



# LAWS OF ALASKA

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**Source**

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**Chapter No.**

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**AN ACT**

Establishing an exemption for the offering and sale of certain securities.

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

THE ACT FOLLOWS ON PAGE 1



**AN ACT**

1   Establishing an exemption for the offering and sale of certain securities.

2

3   \* **Section 1.** AS 45.55 is amended by adding a new section to article 4 to read:

4                   **Sec. 45.55.175. Exemption for certain security sales and offerings.** (a) An  
5                   offer or sale of securities conducted solely in this state to a person who has established  
6                   residency in this state by an issuer in a transaction that meets the requirements of this  
7                   section is exempt from the requirements of AS 45.55.070 - 45.55.120 and 45.55.150  
8                   and is subject to the following limitations:

9                                   (1) the issuer of the security shall be a for-profit corporation, another  
10                                  for-profit entity, or a business cooperative, have its principal place of business in this  
11                                  state, and be licensed by the department;

12                                  (2) the transaction must meet the requirements of the federal  
13                                  exemption for intrastate offerings in 15 U.S.C. 77c(a)(11) (Securities Act of 1933) and  
14                                  17 C.F.R. 230.147; the securities must be offered to and sold only to persons who  
15                                  have established residency in this state at the time of purchase; before any offer or sale

1 under this exemption, the seller shall obtain documentary evidence from each  
2 prospective purchaser that provides the seller with a reasonable basis to believe the  
3 investor has established residency in this state;

4 (3) the sum of all cash and other consideration to be received for all  
5 sales of the security in reliance on this exemption may not exceed \$1,000,000, less the  
6 aggregate amount received for all sales of securities by the issuer within the 12 months  
7 before the first offer or sale made in reliance on this exemption;

8 (4) the issuer may not accept more than \$10,000 from a single  
9 purchaser during a 12-month period unless the purchaser is an accredited investor as  
10 defined by 17 C.F.R. 230.501;

11 (5) the issuer reasonably believes that all purchasers of securities are  
12 purchasing for investment and not for sale in connection with a distribution of the  
13 security;

14 (6) a commission or remuneration may not be paid or given, directly or  
15 indirectly, for any person's participation in the offer or sale of securities for the issuer  
16 unless the person is registered as a broker-dealer, agent, investment adviser  
17 representative, or state investment adviser under AS 45.55.030 or 45.55.035;

18 (7) the issuer of the security shall deposit in an escrow account in a  
19 bank or other depository institution authorized to do business in this state all funds  
20 received from investors until the minimum target dollar amount for the security  
21 offering is met; the issuer shall file the escrow agreement with the administrator, and  
22 the contents of the escrow agreement must include a statement that the proceeds of the  
23 sale under this section will not be released from the escrow account until the minimum  
24 target dollar amount for the security offering is met; all funds shall be used in  
25 accordance with representations made to investors;

26 (8) not less than 10 days before the use of a general solicitation or  
27 within 15 days after the first sale of a security under this exemption if general  
28 solicitation has not been used before the sale, whichever occurs first, the issuer shall  
29 provide a notice to the administrator as prescribed in regulations for this section; the  
30 notice must specify that the issuer is conducting an offering in reliance on this  
31 exemption and must contain the names and addresses of

1 (A) the issuer;  
2 (B) officers, directors, and any person who controls the issuer;  
3 (C) all persons who will be involved in the offer or sale of  
4 securities on behalf of the issuer; and

5 (D) the bank or other depository institution in which investor  
6 funds will be deposited;

7 (9) the issuer may not be, either before or as a result of the offering,  
8 (A) an investment company as defined by 15 U.S.C. 80a-1 -  
9 80a-64 (Investment Company Act of 1940), or subject to the reporting  
10 requirements of 15 U.S.C. 78m or 78o (Securities Exchange Act of 1934); or

11 (B) a broker-dealer, agent, investment adviser representative, or  
12 state investment adviser subject to AS 45.55.030 or 45.55.035;

