATIVE SESSION**

Revision Date: \_\_\_\_\_ Department Affected: Health & Social Services  
 Title: Requesting the United States Congress BRU: Public Health  
to amend the Federal Food, Drugs, and Cosmetic Act  
 Sponsor: Representative Kott Component: \_\_\_\_\_  
 Requestor: \_\_\_\_\_

**Expenditures/Revenues: (Thousands of Dollars)**

OPERATING	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

<b>CAPITAL</b>	0	0	0	0	0	0
----------------	---	---	---	---	---	---

<b>REVENUE FUND SOURCE</b>	0	0	0	0	0	0
----------------------------	---	---	---	---	---	---

**FUNDING: (Thousands of Dollars)**

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE						
<b>TOTAL</b>	0	0	0	0	0	0

**POSITIONS:**

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

Estimate of current year impact: \_\_\_\_\_

**ANALYSIS: (Attach a separate page if necessary)**

Fiscal Note Prepared by the House Labor and Commerce Committee

Prepared by: House Labor and Commerce Committee *Shirley Armstrong* Phone: 465-4954

Division: Committee Staff, Shirley Armstrong Date: 4/4/97

Approved by: Representative Norman Rokeberg, Chair *Shirley Armstrong*

Agency: House Labor and Commerce Committee Date: 4/4/97

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov., & Impacted Agency(ies).

# Alaska State Legislature House of Representatives

## Committees

**Rules Committee, Chair**  
Legislative Council  
International Trade & Tourism  
Military & Veterans Affairs  
World Trade & State/Federal Relations



Interim:  
10928 Eagle River Rd. Suite 141  
Eagle River, AK 99577

Session:  
Alaska State Capitol  
Juneau, AK 99801

## Sponsor Statement HJR 31

This resolution requests Congress to amend the Federal Food, Drug and Cosmetic Act to facilitate the rapid review and approval of innovative new drugs, biological products and medical devices without compromising patient safety of product effectiveness. Congress made it clear that the Act should be liberally construed to protect public health.

Pharmaceutical companies have complained that there is too much government "red tape" acting as a barrier to market entry for new pharmaceutical products. This situation results in effective drugs being held from consumers for years before they are allowed on the market. This resolution urges Congress to look at the Federal Food, Drug and Cosmetic Act and make appropriate changes to the Act allowing drugs and medical devices to move onto the market more rapidly.

More rapid approval of drugs and medical devices without compromising patient safety could save lives and improve the quality of lives. I urge you to support this resolution.

**Representative Pete Kott**

Juneau Office (907) 465-3777 Toll Free 1-800-861-KOTT(5688) Fax (907) 465-2819  
Eagle River Office (907) 694-8944 Fax (907) 694-8945 E-Mail: representative\_pete\_kott@legis.state.ak.us



*MN*

**THE DRUG DEVELOPMENT AND APPROVAL PROCESS IN THE '90s**

~~It takes 15 years on average for an experimental drug to travel from lab to medicine chest.~~

Only five in 5,000 compounds that enter preclinical testing make it to human testing.

One of these five tested in people is approved.

Early Research/ Preclinical Testing		Clinical Trials			FDA	
Years	6.5	Phase I	Phase II	Phase III	2.5*	15 Total
Test Population	Laboratory and animal studies	20 to 80 healthy volunteers	100 to 100 patient volunteers	1,000 to 3,000 patient volunteers	Review process/ approval	
Purpose	Assess safety and biological activity	Determine safety and dosage	Evaluate effectiveness, look for side effects	Verify effectiveness, monitor adverse reactions from long-term use		
Success Rate	5,000 compounds evaluated	5 enter trials			1 approved	

\*Average for 1990-1994. In 1994, the average approval time was 1.5 years.

Current Drug Development Problems

Preclinical (6.5 years)

- Reasonable IND Data Requirements: The FDA Guidance of 20 November 1995 laid out requirements for IND data filings that re-engineered a 48 inch document into the essential 6 inches of information. It is a good first step and represents a model for re-engineering NDA data requirements.

