

**HOUSE BILL NO. 415**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

**BY REPRESENTATIVE MURKOWSKI**

**Introduced: 2/16/00**

**Referred: Labor and Commerce, Judiciary, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to trust companies and providers of fiduciary services; amending  
2 Rules 6 and 12, Alaska Rules of Civil Procedure, Rule 40, Alaska Rules of  
3 Criminal Procedure, and Rules 204, 403, 502, 602, and 611, Alaska Rules of  
4 Appellate Procedure; and providing for an effective date."

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

6 \* **Section 1.** AS 06.05.235(g) is amended to read:

7 (g) For the purpose of this section and AS 06.05.570, a trust company  
8 organized under **AS 06.26** [AS 06.25] that is engaged in the business of banking shall  
9 be considered a state bank.

10 \* **Sec. 2.** AS 06 is amended by adding a new chapter to read:

11 **Chapter 26. Providers of Fiduciary Services.**

12 **Article 1. General Authority.**

13 **Sec. 06.26.010. Persons authorized to act as fiduciaries.** Notwithstanding  
14 other provisions of law and except as provided in AS 06.26.020, a person may not act

1 as a fiduciary in this state unless the person is

- 2 (1) a trust company organized under this chapter;
- 3 (2) a private fiduciary that has received an exemption under  
4 AS 06.26.200;
- 5 (3) a state financial institution;
- 6 (4) a national bank having its principal office in this state and  
7 authorized by the United States Comptroller of the Currency to act as a fiduciary;
- 8 (5) a federally chartered savings association having its principal office  
9 in this state and authorized by its federal chartering authority to act as a fiduciary;
- 10 (6) an international bank or an interstate bank with a branch bank in  
11 this state established or maintained under AS 06.05.550 or an interstate or international  
12 trust company with a trust office authorized under AS 06.26.810 - 06.26.890; in this  
13 paragraph, "branch bank," "international bank," and "interstate bank" have the  
14 meanings given in AS 06.05.540; or
- 15 (7) an interstate or international trust company with a trust office  
16 authorized by the department under AS 06.26.810 - 06.26.890.

17 **Sec. 06.26.020. Exemptions.** Notwithstanding any other provision of this  
18 chapter, a person does not act as a fiduciary under this chapter if the person

- 19 (1) is licensed to practice law in this state, is acting within the scope  
20 of that license, and any fiduciary activity is solely incidental to the person's practice  
21 of law;
- 22 (2) acts as trustee under a deed of trust delivered only as security for  
23 the payment of money or for the performance of another act;
- 24 (3) receives and distributes on behalf of a principal rents and proceeds  
25 of sales as a real estate broker or other licensee under AS 08.88;
- 26 (4) is registered under AS 45.55 as a broker-dealer, a state investment  
27 advisor, or an investment adviser representative and is acting within the scope of that  
28 registration;
- 29 (5) engages in the sale and administration of an insurance product as  
30 an insurance company licensed under AS 21 or insurance producer licensed under  
31 AS 21 and is acting within the scope of that license;

- 1 (6) is a cemetery association organized and acting under AS 10.30;
- 2 (7) acts as a trustee under a voting trust under AS 10.06;
- 3 (8) has a certified public accountant certificate issued under AS 08.04  
4 and is acting within the scope of that certificate;
- 5 (9) serves as trustee of a charitable trust for the benefit of a nonprofit  
6 corporation incorporated under AS 10.20;
- 7 (10) holds real property in trust for the primary purpose of subdivision,  
8 development, or sale or to facilitate a business transaction with respect to the real  
9 property;
- 10 (11) serves as trustee of a trust if
- 11 (A) at least one settlor of the trust is a member of the trustee's  
12 family; and
- 13 (B) the person has not publicly solicited appointment as trustee  
14 for any trust;
- 15 (12) holds money or other assets as a homeowners' association or  
16 similar organization to pay maintenance and other related costs for commonly owned  
17 property; in this paragraph, "homeowners' association" includes an association of  
18 apartment owners under AS 34.07.450 and a unit owners' association or master  
19 association under AS 34.08.990;
- 20 (13) holds money or other assets in connection with the collection of  
21 debts or payments on loans by a person acting solely as the agent or representative at  
22 the sole direction of the person to whom the debt or payment is owed, including  
23 engaging in the business of an escrow agent;
- 24 (14) holds or disburses money or other assets held by a court-appointed  
25 conservator or receiver if the conservatorship or receivership is under continuous court  
26 supervision;
- 27 (15) engages in other activities expressly excluded from the application  
28 of this chapter by regulations adopted by the department that are consistent with this  
29 chapter;
- 30 (16) is a business partner acting with regard to the business, or a co-  
31 owner of property acting with regard to the co-owned property.

