

SENATE CS FOR CS FOR HOUSE BILL NO. 284(FIN) am S

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Amended: 5/6/96

Offered: 5/4/96

Sponsor(s): HOUSE SPECIAL COMMITTEE ON FISHERIES

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Commercial Fishing and Agriculture Bank."

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

3 * Section 1. AS 16.43.150(g) is amended to read:

4 (g) Except as provided in AS 16.10.333 - 16.10.338, **AS 44.81.215**
5 [AS 44.81.210], 44.81.225, and **44.81.231 - 44.81.250** [44.81.230 - 44.81.250], an
6 entry permit may not be

7 (1) pledged, mortgaged, leased, or encumbered in any way;
8 transferred with any retained right of repossession or foreclosure,
9 or on any condition requiring a subsequent transfer; or
10 (3) attached, distrained, or sold on execution of judgment or under any
11 other process or order of any court, except as provided in AS 16.43.170(g) and (h).

12 * Sec. 2. AS 16.43.150(h) is amended to read:

13 (h) Unless an entry permit holder has expressed a contrary intent in a will that
14 is probated, the commission shall, upon the death of the permit holder, transfer the
15 permanent permit by right of survivorship directly to the surviving spouse or, if no

1 spouse survives, to a natural person designated by the permit holder on a form
2 provided by the commission. If no spouse survives and if the person designated on
3 the form, if any, does not survive, the permit passes as part of the permit holder's
4 estate. A designation under this subsection must be acknowledged before a person
5 authorized to administer an oath under AS 09.63.010 or must be witnessed by two
6 persons who are qualified under AS 13.11.170 to witness the will of the permit holder.
7 Except as provided in AS 16.10.333 - 16.10.337, **AS 44.81.215** [AS 44.81.210], and
8 **44.81.231 - 44.81.250** [44.81.230 - 44.81.250], the permit is exempt from the claims
9 of creditors of the estate.

10 * **Sec. 3.** AS 16.43.170(a) is amended to read:

11 (a) Except as provided in AS 16.10.333 - 16.10.338 and in **AS 44.81.231 -**
12 **44.81.250** [AS 44.81.230 - 44.81.250], entry permits and interim-use permits are
13 transferable only through the commission as provided in this section and AS 16.43.180
14 and under regulations adopted by the commission. An involuntary transfer of an entry
15 permit in a manner inconsistent with the statutes of this state and the regulations of the
16 commission is void.

17 * **Sec. 4.** AS 16.43.170(b) is amended to read:

18 (b) Except as provided in (c) and (e) of this section, the holder of an entry
19 permit may transfer the permit to another person or to the commission upon 60 days
20 notice of intent to transfer under regulations adopted by the commission. No sooner
21 than 60 days nor later than 12 months from the date of notice to the commission, the
22 holder of an entry permit may transfer the permit. If the proposed transferee, other
23 than the commission, can demonstrate the present ability to participate actively in the
24 fishery and the transfer does not violate any provision of this chapter or regulations
25 adopted under it, and if a certificate for the permit under AS 16.10.333(b)(1) - (2),
26 16.10.338, or **AS 44.81.231(a)** [AS 44.81.230(b)(1) - (2)] is not in effect, the
27 commission shall approve the transfer and reissue the entry permit to the transferee
28 provided that neither party is prohibited by law from participating in the transfer.

29 * **Sec. 5.** AS 16.43.170(g) is amended to read:

30 (g) A person may request the commission to transfer an entry permit due to
31 an execution on the holder's interest in that permit. The request shall be made in the

1 form and manner provided in this chapter and regulations adopted under this chapter.
2 The commission may deny a request for transfer of an entry permit due to an
3 execution of a holder's interest in that permit if

4 (1) the execution does not comply with legal requirements or otherwise
5 is not valid;

6 (2) the transfer violates this chapter or regulations adopted under this
7 chapter;

8 (3) the proposed transferee or other party to the transfer is prohibited
9 by law from participating in the transaction;

10 (4) a certificate for the permit under AS 16.10.333(b)(1) - (2),
11 16.10.338, or AS 44.81.231(a) [AS 44.81.230(b)(1) - (2)] is in effect at the time of
12 the proposed transfer;

13 (5) the proposed transferee of the entry permit, other than the
14 commission, cannot demonstrate the present ability to actively participate in the
15 fishery; or

16 (6) the holder of the entry permit as shown by the records of the
17 commission demonstrates, under regulations adopted by the commission, that the entry
18 permit is a necessary means of support for the holder and those dependent upon the
19 holder.