Clinical (6 years)

- Reasonable NDA Data Requirements: Information in the NDA needs to answer the key questions - (1) Is the new medicine safe and (2) Is the new medicine effective. Today, NDAs average 200,000 pages compared to about 2,000 pages in Europe. What can be done to re-engineer the NDA, using the new IND (see above) as a model, so as to avoid 2 years of wasted time and resources in gathering and reviewing unnecessary data?
- Substantial Evidence: Current NDAs contain an average of 60 clinical trials. The former FDA Director of CDER, Dr. Carl Peck, in Senate testimony on February 21 noted that the current system requires the unnecessary use of 25,000 human subjects per year and the conduct of ritualistic studies that are no longer needed due to scientific advance. What is a reasonable standard for substantial evidence?

FDA Review (1.5 years)

- Separation of Data Audit/Data Review Functions and other Good Review Practices: The User Fee Program of 1992 has significantly lowered average review times from the 2.5 year average of the early 1990s. What further measures can be implemented to review all products in the 6 month requirement of the 1962 law?
- Regulatory Review Benchmarking and Competition: Western Europe has high scientific and public health standards. How can regular benchmarking of regulatory performance occur? No organization, including the FDA, has all necessary expertise in house. How can the FDA utilize external review expertise to keep up with its large workload?

**HJR**

**65**

STATE OF ALASKA  
1998 LEGISLATIVE SESSION

NO. Bill Version: CSHJR 65 (L&C)  
BILL VER (H) Publish Date: 4/2/98  
PUBLISH

Revision Date: \_\_\_\_\_  
Title: Request wild salmon be  
classified as organic food.  
Sponsor: House Labor & Commerce  
Requestor: \_\_\_\_\_

Department Affected: DCED  
BRU: \_\_\_\_\_  
Component: \_\_\_\_\_

COMPONENT SERIAL NO:

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 99	FY 00	FY 01	FY 02	FY 03	FY 04
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE FUND SOURCE	0	0	0	0	0	0
---------------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE						
<b>TOTAL</b>	0	0	0	0	0	0

POSITIONS:

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

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

Zero fiscal impact.

Prepared By: Shirley Armstrong *Shirley Armstrong* Phone: 465-4954  
Division: Administrative Services Date: 4/2/98

Approved By: Representative Norman Rokeberg *Shirley Armstrong for*  
Agency: House Labor and Commerce Committee Date: 4/2/98

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov., & Impacted Agency(ies).

**COMMITTEE COPY**

# SENATE COMMITTEE REPORT

DATE: 4/27/98

FURTHER:

DATE TURNED IN TO OFFICE: 5-5-98

Labor and Commerce Committee considered CS FOR HOUSE JOINT RESOLUTION NO. 65(L&C)

Requesting that Alaska wild salmon be included as an organic food under federal law.

and recommends:

- be replaced with \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:**
- same title
  - new title
- House Bill:**
- same title
  - technical title
  - new: SCR# \_\_\_\_\_

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	NR	DNP	AM
<i>Tom Kelly</i>	✓				
<i>[Signature]</i>	✓				
CHAIR: <i>Loren J. Lewis</i>	✓	CHAIR:			

**NEW FISCAL NOTE(S):**

Department	Date	Zero	Fiscal

**PREVIOUS FISCAL NOTE(S):\***

Department	Date	Zero	Fiscal
<i>DCED</i>	<i>4/1/98</i>	✓	

APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# Alaska State Legislature

## House Resources Committee

**Co-Chair Scott Ogan**  
(907) 465-3715  
FAX (907) 465-3265  
Capitol Building, Room 124  
Juneau, Alaska 99801



**Co-Chair Bill Hudson**  
(907) 465-6820  
FAX (907) 465-2273  
Committee Meetings  
T/Th 1 - 4 p.m.

Vice Chair: Beverly Masek.

Representatives Ramona Barnes, Fred Dyson, Joe Green, Reggie Joule, Irene Nicholia, William Williams

### HJR 65

### Classify Wild Salmon as Organic Food

The organic-foods market is a growing market (annual growth rate of 20%) with total sales of \$3.5 billion in 1996. Alaska's wild salmon, long recognized by the medical community as a heart healthy food, and reared in pristine Alaskan waters should be a strong candidate for this growing market.

Unfortunately, farmed salmon producers, both domestic and foreign, are ahead of Alaska in striving to convince the U.S. Department of Agriculture that farmed salmon should qualify for Organic certification under federal law.

House Joint Resolution 65 requests that Alaska wild salmon be fairly considered by objective scientific criteria as an organic food. The United States Department of Agriculture, via the Agricultural Marketing Service (AMS), is seeking the establishment of national standards for the organic production and handling of agricultural products. The deadline for public and official input is May 30<sup>th</sup>, 1998.