1           **Sec. 06.26.030. Location of operation.** (a) A trust company may act as a  
 2 fiduciary in this state, another state, or a foreign country, subject to complying with  
 3 applicable laws of the state or foreign country, at an office or branch established and  
 4 maintained under this chapter.

5           (b) A trust company may conduct any activities at an office outside this state  
 6 that are permissible for a trust company chartered by the host state, except to the  
 7 extent those activities are expressly prohibited by the laws of this state or by a  
 8 regulation or order of the department applicable to the trust company.

9           **Article 2. Name, Powers, Organization, and Capitalization.**

10          **Sec. 06.26.040. Name of trust company.** (a) A person may not to use the  
 11 words "trust" or "trust company" or any other words in a manner that could reasonably  
 12 be expected to convey the impression that the person is acting as a fiduciary unless the  
 13 person is authorized to act as a fiduciary under AS 06.26.010.

14          (b) This section does not prohibit the use of the words "trust" or "trust  
 15 company" in the name of a corporation that is in existence as of the effective date of  
 16 this Act and that is not subject to this chapter if the corporation was originally  
 17 organized under the laws of this state and has not, since the date of its original  
 18 organization, amended or restated its articles of incorporation to delete from its name  
 19 the words "trust" or "trust company."

20          **Sec. 06.26.050. Powers of trust company.** (a) A trust company may perform  
 21 any act as a fiduciary that a state financial institution, or a national bank exclusively  
 22 exercising trust powers, may perform, including

- 23                   (1) acting as trustee under a written agreement;  
 24                   (2) receiving money and other property as trustee for investment in real  
 25 or personal property;  
 26                   (3) acting as a trustee and performing the fiduciary duties committed  
 27 or transferred to it by a court;  
 28                   (4) receiving money or other assets under AS 06.35;  
 29                   (5) acting as an executor, an administrator, or a trustee of the estate of  
 30 a deceased person;  
 31                   (6) acting as a custodian, guardian, conservator, or trustee for a minor

1 or an incapacitated person;

2 (7) acting as a successor fiduciary to a depository;

3 (8) receiving for safekeeping any type of personal property;

4 (9) acting as a custodian, an assignee, a transfer agent, an escrow agent,  
5 a registrar, or a receiver;

6 (10) acting as an investment advisor, an agent, or an attorney-in-fact  
7 in any agreed upon capacity;

8 (11) exercising additional powers expressly authorized by a regulation  
9 adopted under this chapter; and

10 (12) exercising an incidental power that is reasonably necessary to  
11 enable it to fully exercise the powers expressly conferred according to commonly  
12 accepted fiduciary customs and usage.

13 (b) A trust company may exercise the powers of a business incorporated under  
14 the laws of this state that are reasonably necessary to enable the exercise of its specific  
15 powers under this chapter.

16 (c) A trust company may contribute to community solicitations, or to  
17 charitable, philanthropic, or benevolent instrumentalities that operate to promote public  
18 welfare, amounts that its board considers appropriate and in the interests of the trust  
19 company.

20 (d) Subject to AS 06.26.370, a trust company may deposit trust money or other  
21 assets with itself.

22 (e) Subject to the approval of the department and to being insured by the  
23 Federal Deposit Insurance Corporation or its successor, a trust company may accept  
24 deposits from the public.

25 (f) A trust company organized under this chapter may apply for a certificate  
26 of authority under AS 06.05.

27 (g) A trust company organized under this chapter with a certificate of authority  
28 issued under AS 06.05 may exercise all powers granted to it under AS 06.05 to the  
29 extent the powers do not conflict with this chapter. A trust company with a certificate  
30 of authority issued under AS 06.05 is subject to all of the provisions of AS 06.05. In  
31 case of a conflict between the provisions of this chapter and AS 06.05, the provisions

1 of this chapter apply.