20 * **Sec. 6.** AS 16.43.960(i) is amended to read:

21 (i) An entry permit revoked by the commission under this section that is
22 pledged as security for a loan under AS 16.10.333 or AS 44.81.231 [AS 44.81.230]
23 shall be reassigned or sold as provided in AS 16.10.337 or AS 44.81.250.

24 * **Sec. 7.** AS 16.43.970(f) is amended to read:

25 (f) An entry permit forfeited under this section that is taken as security for a
26 loan under AS 16.10.333 or AS 44.81.231 [AS 44.81.230] shall be reassigned as
27 provided in AS 16.10.337 or AS 44.81.250.

28 * **Sec. 8.** AS 44.81.010(a) is amended to read:

29 (a) There is established the Alaska Commercial Fishing and Agriculture Bank.
30 The exercise by the bank of the powers conferred by this chapter is considered to be
31 for a public purpose. In the exercise of its powers under AS 44.81.215(7), the bank

1 is acting as an agent under the express authority and reservations of the state as
2 the issuer of limited entry permits under AS 16.43. The bank is exempt from the
3 provisions of AS 06.05 (Alaska Banking Code) and AS 10.15 (Alaska Cooperative
4 Corporation Act) in its structure and operations and in the exercise of powers
5 granted by this chapter.

6 * **Sec. 9.** AS 44.81.010(b) is amended to read:

7 (b) For the purpose of acquiring and accumulating capital [THE FUNDING]
8 of the bank [BANK'S OPERATIONS], the board [OF DIRECTORS] may issue
9 nonvoting, preferred shares of stock in the bank and determine the value of each share.
10 The state, through the Department of Revenue [APPROPRIATE AGENCIES], may
11 purchase the nonvoting, preferred shares issued by the bank. Shares purchased by the
12 state shall be repurchased by the bank within 20 years after their purchase. If the bank
13 fails to repurchase the shares within 20 years after their purchase by the state, the
14 commissioner of commerce and economic development may appoint a receiver to
15 direct, manage, and operate [DISSOLVE] the bank until the shares have been
16 repurchased. Upon voluntary or involuntary liquidation of the bank, and upon
17 repayment of all legal debts and obligations of the bank, all shares of nonvoting,
18 preferred stock owned by the state have priority for redemption over all other
19 forms and amounts of ownership of the bank.

20 * **Sec. 10.** AS 44.81.020 is repealed and reenacted to read:

21 Sec. 44.81.020. BOARD OF DIRECTORS. (a) The bank shall be governed
22 by a board of directors consisting of seven to nine natural persons. The number is
23 determined by the bank's bylaws. Two board members shall be appointed by the
24 governor of the state. The other board members shall be elected by the members of
25 the bank as provided in the bank's bylaws, except that at least one of the elected board
26 members must be a resident farmer.

27 (b) The members of the board shall serve for terms of three years and may
28 serve successive terms. Terms must be staggered. A member of the board who
29 releases confidential information in violation of AS 44.81.260, commits serious ethical
30 misconduct that relates to the member's fitness to serve as a member of the board, or
31 maintains a chronic substandard borrowing relationship with the bank shall be removed

1 from the board.

2 (c) A majority of the members of the board constitutes a quorum for the
3 transaction of business and the exercise of the powers and duties of the board.

4 (d) A member of the board may not vote on a transaction of the bank under
5 this chapter if the member is a party to the transaction.

6 (e) The members of the board shall annually elect from among themselves a
7 chair and vice-chair and other board officers as may be provided in the bank's bylaws.

8 (f) Members of the board shall receive compensation not to exceed \$250 for
9 each day of a board meeting if they attend the meeting. Directors may also receive
10 compensation for personal time and efforts expended to further the bank's interests or
11 business other than on meeting days as may be determined by the chair under the
12 bank's bylaws.