13 (10) the issuer shall inform all purchasers that the securities have not  
14 been registered under AS 45.55.070 - 45.55.120, are exempt from AS 45.55.150, and  
15 may not be resold unless the securities are registered or qualify for an exemption from  
16 registration under AS 45.55.900; in addition, the issuer shall make the disclosures  
17 required by 17 C.F.R. 230.147(f);

18 (11) the issuer shall require all purchasers to sign the following  
19 statement at the time of sale: "I acknowledge that I am investing in a high-risk,  
20 speculative business venture, that I may lose all of my investment, and that I can  
21 afford the loss of my investment";

22 (12) this exemption may not be used in conjunction with any other  
23 exemption under this chapter, except the exemption related to institutional investors  
24 under AS 45.55.030(c) and for offers and sales to persons who control the issuer; sales  
25 to persons who control the issuer do not count toward the limitation in (3) of this  
26 subsection;

27 (13) this exemption may not be construed to remove a person from the  
28 anti-fraud and other provisions under AS 45.55.010 - 45.55.028, and the exemption  
29 may not be construed to provide relief from another provision of this chapter other  
30 than as expressly stated.

31 (b) The administrator may by order deny or revoke the exemption specified in

1 this section with respect to a specific security if the administrator finds that the sale of  
2 the security would work or tend to work a fraud on the purchasers of the security. An  
3 order under this subsection may not operate retroactively. A person may not be  
4 considered to have violated the order because of an offer or sale effected after the  
5 entry of an order under this subsection if the person sustains the burden of proof that  
6 the person did not know and, in the exercise of reasonable care, could not have known  
7 of the order.

8 (c) The department shall assess a person who makes application to the  
9 department for an exemption under this section a filing fee as prescribed in regulations  
10 for this section.

11 (d) Exemption from registration under this section is not available for a  
12 security or transaction if the issuer, or any of its officers, persons in control, or  
13 promoters, is subject to a disqualifier described in the regulations adopted under 15  
14 U.S.C. 78c(a)(39) (Dodd-Frank Wall Street Reform and Consumer Protection Act) as  
15 of the date of the transaction or offer.

16 (e) In this section,

17 (1) "control" means having the power, directly or indirectly, to direct  
18 the management or policies of the issuer, whether through ownership of securities, by  
19 contract, or otherwise;

20 (2) "department" means the Department of Commerce, Community,  
21 and Economic Development;

22 (3) "residency" has the meaning given in AS 01.10.055.

23 \* **Sec. 2.** AS 45.55.900(b) is amended to read:

24 (b) The following transactions are exempted from AS 45.55.070 and  
25 45.55.075:

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

28 (2) a transaction in a bond or other evidence of indebtedness secured  
29 by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real  
30 estate or chattels, if the entire mortgage, deed of trust, or agreement, together with all  
31 the bonds or other evidence of indebtedness, secured under those documents, is

1 offered and sold as a unit;

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

4 (4) an offer or sale to a bank, savings institution, trust company,  
5 insurance company, investment company as defined in 15 U.S.C. 80a-1 - 80a-64  
6 (Investment Company Act of 1940), pension or profit-sharing trust, or other financial  
7 institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting  
8 for itself or in some fiduciary capacity;

9 (5) sales by an issuer

10 (A) to not more than 10 persons in this state other than those  
11 designated in (4) of this subsection during a period of 12 consecutive months,  
12 regardless of whether the seller or any of the buyers is then present in this  
13 state, if

14 (i) a commission or other remuneration is not paid or  
15 given directly or indirectly for soliciting a prospective buyer in this  
16 state;

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

21 (iii) offers are made without public solicitation or  
22 advertisement;

23 (B) to not more than 25 persons in this state other than those  
24 designated in (4) of this subsection during a period of 12 consecutive months,  
25 regardless of whether the seller or any of the buyers is then present in this  
26 state, if

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

28 (ii) before a sale, each prospective buyer is furnished  
29 information that is sufficient to make an informed investment decision,  
30 which information shall be furnished to the administrator upon request;  
31 in this sub-subparagraph, "information that is sufficient to make an