2 (h) In (a) of this section, "national bank exclusively exercising trust powers"  
3 means a person issued a charter by the United States Comptroller of the Currency if  
4 the charter confers only trust powers.

5 **Sec. 06.26.060. Organizers.** One or more persons may organize a trust  
6 company.

7 **Sec. 06.26.070. Incorporation.** (a) A trust company shall be incorporated  
8 under AS 10.06.

9 (b) In addition to the items required under AS 10.06.208 to be included in  
10 articles of incorporation, the articles of incorporation of a trust company must specify

11 (1) the judicial district where the trust company will be located and the  
12 community where the trust company will locate its principal place of business;

13 (2) the amount of the trust company's stock, which must be divided into  
14 shares having a par value of not less than \$1 each;

15 (3) that there will be at least five but not more than 25 directors;

16 (4) the period for which the trust company is organized, whether  
17 limited or perpetual;

18 (5) the name by which the trust company will be known, which must  
19 contain the words "trust company" as a part of the name; and

20 (6) a declaration that each incorporator will, if elected, accept the  
21 responsibilities and faithfully discharge the duties of a director.

22 **Sec. 06.26.080. Amendment of articles or bylaws.** (a) A trust company may  
23 amend its articles of incorporation or bylaws in a manner consistent with its articles,  
24 its bylaws, AS 10.06, and this chapter by a vote of its shareholders representing at  
25 least a majority of the capital at a regular meeting or at a special meeting called for  
26 that purpose. The trust company shall file a written notice of an amendment with the  
27 department.

28 (b) The department has 60 days from the date that the department receives a  
29 notice under (a) of this section to review the amendment, and the amendment becomes  
30 effective on the 61st day after the department receives the notice unless the department  
31 specifies a different date. The department may extend the 60-day period of review if

1 the department determines that the notice raises issues that require additional  
2 information or if the department needs additional time for analysis. If the 60-day  
3 period of review is extended, the amendment becomes effective only when the  
4 department approves the amendment in writing.

5 **Sec. 06.26.085. Certificate of authority required.** A person may not act as  
6 a trust company until a certificate of authority is received from the department.

7 **Sec. 06.26.090. Application for certificate of authority.** (a) An application  
8 for a certificate of authority shall be made in the form required by the department and  
9 must be supported by the information, data, records, and opinions of counsel required  
10 by the department. The application must be accompanied by all fees and deposits  
11 required by this chapter.

12 (b) The department may grant a certificate of authority only if the department  
13 receives evidence from the applicant that the department determines demonstrates that  
14 the establishment of the proposed trust company will serve public convenience and  
15 well-being. The evidence must address the following factors:

16 (1) the market to be served;

17 (2) whether the proposed organizational structure, capital structure, and  
18 amount of initial capitalization are adequate for the proposed trust company and its  
19 location;

20 (3) whether the anticipated volume and nature of the proposed trust  
21 company indicates a reasonable probability of success and profitability based on the  
22 market sought to be served;

23 (4) whether, as a group, the proposed officers, directors, and employees  
24 have sufficient fiduciary experience, ability, standing, competence, trustworthiness, and  
25 integrity to justify a belief that the proposed trust company will operate in compliance  
26 with the law and that success of the proposed trust company is probable;

27 (5) whether each principal shareholder has sufficient experience, ability,  
28 standing, competence, trustworthiness, and integrity to justify a belief that the proposed  
29 trust company will be free from improper or unlawful influence or interference with  
30 respect to the trust company's operation in compliance with the law; and

31 (6) whether the persons organizing the trust company are acting in good

1 faith.

2 (c) The applicant for a certificate of authority bears the burden of establishing  
3 that public convenience and well-being will be served by the establishment of the trust  
4 company. The failure of an applicant to furnish required information, data, opinions  
5 of counsel, other material, the required fee, or a required deposit is considered an  
6 abandonment of the application.