The global salmon industry is fiercely competitive. Organic certification is a valuable market niche because a rapidly growing base of consumers has demonstrated willingness to consistently pay top dollar for products of choice.

HJR 65 is but one step in pursuing this significant market. It puts the United States Department of Agriculture on notice that Alaskans are watching the pending debate over organic qualification, and it asks our delegation in Congress to assist in this matter, to insure the huge agri-industry doesn't simply dominate the agenda from the start.



March 31, 1998

Representative Norm Rokeberg, Chairman  
House Labor and Commerce Committee  
State Capitol  
Juneau, AK 99801-1182

Dear Representative Rokeberg:

The Alaska Seafood Marketing Institute (ASMI) supports HJR 65 by the House Resources Committee, requesting that Alaska wild salmon be included as an organic food under federal law, and asks that the House Labor and Commerce Committee give the measure favorable consideration.

Proposed rules now being considered by the U. S. Dept. of Agriculture do not provide for organic labeling of wild Alaska seafood. In addition, it is possible that they may restrict Alaska's use of words that would indirectly imply that a product is organic. These restrictions would have a detrimental effect on Alaska's seafood products industry. A cornerstone concept of ASMI's marketing program is the inherently natural quality of Alaska wild seafood, particularly salmon. This concept is a valuable tool for the Alaska Seafood Marketing Institute as it markets Alaska salmon in a highly competitive global market glutted with Norwegian and Chilean farmed salmon. Organic certification for Alaska's wild seafood will be valuable to the Alaska seafood industry as a whole and for the Alaska businesses that must aggressively pursue an increased share of the domestic market

Thank you for your consideration.

Sincerely,



Barbara Belknap  
Executive Director

Testimony of  
United Fishermen of Alaska  
before the  
Senate Labor and Commerce Committee

May 5, 1998

Mr. Chairman and members of the committee, my name is Liz Cabrera and I am executive director of United Fishermen of Alaska. UFA is the statewide umbrella organization for the commercial fishing industry; we are comprised of 20 member groups from across the state.

UFA strongly supports HJR 65 which requests that Alaska wild salmon be included as an organic food under federal law. As proposed the USDA's National Organic Program includes "fish" under the definition of livestock. There are no provisions directly applicable to wild fish products and, in fact, it seems wild fish is specifically being excluded from the proposed rule.

Organic labeling provide an whole new market niche for Alaskan fishermen and processors to direct their products. The organic market rang up sales in excess of \$3 billion in 1996 with an average annual growth rate of 20%. In addition to being a fast growing market, consumers have demonstrated a willingness to pay premium prices for these products.

Additionally, we believe US consumers who purchase seafood products should be able to discern whether they are buying a natural organic product or one that is routinely treated with chemicals, antibiotics and growth hormones.

We appreciate the legislature taking an interest in this issue and supporting our efforts to allow organic labeling of wild salmon.

Thank you for the opportunity to testify.

# Cordova District Fishermen United

Celebrating 63 Years of Service to Commercial Fishermen in Cordova, Alaska  
P.O. Box 939 Cordova, Alaska 99574 / Telephone (907) 424-3447 / Fax (907) 424-3430

April 1, 1998

**Oral testimony given re: HJR 65 (Relating to Alaska wild salmon inclusion under federal organic food standards)**

Good afternoon. Mr. Chairman and committee members, my name is Cheri Shaw. I am Executive Director of Cordova District Fishermen United (CDFU) and will be speaking on behalf of CDFU and myself this afternoon.

CDFU supports HJR 65 and the effort it will create to allow wild Alaska salmon to be federally labeled as organic. While the market for wild salmon has been eroding due to the increasing production of farmed salmon, the organic market has been growing dramatically. As noted in HJR 65, in 1996 alone, sales were worth \$3.5 billion. Organic food sales have increased 20 to 25% in each of the last six years. Overseas, organic foods are even more popular.


The commercial fishing industry has often been called the first permanent fund. With the high quality of management we find here in Alaska, the salmon fishing industry will pump millions, if not billions of dollars into the state's economy into perpetuity. Anything the legislature can do to help increase Alaska's salmon share in the global market will benefit all Alaskan's.