1 informed investment decision" includes a business plan, an income and  
2 expense statement, a balance sheet, a statement of risks, and a  
3 disclosure of any significant negative factors that may affect the  
4 outcome of the investment;

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

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

12 (v) the issuer obtains a signed agreement from the buyer  
13 acknowledging that the buyer is buying for investment purposes and  
14 that the securities will not be resold without registration under this  
15 chapter; and

16 (vi) offers are made without public solicitation or  
17 advertisement;

18 (C) to not more than 10 persons who are to receive the initial  
19 issue of shares of a nonpublicly traded corporation, limited liability company,  
20 limited partnership, or limited liability partnership if the requirements of (B)(ii)  
21 - (iv) and (vi) of this paragraph are met;

22 (D) to the buyer of an enterprise or a business and the assets  
23 and liabilities of the enterprise or business if

24 (i) the transfer of stock to the buyer is solely incidental  
25 to the sale of the enterprise or business and its assets and liabilities;

26 (ii) the seller provides full access to the buyer of the  
27 books and records of the enterprise or business; and

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

- 1 (6) an offer or sale of a preorganization certificate or subscription if  
2 (A) a commission or other remuneration is not paid or given  
3 directly or indirectly for soliciting a prospective subscriber;  
4 (B) the number of subscribers does not exceed 10; and  
5 (C) a payment is not made by any subscriber;

6 (7) a transaction under an offer to existing security holders of the  
7 issuer, including persons who, at the time of the transaction, are holders of convertible  
8 securities, nontransferable warrants, or transferable warrants exercisable not later than  
9 90 days after their issuance, if a commission or other remuneration, other than a  
10 standby commission, is not paid or given directly or indirectly for soliciting a security  
11 holder in this state;

12 (8) an offer, but not a sale, of a security for which registration  
13 statements have been filed under both this chapter and 15 U.S.C. 77a - 77bfff  
14 (Securities Act of 1933) if a stop order or refusal order is not in effect and a public  
15 proceeding or examination looking toward an order is not pending under either this  
16 chapter or 15 U.S.C. 77a - 77bfff (Securities Act of 1933);

17 (9) an isolated nonissuer transaction, regardless of whether effected  
18 through a broker-dealer, if the seller is not a promoter or controlling person as the  
19 administrator may define by regulation or order or if the administrator at the request of  
20 the seller waives the requirement that the seller not be a promoter or controlling  
21 person;

22 (10) a nonissuer transaction effected by or through a registered broker-  
23 dealer under an unsolicited order or offer to buy; however, the administrator may by  
24 regulation require that the customer acknowledge on a specified form that the sale was  
25 unsolicited, and that a signed copy of each form be preserved by the broker-dealer for  
26 a specified period;

27 (11) a transaction executed by a bona fide pledgee without intending to  
28 evade this chapter;

29 (12) a transaction incident to a right of conversion or a statutory or  
30 judicially approved reclassification, recapitalization, reorganization, quasi-  
31 reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

1 (13) a stock dividend, regardless of whether the corporation  
2 distributing the dividend is the issuer of the stock, if nothing of value is given by  
3 stockholders for the dividend other than the surrender of a right to a cash or property  
4 dividend when each stockholder may elect to take the dividend in cash or property or  
5 in stock;

6 (14) an act incident to a statutory vote by security holders on a merger,  
7 consolidation, reclassification of securities, or sale of assets in consideration of the  
8 issuance of securities of another issuer;

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

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

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

22 (C) have been lawfully sold and distributed in this state under  
23 this chapter;

24 (16) offers or sales of certificates of interest or participation in oil, gas,  
25 or mining rights, titles, or leases, or in payments out of production under those rights,  
26 titles, or leases, if the purchasers

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

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

1 mining, producing, or refining oil, gas, or minerals so as not to require the  
2 protection provided by AS 45.55.070;

3 (17) a nonissuer transaction by a registered agent of a registered  
4 broker-dealer, and a resale transaction by a sponsor of a unit investment trust  
5 registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), in a  
6 security of a class that has been outstanding in the hands of the public for at least 90  
7 days if, at the time of the transaction,