7 (d) An applicant shall pay under AS 06.01.010 the investigation expenses  
8 incurred by the department in processing an application for a certificate of authority.  
9 When submitting an application to the department, the applicant shall pay the  
10 department \$2,000 as an advance payment of the investigation expenses incurred by  
11 the department. If the investigation expenses incurred by the department are less than  
12 \$2,000, the department shall promptly refund the excess to the applicant. If the  
13 investigation expenses incurred by the department are greater than \$2,000, the  
14 department may obtain reimbursement from the applicant.

15 (e) If a protest of the application is not filed with the department on or before  
16 the 15th day after the last date that the notice is published under AS 06.26.100, the  
17 department may immediately determine whether the application meets the requirements  
18 of this section based on the application and investigation. The department may  
19 approve the application or hold a hearing on the application. The department may  
20 deny the application if the department determines that the requirements of this chapter  
21 have not been met.

22 (f) If the department holds a hearing under (e) of this section, the department  
23 shall determine whether all of the applicable requirements of this section have been  
24 satisfied and shall enter an order granting or denying the certificate of authority. The  
25 department may set conditions on the certificate of authority and shall include any  
26 conditions in the order granting the certificate of authority.

27 **Sec. 06.26.100. Department notices regarding application.** (a) The  
28 department shall notify the organizers of a proposed trust company when the  
29 application under AS 06.26.090 is complete and accepted for filing and all required  
30 fees and deposits have been paid. Promptly after notification, the organizers shall  
31 publish in a form specified by the department notice of the filing of the application in

1 a newspaper of general circulation published in the community proposed as the trust  
 2 company's principal place of business. If a newspaper of general circulation is not  
 3 published in the community, the organizers shall publish the notice in a newspaper of  
 4 general circulation near the community. The department may require the organizers  
 5 to publish the notice at other locations reasonably necessary to solicit the views of  
 6 potentially affected persons. The notice must include a solicitation of comments and  
 7 protests.

8 (b) To prove that the publication required by (a) of this section has been  
 9 accomplished, the organizers shall file with the department an affidavit of publication  
 10 from the newspaper in which the notice was published.

11 **Sec. 06.26.110. Issuance of certificate of authority; required operation.** (a)  
 12 The department may not deliver a certificate of authority to a person to act as a trust  
 13 company until the person has

14 (1) received cash or marketable securities in at least the full amount of  
 15 the capital required under AS 06.26.120 from subscriptions for the issuance of shares;

16 (2) elected or qualified the initial officers and directors named in the  
 17 application for the certificate of authority or other officers and directors approved by  
 18 the department; and

19 (3) complied with all other requirements of this chapter related to the  
 20 organization of a trust company.

21 (b) A person who receives a certificate of authority, including a certificate of  
 22 authority with conditions, shall open a home office and begin providing fiduciary  
 23 services within six months after the date that the person receives the certificate of  
 24 authority or by the end of any extension of the six-month period allowed by the  
 25 department. If the person does not open the home office or begin providing fiduciary  
 26 services within the six months or by the end of any extension, the department shall  
 27 revoke the certificate of authority.

28 **Sec. 06.26.120. Required capital; change in outstanding capital and**  
 29 **surplus.** (a) A trust company may not act as a fiduciary unless the trust company has  
 30 paid-in capital in an amount acceptable to the department, but not less than \$400,000,  
 31 and paid-in surplus equal to 20 percent of paid-in capital. The trust company shall

1 hold its unimpaired capital as security for the faithful discharge of the fiduciary duties  
2 undertaken by the trust company and for the claims of creditors.

3 (b) The department may by order require or permit adjustment to capital for  
4 a proposed or existing trust company if the department finds the condition and  
5 operations of an existing trust company or the proposed scope or type of operations  
6 of a proposed trust company requires adjustment to capital to protect the safety and  
7 soundness of the trust company. The safety and soundness factors to be considered  
8 by the department in the exercise of its discretion to adjust capital include

- 9 (1) the nature and type of business conducted;  
10 (2) the nature and degree of liquidity of the assets held by the trust  
11 company other than trust assets;  
12 (3) the amount of fiduciary assets being managed;  
13 (4) the type of fiduciary assets held and the depository of those assets;  
14 (5) the complexity of the fiduciary duties and degree of discretion  
15 undertaken;  
16 (6) the competence and experience of management;  
17 (7) the extent and adequacy of internal controls;  
18 (8) the presence or absence of annual unqualified audits by an  
19 independent certified public accountant;  
20 (9) the reasonableness of the trust company's plans for retaining or  
21 acquiring additional capital; and  
22 (10) the existence and adequacy of insurance held by the trust company  
23 to protect its customers, beneficiaries, and grantors.