13 * **Sec. 11.** AS 44.81 is amended by adding a new section to read:

14 Sec. 44.81.031. OFFICERS AND EMPLOYEES. (a) The board shall employ
15 a president. The president may not be a member of the board and serves at the
16 pleasure of the board. The president is the chief executive officer of the bank.

17 (b) The board shall appoint those officers of the bank that are provided for in
18 the bank's bylaws and as the board determines to be necessary for the effective
19 operations of the bank. An executive, operating, administrative, or other salaried
20 officer of the bank may not be a member of the board.

21 (c) The president may hire employees of the bank as may be determined
22 necessary for the efficient performance of the functions of the bank. The board shall
23 approve the compensation of the employees. Employees of the bank are not
24 employees of the state and are not considered to be employees of a public organization
25 for the purposes of AS 39.35.

26 * **Sec. 12.** AS 44.81 is amended by adding a new section to read:

27 Sec. 44.81.041. STRUCTURE AND MEMBERSHIP OF THE BANK. (a)
28 The bank shall be structured and operated as a cooperative corporation.

29 (b) The board shall issue shares of membership stock in the bank in the
30 amounts and with the value determined by the board and stated in the articles of
31 incorporation. The membership stock may be issued under this chapter and under the

1 bylaws of the bank to persons determined to be eligible to transact business with the
2 bank.

3 (c) The board may establish one or more mechanisms by which persons or
4 entities, or classes of persons or entities, who transact business with the bank are
5 required to provide or establish capital ownership in the bank. The mechanisms may
6 include the issuance of capital stock or other equity instruments or the allocation or
7 retention of net proceeds from the operations of the bank. The mechanisms shall be
8 established and imposed in a manner that the board determines equitably reflects the
9 nature and amount of business transacted with the bank.

10 * **Sec. 13.** AS 44.81 is amended by adding a new section to read:

11 Sec. 44.81.051. BYLAWS. The board may adopt bylaws for the bank for the
12 regulation and management of the affairs of the bank, and may alter, amend, or repeal
13 them. The bylaws shall be consistent with this chapter and other laws that apply to the
14 bank.

15 * **Sec. 14.** AS 44.81 is amended by adding a new section to read:

16 Sec. 44.81.061. INDEMNIFICATION OF DIRECTORS, OFFICERS, AND
17 EMPLOYEES. The bank may indemnify directors, officers, and employees, or may
18 purchase and maintain insurance on behalf of directors, officers, and employees. The
19 indemnification and the insurance purchase and maintenance shall comply with
20 AS 10.06.490.

21 * **Sec. 15.** AS 44.81 is amended by adding a new section to read:

22 Sec. 44.81.101. PLEDGE OF THE STATE. (a) The state pledges to and
23 agrees with any lender to the bank that the state will not limit or alter the rights and
24 powers given to the bank by this chapter to fulfill the terms of a contract made by the
25 bank with the lender to the bank, or in any way impair the rights and remedies of the
26 lender to the bank. The bank is authorized to include this pledge and agreement of the
27 state in a contract with any lender to the bank.

28 (b) The pledge of the state is limited to the express provisions of (a) of this
29 section and is not a guarantee, surety, promise, undertaking, or assurance of repayment
30 or performance of any obligation of the bank.

31 * **Sec. 16.** AS 44.81.200 is amended to read:

1 Sec. 44.81.200. REPORTS AND PUBLICATIONS. The board [OF
2 DIRECTORS] shall publish an annual report to the bank's members. The report shall
3 be made available to the governor, the legislature, and the public. The report
4 [AND] must include financial statements audited by independent outside auditors, a
5 discussion [STATEMENT] of the bank's circumstances and operations
6 [INVESTMENTS, A DESCRIPTION OF THE BANK'S LOAN ACTIVITY] during
7 the period covered by the report [, AN ANALYSIS OF ECONOMIC AND OTHER
8 EFFECTS OF LOAN DECISIONS ON THE STATE'S COMMERCIAL FISHING
9 AND AGRICULTURE INDUSTRIES], and any other information that the board
10 believes would be of interest to the governor, the legislature, and the public, or that
11 the legislature requests the board to include. The board may [ALSO] publish other
12 reports considered appropriate [IT CONSIDERS DESIRABLE] to [CARRY OUT]
13 its purposes.