8 (A) the issuer of the security is actually engaged in business  
9 and not in the organization stage or in bankruptcy or receivership and is not a  
10 blank check, blind pool, or shell company whose primary plan of business is to  
11 engage in a merger or combination of the business with, or an acquisition of,  
12 an unidentified person or persons;

13 (B) the security is sold at a price reasonably related to the  
14 current market price of the security;

15 (C) the security does not constitute the whole or part of an  
16 unsold allotment to, or a subscription or participation by, the broker-dealer as  
17 an underwriter of the security;

18 (D) a nationally recognized securities manual, which may be  
19 designated by rule or order of the administrator, or a document filed with the  
20 United States Securities and Exchange Commission that is publicly available  
21 through the United States Securities and Exchange Commission's electronic  
22 data gathering and retrieval system, contains

23 (i) a description of the business and operations of the  
24 issuer;

25 (ii) the names of the issuer's officers and directors, if  
26 any, or, in the case of an issuer not domiciled in the United States, the  
27 corporate equivalents of the issuer's officers and directors in the issuer's  
28 country of domicile;

29 (iii) an audited balance sheet of the issuer dated not  
30 earlier than 18 months before the transaction or, in the case of a  
31 reorganization or merger in which parties to the reorganization or

1 merger had that audited balance sheet, a pro forma balance sheet; and

2 (iv) an audited income statement for each of the issuer's  
3 immediately preceding two fiscal years or for the period of existence of  
4 the issuer if the issuer has been in existence for less than two years or,  
5 in the case of a reorganization or merger where the parties to the  
6 reorganization or merger had that audited income statement, a pro  
7 forma income statement; and

8 (E) the issuer of the security has a class of equity securities  
9 listed on a national securities exchange registered under 15 U.S.C. 78a - 78lll  
10 (Securities Exchange Act of 1934) or designated for trading on the National  
11 Association of Securities Dealers Automated Quotation System, unless the  
12 issuer of the security

13 (i) is a unit investment trust registered under 15 U.S.C.  
14 80a-1 - 80a-64 (Investment Company Act of 1940);

15 (ii) including predecessors, has been engaged in  
16 continuous business for at least three years; or

17 (iii) has total assets of at least \$2,000,000 based on an  
18 audited balance sheet dated not earlier than 18 months before the  
19 transaction or, in the case of a reorganization or merger in which the  
20 parties to the reorganization or merger had that balance sheet, a pro  
21 forma balance sheet;

22 (18) an offer or a sale of a security by an issuer that has a specific  
23 business plan or purpose, is not in the development stage, and has not indicated that its  
24 business plan is to engage in a merger or acquisition with an unidentified company or  
25 other entity or person, under the following conditions:

26 (A) sales of securities are made only to persons who are or the  
27 issuer reasonably believes are accredited investors as defined in 17 C.F.R.  
28 230.501(a), as that regulation exists on or after October 1, 2013;

29 (B) the issuer reasonably believes that all purchasers are  
30 purchasing for investment and not with the view to or for sale in connection  
31 with a distribution of the security; a resale of a security sold in reliance on this

1 exemption is presumed to be with a view to distribution and not for investment  
2 if the resale occurs not later than 12 months after sale, except a resale under a  
3 registration statement under AS 45.55.070 - 45.55.120 or to an accredited  
4 investor under an exemption available under this chapter;

5 (C) the exemption in this paragraph is not available to an issuer  
6 if the issuer, a predecessor of the issuer, an affiliated issuer, a director, an  
7 officer, or a general partner of the issuer, a beneficial owner of 10 percent or  
8 more of a class of the issuer's equity securities, a promoter of the issuer  
9 presently connected with the issuer in any capacity, an underwriter of the  
10 securities to be offered, or a partner, a director, or an officer of the underwriter

11 (i) within the last five years has filed a registration  
12 statement that is the subject of a currently effective registration stop  
13 order entered by a state securities administrator or the United States  
14 Securities and Exchange Commission;