24 (c) If the department orders a trust company to increase or adjust its capital,  
25 the order must state the date by which the increase or adjustment must be made.  
26 Unless the trust company makes a written request for a hearing within 30 days after  
27 the order is issued and before the date for making the increase or adjustment, the order  
28 becomes effective and final and may not be appealed to the department. An order  
29 under this subsection does not prohibit the trust company from later applying to the  
30 department to reduce capital requirements for the trust company under (b) of this  
31 section.

1 (d) Subject to (b) of this section and AS 06.26.200, a trust company to which  
 2 the department issues a certificate of authority shall at all times maintain capital in at  
 3 least the amount required under (a) of this section, as increased or decreased under (b)  
 4 of this section.

5 (e) A trust company may not reduce or increase its outstanding capital through  
 6 dividend, redemption, issuance of shares, or otherwise without the prior written  
 7 approval of the department, unless otherwise permitted by this chapter.

8 (f) Prior approval by the department is not required for a decrease in surplus  
 9 caused by incurred losses that exceed undivided profits. A decrease to surplus as a  
 10 result of losses shall be replaced before payment of further dividends.

11 **Sec. 06.26.130. Capital notes or debentures.** (a) A trust company may, with  
 12 the written consent of the department, and if authorized by its articles of incorporation  
 13 or approved by persons owning two-thirds of the stock of the trust company entitled  
 14 to vote, issue convertible or nonconvertible capital notes or debentures. The principal  
 15 amount of notes and debentures outstanding at any time may not exceed 33 1/3 percent  
 16 of the capital stock and surplus fund of the trust company on the date of issuance.  
 17 The rate and term are subject to the approval of the department, but the term may not  
 18 exceed 20 years.

19 (b) A trust company may not retire capital notes or debentures if the retirement  
 20 creates an impairment of its capital. Capital notes and debentures are subordinated in  
 21 right of payment in the event of insolvency or liquidation of the trust company to the  
 22 prior payment of all deposits and all claims of other creditors except the holders of  
 23 securities on a parity with the capital notes and debentures and the holders of securities  
 24 expressly subordinated to the capital notes and debentures.

25 **Sec. 06.26.140. Cumulative voting.** Shareholders may not use cumulative  
 26 voting in the election of directors unless cumulative voting is allowed by the trust  
 27 company's articles of incorporation.

### 28 **Article 3. Operation of Offices.**

29 **Sec. 06.26.150. Trust company home office.** (a) A trust company shall  
 30 continuously maintain in this state a home office where the trust company operates and  
 31 keeps its corporate books and records. At least one executive officer shall maintain

1 an office at the home office.

2 (b) Each executive officer at the home office is an agent of the trust company  
3 for service of process.

4 (c) A trust company may change its home office to any of its offices existing  
5 at the time of the change within this state by filing a written notice with the  
6 department setting out the name of the trust company, the street address of its home  
7 office before the change, the street address to which the home office is to be changed,  
8 and a copy of a resolution adopted by the trust company's board authorizing the  
9 change.

10 (d) The change of the location of a home office takes effect on the 61st day  
11 after the date the department receives the notice under (c) of this section, unless the  
12 department establishes a different date or unless, before the 61st day, the department  
13 notifies the trust company that the trust company shall establish to the satisfaction of  
14 the department that the relocation is consistent with the original determination made  
15 under AS 06.26.090 for the establishment of a trust company at that location, in which  
16 event the change of home office takes effect when approved by the department.

17 **Sec. 06.26.160. Trust company branch offices.** (a) A trust company may  
18 establish branch offices anywhere in the state by filing a written notice with the  
19 department setting out the name of the trust company, the street address of the  
20 proposed branch office, a description of the activities proposed to be conducted at the  
21 branch office, and a copy of a resolution adopted by the trust company's board. The  
22 department has 60 days from the date the department receives the notice to review the  
23 proposal for the branch office, and the trust company may begin operating the branch  
24 office on the 61st day after the date the department receives the notice, unless the  
25 department specifies a different date.