14 * Sec. 17. AS 44.81.210 is repealed and reenacted to read:

15 Sec. 44.81.210. GENERAL POWERS OF THE BANK. The bank may

- (1) adopt, alter, and use a corporate seal;
- (2) sue and be sued in the name of the bank;
- (3) appoint officers, employees, trustees for establish their powers and duties;

(4) provide technical services to members of the bank; in this paragraph, "technical services" includes services that will enhance the ability of a member to obtain financial assistance from the bank;

(5) participate with state departments and agencies in formulating policy and in planning for the development of commercial fishing and agriculture in the state;

(6) engage in programs to support the efforts of resident fishers or farmers in order to enhance the further development, efficiency, stability, or profitability of commercial fishing or agriculture in the state:

(7) make contracts and execute instruments necessary to or convenient for the exercise of its corporate powers:

(8) issue bonds to carry out its corporate purposes and powers:

(9) borrow money and issue secured and unsecured evidence of indebtedness for a corporate purpose or to fund, refund, pay, or discharge outstanding obligations, and enter into agreements and contracts relating to these obligations;

(10) secure the payment of its obligations by pledge, mortgage, or other lien on its contracts, revenue, income, or property;

(11) incur secondary liability by guaranty or endorsement of the obligations of a person, except for natural persons, when, in the judgment of the board, the action furthers the bank's corporate purposes;

(12) acquire real or personal property by purchase, lease, bequest, devise, gift, the satisfaction of debts, or the foreclosure of mortgages, and hold, maintain, use, operate, and convey real or personal property;

(13) sell, lease as lessor or lessee, exchange, donate, convey, or encumber in any manner by mortgage or by creation of another security interest, real or personal property owned by it, or in which it has an interest, when, in the judgment of the board, the action furthers its corporate purposes;

(14) establish wholly-owned or majority-owned subsidiary corporations or limited liability companies to acquire, hold, operate, maintain, or liquidate property received by the bank in a foreclosure action or other loan collection process or to provide services to resident fishers or farmers, or other persons, if the services are consistent with the corporate purposes and powers expressed in this chapter;

(15) acquire equity or other ownership interest in a domestic corporation or limited liability company if the purpose of the acquisition is to enhance the further development, efficiency, stability, or profitability of commercial fishing or agriculture in the state;

(16) enter into agreements with public or private lenders or other entities, or with state agencies or agencies of the federal government, to carry out the purposes of this chapter;

(17) do what is necessary or desirable to carry out the corporate purposes and powers expressed or implied in this chapter.

* **Sec. 18.** AS 44.81 is amended by adding a new section to read:

Sec. 44.81.215. LENDING POWERS OF THE BANK. The bank may

(1) make loans to individuals, including married couples, who are residents of the state and who are engaged in commercial agriculture or fishing, including harvesters, processors, suppliers, and marketers, if at least one of the primary obligors on the loan is a member of the bank;

(2) make loans to corporations, partnerships, or limited liability companies engaged in commercial agriculture or fishing if the majority interest of the corporation, partnership, or limited liability company is beneficially owned by residents of the state and a majority of the owners are residents of the state, and if at least one of the primary obligors on a loan is a member of the bank; however, the bank may not make a loan under this paragraph to a corporation, partnership, or limited liability company for the purchase of a new or existing fishing boat or for the repair or renovation of an existing fishing boat if the primary purpose of the fishing boat is to commercially harvest fishery resources, unless the corporation, partnership, or limited liability company is wholly owned and controlled by residents of the state, and unless at least one of the primary obligors on the loan is a member of the bank;

(3) make loans for limited entry permits to individuals who fish commercially if the individual is a state resident; loans made under this paragraph are subject to AS 44.81.231;

(4) make a loan for capital investment or operating capital to a shore-based fish processor, a timber processor, or an agricultural processor or harvester who does not meet the resident ownership requirements of (1) or (2) of this section if a facility of the processor or harvester is located in the state and the majority interest in the processor or harvester is beneficially owned by residents of the United States;