In conjunction with a passage of HJR 65 in the legislature, a letter writing campaign by all senators, representatives and the constituents they represent should be organized requesting the federal government allow wild harvested Alaska salmon to be labeled organic under the Organic Foods Production Act. This step forward will give the State and its salmon industry a valuable marketing edge they've both been searching for in this increasingly competitive global market.

The organic label will increase demand for Alaska wild salmon and should increase ex-vessel value thereby adding growth to the State's revenue in shared raw fish taxes. A win win situation for all.

Thank you for opportunity to testify on behalf of CDFU today. If you have any questions regarding my testimony, I will be happy to answer them at this time. Thank you for your consideration.

Sincerely,



Cheri Shaw, Executive Director  
Cordova District Fishermen United

# Fisherman says organic sticker will sell salmon

By ELIZABETH MANNING  
Daily News reporter

Picture this: It's salmon season, and inside supermarkets across the nation, shoppers are snubbing refrigerated displays packed with cheaper, farm-raised salmon, heading straight for fish caught in Alaska waters instead. Oh, and one more detail: They're willing to pay top dollar.

Look closer and you'll see why. Cut into slabs, packed into cans or molded into fish cakes, every Alaska salmon product



FRAN DURNER / Anchorage Daily News

Jeff Bailey, a commercial fisherman and salmon buyer, is behind the movement to label Alaska wild salmon as organic.

Please see Back Page, SALMON

ADN

2 Mar '98

## SALMON: Fisherman hopes to add organic labeling

Continued from Page A-1

sports a label approved by the U.S. Department of Agriculture: 100 percent organic.

Of course, this is only a dream, but it's one that Cordova fisherman Jeff Bailey is trying to turn into reality. The national organic labels don't exist yet, but when they do appear in stores in a year or so, Bailey wants to make sure Alaska salmon are wearing them.

Bailey, who also owns Prime Select Seafoods Inc., believes the label would help Alaskans profit from the lucrative organic-foods market, worth \$3.5 billion in sales in 1996 with an average annual growth rate of 20 percent. He also thinks it would give the state a marketing tool to separate salmon caught in Alaska waters from fish raised in farms off the coast of Chile, British Columbia, Maine or Washington.

"Right now," Bailey said, "a salmon is a salmon is a salmon." The label could change that, he said.

The national organic program was required by the 1990 Organic Foods Production Act. This year, the USDA released general guidelines describing how different foods would be classified organic and gave the public until April 30 to comment. The agency hopes to begin implementing a program within 18

months, USDA spokeswoman Demaris Kogut said.

Bailey heard about the guidelines on National Public Radio and downloaded them onto his computer. Combing through the text, he found language about aquaculture, wild mushroom gathering and honey production. Bailey believes some of the language might be tweaked to include wild fish, or that perhaps a whole new section for fishing should be added. He's been on a letter-writing campaign ever since, commenting on the rule and trying to drum up support from government officials and the seafood industry.

The Alaska Seafood Marketing Institute, a government/industry funded group that markets the state's seafood, said it liked the idea. But program coordinator Barbara Belknap said she didn't have enough staff to pursue it.

Connie Godwin, an aide to U.S. Sen. Ted Stevens, R-Alaska, said Bailey has contacted her office, and staff is looking into the idea.

The most help so far has come from Kate Troll, a fisheries specialist with the state Department of Commerce and Economic Development. She wants to ensure that whatever language the state proposes includes salmon started in hatcheries as well as stream-spawned salmon.

So far, reaction from the USDA has been skeptical. The agency said wild fish pose a problem because you can't guarantee the purity of the water they swim in or the quality of the food they eat. With wild food gathering, the USDA at least can require the owner of the land where the food was collected to disclose whatever chemicals might have been used there.

"These rules probably aren't ever going to apply to wild fish," Kogut said. "You can't manage where the fish go and what they're eating. But someone could certainly make a case for it. That's what the comment period is for."

Despite the lack of encouragement, Bailey and others believe it's still worth making a case. After all, what could be a healthier meal than the wild fish caught in the clear, pristine waters of Alaska?

"Some poor USDA official is probably thinking this will open a whole can of worms," said University of Alaska Anchorage fisheries economist Gunnar Knapp. "But it makes sense for the congressional delegation and individuals to see what they can do. Anybody marketing salmon can point out that wild salmon are natural. But how often does it (enter) someone's consciousness?"

An attractive government sticker sure would help, Knapp said.