26 (b) The department may extend the 60-day period of review provided by (a)  
27 of this section if the department determines that the proposed branch office raises  
28 issues that require additional information or if the department needs additional time for  
29 analysis. If the 60-day period of review is extended, the trust company may establish  
30 the branch office only after the department approves the branch office in writing. The  
31 department may deny the trust company permission to establish a branch office if the

1 department has safety or soundness concerns.

2 **Sec. 06.26.170. Trust company representative offices.** (a) A trust company  
3 may establish or acquire representative trust offices anywhere in this state. To  
4 establish or acquire a representative office, a trust company shall (1) file a written  
5 notice with the department that sets out the name of the trust company and the location  
6 of the proposed representative office, (2) furnish a copy of a resolution adopted by the  
7 trust company's board authorizing the establishment or acquisition of the representative  
8 office, and (3) pay the filing fee established by the department by regulation. The  
9 department has 60 days from the date the department receives the notice to review the  
10 establishment or acquisition of a representative office, and the trust company may  
11 begin operating the representative office on the 61st day after the date the department  
12 receives the notice, unless the department specifies a different date.

13 (b) The department may extend the 60-day period of review provided by (a)  
14 of this section if the department determines that the written notice raises issues that  
15 require additional information or if the department needs additional time for analysis.  
16 If the 60-day period of review is extended, the trust company may establish the  
17 representative office only after the department approves the office in writing. The  
18 department may deny permission to establish or acquire a representative office of the  
19 trust company if the department has safety or soundness concerns.

20 **Sec. 06.26.180. Interstate and international offices.** (a) With the prior  
21 written approval of the department, a trust company may establish a branch office or  
22 a representative office outside this state. To establish an interstate or international  
23 office, a trust company shall submit an application to the department specifying

24 (1) the location of the proposed office;  
25 (2) the business to be conducted at the proposed office; and  
26 (3) the laws of the jurisdiction where the office will be located that  
27 permit the office to be established.

28 (b) The department may approve an application for an interstate or  
29 international office if the department finds that

30 (1) the laws of the jurisdiction in which the office is to be located  
31 permit the establishment of the office; and

1 (2) the department does not have a significant supervisory or regulatory  
2 concern regarding the proposed office.

3 (c) If a trust company submits with the application a certified statement of the  
4 governmental regulator for the jurisdiction in which the office is to be located  
5 expressly permitting the establishment of the office, the trust company may establish  
6 the office by following the procedures under AS 06.26.090, except that the trust  
7 company may not establish the office before the 91st day after the date the department  
8 receives the notice filed under AS 06.26.160(a) unless the department notifies the trust  
9 company that the trust company may establish the office on an earlier date.

10 (d) The department may deny a trust company permission to establish an  
11 interstate or international office if the department has safety or soundness concerns  
12 regarding

13 (1) the market to be served;

14 (2) whether the proposed organizational structure, capital structure, and  
15 amount of initial capitalization are adequate;

16 (3) whether the anticipated volume and nature of the proposed office  
17 indicate a reasonable probability of success and profitability based on the market  
18 sought to be served;

19 (4) whether, as a group, the officers, directors, and employees have  
20 sufficient fiduciary experience, ability, standing, competence, trustworthiness, and  
21 integrity to justify a belief that the proposed office will operate in compliance with  
22 law.

23 **Sec. 06.26.190. Hours of operation.** (a) A trust company and an interstate  
24 or international trust company maintaining a trust office under AS 06.26.810 -  
25 06.26.890 may close on the legal holidays described in AS 44.12.010 - 44.12.025. A  
26 notice of holiday closings shall be made available to the trust company's customers by  
27 mail, by the Internet, or by other means.

28 (b) A trust company and an interstate or international trust company  
29 maintaining a trust office under AS 06.26.810 - 06.26.890 may close on any business  
30 day if the trust company

31 (1) notifies the department in advance of the closure; and

1 (2) makes a closure notice available to its customers by mail, by the  
2 Internet, or by other means.

3 (c) The hours of operation, and any changes in the hours of operation, of a  
4 trust company and an interstate or international trust company maintaining a trust  
5 office under AS 06.26.810 - 06.26.890 must be submitted to the department and must  
6 be made available to the trust company's customers by mail, by the Internet, or by  
7 other means.