(5) make a loan to a person, regardless of residency, if the board determines that the loan is necessary to preserve the value of property held by the bank as security for a loan that was made under AS 44.81.210 or this section and that is in default;

(6) make loans, as provided in (1), (2), or (4) of this section, that are secured by liens subordinate to valid first liens and security agreements granted to another creditor:

(7) accept the pledge of a limited entry permit as security for a loan

1 made under this chapter subject to the conditions set out in AS 44.81.236 on pledges
2 of limited entry permits;

3 (8) make loans in participation with other lenders as provided in (1),
4 (2), or (4) of this section, whether or not an obligor is a member of the bank;

5 (9) purchase or acquire participations in loans from other lenders if the
6 participations conform to the provisions of (1), (2), or (4) of this section, whether or
7 not an obligor is a member of the bank;

8 (10) issue certificates of loan participation to members and to other
9 individuals, corporations, partnerships, and limited liability companies, but the bank
10 may not issue a certificate of loan participation if the certificate would allow
11 participation by the member, individual, corporation, partnership, or limited liability
12 company in loans that individually or cumulatively involve more than 20 percent of
13 the commercial fishery entry permits issued for one type of gear in a specific fishery
14 resource administrative area.

15 * **Sec. 19.** AS 44.81 is amended by adding a new section to read:

16 Sec. 44.81.231. PLEDGE OF PERMITS. (a) A limited entry permit issued
17 under AS 16.43 may be pledged by the holder as security for a loan authorized under
18 AS 44.81.236 if the certificate for the pledged permit lists the bank as the legal owner
19 of the permit and the pledger as the equitable owner of the permit.

20 (b) Annual permit cards issued under the pledged permit must be in the name
21 of the equitable owner who shall be responsible for compliance with the laws that
22 govern the permit as if the equitable owner were the holder of the permit.

23 (c) Co-borrowers or guarantors on a loan secured by one or more pledged
24 permits do not have a right in the pledged permit of the equitable owner, whether by
25 subrogation or other manner.

26 (d) Upon payment of the loan, the bank shall certify to the Commercial
27 Fisheries Entry Commission that the loan has been repaid, and the commission shall
28 amend the permit certificate to list the equitable owner as the holder, and the legal
29 interest of the bank shall terminate.

30 (e) In anticipation of a possible foreclosure under AS 44.81.241 - 44.81.250,
31 the equitable owner of a permit that is pledged as security for the loan may nominate

1 a person to whom the permit may be transferred if the pledge is foreclosed under
2 AS 44.81.245.

3 * **Sec. 20.** AS 44.81 is amended by adding a new section to read:

4 Sec. 44.81.236. LIMITATIONS ON THE PLEDGE OF PERMITS. A loan
5 may not be secured by the pledge of a limited entry permit unless the proceeds of the
6 loan are used for

7 (1) the purchase of a permit;

8 (2) the purchase or lease of quota shares, individual fishing quotas, or
9 another license, permit, or other grant of commercial fisheries harvesting entitlements
10 that is issued and regulated under state or federal law;

11 (3) the purchase, construction, maintenance, repair, or improvement of
12 commercial fishing boats, sites, gear, or equipment;

13 (4) working capital, including insurance premiums, supplies, food, fuel,
14 bait, boat storage, and boat launching;

15 (5) the payment of obligations whose status places the permit of a
16 borrower in jeopardy of sale as a result of United States Internal Revenue Service
17 enforcement action;

18 (6) the purchase of the bank's stock or other equity instruments and
19 loan costs; or

20 (7) refinancing of debts incurred for a purpose listed in (1) - (4) or (6)
21 of this section.