15 (ii) within the last five years has been convicted of a  
16 criminal offense in connection with the offer, purchase, or sale of a  
17 security, of a criminal offense involving fraud or deceit, or of a felony;

18 (iii) is currently subject to a state or federal  
19 administrative enforcement order or judgment entered in the past five  
20 years finding fraud or deceit in connection with the purchase or sale of  
21 a security; or

22 (iv) is currently subject to an order, judgment, or decree  
23 of a court of competent jurisdiction entered in the past five years,  
24 temporarily, preliminarily, or permanently restraining or enjoining the  
25 person from engaging in or continuing to engage in conduct or a  
26 practice involving fraud or deceit in connection with the purchase or  
27 sale of a security;

28 (D) the nonavailability of the exemption under (C) of this  
29 paragraph does not apply if

30 (i) the person subject to the disqualification is licensed  
31 or registered to conduct securities related business in the state in which

1 the order, judgment, or decree creating the disqualification was entered  
2 against the person;

3 (ii) before the first offer under this exemption, the state  
4 securities administrator or the court or regulatory authority that entered  
5 the order, judgment, or decree waives the disqualification; or

6 (iii) the issuer establishes that it did not know and, in  
7 the exercise of reasonable care, based on a factual inquiry, could not  
8 have known that a disqualification existed under this paragraph;

9 (E) a general announcement of the proposed offering may be  
10 made by any means and may include only the following information unless the  
11 administrator specifically permits additional information:

12 (i) the name, address, and telephone number of the  
13 issuer of the security;

14 (ii) the name, a brief description, and the price, if  
15 known, of the security to be issued;

16 (iii) a brief description in 25 words or less of the  
17 business of the issuer;

18 (iv) the type, number, and aggregate amount of  
19 securities being offered;

20 (v) the name, address, and telephone number of the  
21 person to contact for additional information;

22 (vi) a statement that sales will be made only to  
23 accredited investors;

24 (vii) a statement that money or other consideration is  
25 not being solicited or will not be accepted by way of this general  
26 announcement; and

27 (viii) a statement that the securities have not been  
28 registered with or approved by a state securities agency or the United  
29 States Securities and Exchange Commission and are being offered and  
30 sold under an exemption from registration;

31 (F) the issuer in connection with any offer may provide

1 information in addition to the general announcement under (E) of this  
2 paragraph if the information is delivered

3 (i) through an electronic database that is restricted to  
4 persons who have been prequalified as accredited investors; or

5 (ii) to a prospective purchaser that the issuer reasonably  
6 believes is an accredited investor;

7 (G) a telephone solicitation is not permitted unless, before  
8 placing the call, the issuer reasonably believes that the prospective purchaser  
9 being solicited is an accredited investor;

10 (H) dissemination of the general announcement of the proposed  
11 offering to persons who are not accredited investors does not disqualify the  
12 issuer from claiming this exemption;

13 (I) the issuer shall file a notice of the transaction with the  
14 administrator, a copy of the general announcement, and the fee for exemption  
15 filings established by regulation within 15 days after the first sale in this state;

16 (19) an offer to repay, under AS 45.55.930, the buyer of a security if  
17 the offeror first files with the administrator a notice specifying the terms of the offer at  
18 least 10 days before the offer is made;

19 (20) a transaction involving only family members who are related,  
20 including related by adoption, within the fourth degree of affinity or consanguinity, or  
21 involving only those family members and the corporations, partnerships, limited  
22 liability companies, limited partnerships, limited liability partnerships, associations,  
23 joint-stock companies, or trusts that are organized, formed, or created by those family  
24 members or at the direction of those family members;

25 (21) a security that is not part of an initial issue of stock covered by  
26 AS 45.55.138, but that is issued by a corporation organized under state law in  
27 accordance with 43 U.S.C. 1601 et seq. (Alaska Native Claims Settlement Act), if the  
28 corporation qualifies for exempt status under 43 U.S.C. 1625(a);

29 **(22) a transaction exempt under AS 45.55.175.**