22 * **Sec. 21.** AS 44.81 is amended by adding new sections to read:

23 Sec. 44.81.241. INITIAL NOTICE OF DEFAULT. If there is a default on a
24 loan secured by a permit pledged under AS 44.81.231, the bank shall notify the
25 borrowers and guarantors on the loan of the default and of the right to cure the default
26 by sending a notice by certified mail to their last known address or addresses on file
27 with the bank. The notice must include

28 (1) the date of the notice;

29 (2) a description of the security given for the loan, including the
30 number assigned by the commission and the name of the equitable owner of each
31 permit pledged to secure the loan;

- (3) the date and nature of the default;
- (4) the amount of arrearages as of the date of the notice;
- (5) the total indebtedness, including interest, penalties, and costs of collection, remaining owing on the loan as of the date of the notice;
- (6) the amount of daily interest to accrue from the date of the notice;
- (7) a statement that the costs of collection of the loan incurred by the bank after the date of the notice will be added to the total amount of the indebtedness owing on the loan;
- (8) a statement that the default may be cured within 60 days from the date of the notice or within an extended time period that is specified in an extension notice provided by the bank within the 60-day period under AS 44.81.249;
- (9) the place where payment of arrearages or other cure may be made; and
- (10) a statement in at least 10 point bold type stating:

"IMPORTANT: UNLESS YOU CURE THE LOAN DEFAULT WITHIN THE TIME SPECIFIED BY THIS NOTICE, THE TOTAL INDEBTEDNESS OWING ON THE LOAN SHALL BE IMMEDIATELY DUE AND PAYABLE TO THE BANK WITHOUT FURTHER NOTICE TO YOU. ALSO, THE BANK SHALL THEN BE ENTITLED TO TAKE ANY LEGAL ACTION AGAINST YOU TO COLLECT THE LOAN, INCLUDING THE INSTITUTION OF LAWSUITS AND THE FORECLOSURE OF THE PLEDGE OF ANY PERMIT PLEDGED TO SECURE THIS LOAN."

Sec. 44.81.243. BANK REMEDIES AFTER FAILURE TO CURE. If the borrowers and guarantors on a loan secured by a permit pledged under AS 44.81.231 fail to cure a default within the time stated in the notice given under AS 44.81.241, the total indebtedness owing on the loan immediately becomes due and payable to the bank, and the bank shall be entitled to take any legal action to collect the loan, including the foreclosure under AS 44.81.245 of the permit pledge that secures the loan and the institution of legal action. If the bank forecloses the permit pledge, the bank may proceed in the order the bank selects, whether before, after, or concurrent

1 with other action taken to collect the loan.

2 Sec. 44.81.245. FORECLOSURE NOTICE. The bank may foreclose on a
3 permit pledge that secures a loan by sending to the equitable owner of the permit
4 pledged and any other borrowers and guarantors on the loan a notice of foreclosure.
5 The notice shall be sent by certified mail to their last known address or addresses on
6 file with the bank and must include

7 (1) the date of the notice;

8 (2) a statement that the total indebtedness owing on the loan became
9 due and payable to the bank because the loan default was not cured within the time
10 specified in the notice of default and right to cure provided under AS 44.81.241, and
11 that as a result the bank is entitled to take legal action to collect the loan, including
12 the forfeiture of a permit pledge that secures the loan and the institution of legal
13 action;

14 (3) a description of the permit pledge that is being foreclosed by the
15 notice, including an identification of the permit by the number assigned by the
16 commission and the name of the equitable owner;

17 (4) the amount of the total indebtedness owing as of the date of the
18 notice;

19 (5) the amount of daily interest that accrues from the date of the notice;

20 (6) a statement that the costs of collection of the loan incurred by the
21 bank after the date of the notice will be added to the total amount of the indebtedness
22 due on the loan;

23 (7) a statement that to avoid forfeiture of all rights of the equitable
24 owner of the permit identified in the notice, the loan must be paid in full within 60
25 days from the date of the notice or within an extended time period that is specified in
26 an extension notice provided by the bank within the 60-day period under
27 AS 44.81.249;

28 (8) a statement that once a forfeiture of all rights of the equitable owner
29 of a permit described in the notice occurs, the permit may not be redeemed;

30 (9) a statement of the right of the equitable owner to nominate a person
31 to assume the loan under AS 44.81.245;

- (10) the place where payment in full may be made; and
- (11) a notice in at least 10 point bold type stating:

"IMPORTANT: IF THE LOAN IS NOT PAID IN FULL BY THE DATE SPECIFIED, ALL RIGHTS OF THE EQUITABLE OWNER TO THE PERMIT IDENTIFIED IN THIS NOTICE WILL BE FORFEITED WITHOUT FURTHER NOTICE TO YOU. IN THAT EVENT, THERE WILL NOT BE A RIGHT OF REDEMPTION OF THE PERMIT. IN ADDITION, THE BANK MAY NOW TAKE OTHER ACTION TO COLLECT THE LOAN, INCLUDING THE INSTITUTION OF LEGAL ACTION AGAINST YOU AND THE FORECLOSURE OF OTHER PERMIT PLEDGES THAT SECURE THE LOAN."

Sec. 44.81.247. TERMINATION OF PERMIT INTEREST. If a loan is not paid in full within the time specified by the notice provided for the loan under AS 44.81.245, the equitable interest in the permit identified in the notice terminates by operation of law without further notice. The commission shall cancel an entry permit card issued to the equitable owner of the permit immediately upon receipt by the commission of a certificate of termination containing a copy of the notices required by AS 44.81.241 and 44.81.245.

Sec. 44.81.249. CANCELLATION, EXTENSION, AND DELIVERY OF NOTICES. (a) The bank may cancel a notice provided under AS 44.81.241 or 44.81.245 by delivering a written notice of cancellation to the persons who were given the cancelled notice. The notice shall be given in the same manner as is required for the cancelled notice.

(b) The bank may extend the 60-day period for curing a default under AS 44.81.243 and the period before a forfeiture occurs under AS 44.81.247 by giving a written notice of extension to the persons who were given the notice. The notice shall be given in the same manner as is required for the giving of the notice being extended.

(c) The bank may give a notice required to be provided in AS 44.81.241, 44.81.245, or 44.81.247 by personal delivery instead of by certified mail.

* **Sec. 22.** AS 44.81.250 is repealed and reenacted to read:

Sec. 44.81.250. TRANSFER OF ENTRY PERMITS AFTER FORECLOSURE.

(a) Upon foreclosure of a pledge of an entry permit under AS 44.81.241 - 44.81.249, the bank shall determine if the permit is subject to a buy-back program under AS 16.43.290 - 16.43.330 and, if it is subject to a buy-back program, shall offer the permit to the commission at a price equal to the outstanding indebtedness on the loan.

(b) If the permit is not subject to a buy-back program, or if the commission fails to buy back the permit within 30 days after the commission receives the offer, the bank shall sell the permit to a person who qualifies as a transferee of an entry permit under AS 16.43 and the regulations adopted by the commission. The bank shall give preference to an offer to purchase a permit made by a state resident if the price offered is equal to or greater than the price offered by a nonresident. If the proceeds of the sale of a permit exceed the amount necessary to pay the indebtedness in full, the bank shall remit the excess to the borrower.

(c) At any time before foreclosure of a pledge of a permit, or within 30 days following foreclosure of a pledge of a permit, the equitable owner or former equitable owner may nominate a person to assume the loan. A person nominated must qualify as a transferee of the permit under AS 16.43 and must qualify to assume the loan under the requirements of the bank. If the person qualifies, the permit shall be transferred to the nominee upon the nominee's assumption of the loan.

(d) This section does not affect the right of the bank to institute legal actions against the borrowers, guarantors, or other sureties for performance to collect the indebtedness owing on the loan and to take other legal action on the collateral securing the loan.

* **Sec. 23.** AS 44.81.270 is repealed and reenacted to read:

Sec. 44.81.270. AUDITS AND EXAMINATIONS OF BANK. (a) The

legislative auditor may cause the bank to be audited in the manner and under the conditions established by AS 24.20.271 for audits performed by the legislative audit division. The legislative audit division has free access to all books and papers of the bank that relate to the business of the bank and books and papers kept by a director, officer, or employee relating to or upon which a record of the business of the bank is

1 kept. The legislative audit division may summon witnesses and administer oaths or
2 affirmations in the examination of directors, officers, or employees of the bank or
3 another person in relation to the affairs, transactions, and conditions of the bank, and
4 may require and compel the production of records, books, papers, contracts, or other
5 documents by court order if not voluntarily produced. At the direction of the legislative
6 budget and audit committee under AS 24.20.271, the legislative auditor may conduct
7 an audit of the bank.

8 (b) The legislative auditor and the auditor's employees may not disclose
9 information acquired by them in the course of an audit of the bank concerning the
10 particulars of the business or affairs of a borrower of the bank or another person,
11 unless the information is required to be disclosed by law or under a court order.

12 (c) The bank shall be audited annually by independent outside auditors. The
13 legislative auditor may confer with the outside auditors and review the work papers of
14 the audit. The board shall engage the outside auditors, who shall be responsible to the
15 board. The bank shall submit copies of each report of the outside auditors to the
16 legislative auditor within 30 days of the report by the bank.

17 (d) The state bank examiners shall perform an annual qualitative examination
18 and evaluation of the bank. The commissioner of commerce and economic
19 development shall assess the bank a fee established under AS 06.01.010(b) for the
20 actual expenses incurred by the Department of Commerce and Economic Development
21 in connection with the examination. The examiners shall report to the board on the
22 examination. The examiners shall prepare a summary report evaluating the bank's loan
23 portfolio quality on a statistical basis and addressing the appropriateness and
24 effectiveness of the bank's policies, practices, and management within the context of
25 the bank's statutory purposes. The examiners shall distribute copies of the summary
26 report to the bank, the legislature, and the governor, and the other records related to
27 the examination of the bank are subject to AS 06.01.025.

28 * **Sec. 24.** AS 44.81 is amended by adding a new section to read:

29 Sec. 44.81.300. UNCLAIMED DISTRIBUTIONS, REDEMPTIONS, OR
30 PAYMENTS. The bank may revoke a distribution of net proceeds by the bank or a
31 redemption of or payment based upon an allocation of proceeds or upon capital stock

1 issued by the bank if the distribution, redemption, or payment remains unclaimed six
2 years after the date authorized for payment, redemption, or retirement. The amount
3 revoked may revert to an unallocated capital account of the bank if, at least six months
4 before the declared date of revocation, the bank has mailed to the last known address
5 of the person shown by the bank's records to be entitled to the amount a notice that
6 the payment is available to the person; if the address is unknown, the bank shall
7 publish the notice as provided by law for the publication of a summons. A
8 distribution, redemption, or payment subject to this section is not subject to
9 AS 34.45.110 - 34.45.780.

10 * **Sec. 25.** AS 44.81.350(3) is amended to read:

11 (3) "member of the bank" includes
12 (A) a holder of a share of membership stock of the bank; or
13 (B) a patron of the bank with retained patronage earnings, or
14 other form of capital ownership in the bank, of \$2,500 or more to the
15 patron's credit;

16 * **Sec. 26.** AS 44.81.350 is amended by adding new paragraphs to read:

17 (5) "commercial agriculture" includes commercially-related activity in
18 connection with producing, harvesting, processing, or marketing an agricultural,
19 maricultural, or horticultural commodity, including the breeding, raising, shearing,
20 feeding, caring for, training, and management of livestock, bees, poultry, shellfish, and
21 fur-bearing animals and wildlife, and the planting, cultivating, caring for, harvesting,
22 or processing of forest products on a sustained yield basis;

23 (6) "permit" means a limited entry permit issued under AS 16.43;

24 (7) "resident farmer" means a person who is a resident of the state and
25 who is engaged in commercial agriculture in the state;

26 (8) "resident fisher" means a person who is a resident of the state and
27 who is engaged in commercial fishing in the state.

28 * **Sec. 27.** AS 44.81.010(c), 44.81.040, 44.81.050, 44.81.060, 44.81.070, 44.81.090,
29 44.81.100, 44.81.110, 44.81.160, 44.81.190, 44.81.220, 44.81.230, 44.81.235, 44.81.240, and
30 44.81.280 are repealed.

31 * **Sec. 28.** TRANSITION PROVISIONS. This Act does not affect a contract, cause of

1 action, liability, penalty, or proceeding existing, incurred, or accrued on the effective date of
2 this Act. This Act does not affect an action of the Alaska Commercial Fishing and
3 Agriculture Bank taken before the effective date of this Act.