8 (d) Notwithstanding this section, the hours of operation of a trust company  
9 with a certificate of authority issued under AS 06.05 are subject to AS 06.05.166.

#### 10 **Article 4. Private Fiduciaries.**

11 **Sec. 06.26.200. Private fiduciaries.** (a) Unless a private fiduciary is exempt  
12 under AS 06.26.020, or unless the department expressly in writing exempts the person  
13 under this section from all or some of the provisions of this chapter, a private fiduciary  
14 shall comply with the provisions of this chapter applicable to a trust company.

15 (b) A private fiduciary may apply in writing for an exemption from specific  
16 provisions of this chapter. The department may grant the exemption, in whole or in  
17 part, if the department finds that the private fiduciary does not and will not offer  
18 fiduciary services to the general public.

19 (c) At the expense of the private fiduciary, the department may examine or  
20 investigate the private fiduciary in connection with an application for an exemption  
21 under this section. Unless the application presents novel or unusual questions, the  
22 department shall approve or deny the application for exemption or, at the written  
23 request of the private fiduciary, hold a hearing on the application not later than the  
24 61st day after the date that the department considers the application complete and  
25 accepted for filing. The department may require the private fiduciary to submit  
26 additional information the department considers necessary to make an informed  
27 decision.

28 (d) The department may make an exemption under this section subject to  
29 conditions or limitations imposed by the department that are consistent with this  
30 chapter.

31 (e) The department may adopt regulations that are consistent with this chapter

1 defining the activities that do not constitute offering fiduciary services to the general  
 2 public, specifying the provisions of this chapter that are subject to an exemption under  
 3 this section, and establishing procedures and requirements for obtaining, maintaining,  
 4 or revoking an exemption granted under this section.

5 **Sec. 06.26.210. Requirements to apply for and maintain status as a private**  
 6 **fiduciary.** (a) To obtain an exemption under AS 06.26.200, a private fiduciary shall  
 7 file an application with the department containing

8 (1) a nonrefundable application fee established by the department by  
 9 regulation;

10 (2) a detailed statement under oath showing the private fiduciary's  
 11 assets and liabilities as of the end of the month that precedes the date of the filing of  
 12 the application with the department;

13 (3) a statement under oath of the reason for requesting the exemption;

14 (4) a statement under oath that the private fiduciary does not currently  
 15 offer fiduciary services to the general public and that the private fiduciary will not  
 16 offer fiduciary services to the general public without the prior written permission of  
 17 the department;

18 (5) the current street address of the physical location in this state where  
 19 the private fiduciary will maintain its books and records, the private fiduciary's current  
 20 telephone number at that location, and a statement under oath that the address given  
 21 is true and correct and not a United States Postal Service post office box or a private  
 22 commercial mail drop;

23 (6) a list of the specific provisions of this chapter or regulations  
 24 adopted under this chapter from which the private fiduciary requests an exemption.

25 (b) The department may not approve an exemption under this section unless  
 26 the application complies with (a) of this section.

27 (c) To maintain its exemption under AS 06.26.200, a private fiduciary

28 (1) may not offer fiduciary services to the general public;

29 (2) shall file an annual certification on or before December 31 of each  
 30 year on a form provided by the department that the private fiduciary is maintaining the  
 31 conditions and limitations of its exempt status; the annual certification must be

1 accompanied by a fee established by the department by regulation.

2 (d) The annual certification required under (c) of this section is valid only if  
3 it bears an acknowledgment stamped by the department. The department has 60 days  
4 from the date it receives the annual certification to review the annual certification and  
5 return a copy of the acknowledged annual certification to the private fiduciary. The  
6 burden is on the exempt private fiduciary to notify the department of a failure to return  
7 a copy of an acknowledged annual certification within the 60-day period.

8 (e) The department may examine or investigate the private fiduciary  
9 periodically as necessary to verify the annual certification.

10 (f) Notwithstanding having an exemption under AS 06.26.200, a private  
11 fiduciary shall comply with the home office provisions of AS 06.26.150 and shall  
12 report to the department any change of address or telephone number within 30 days  
13 after the change.

14 **Sec. 06.26.220. Transfer of control.** Control of an exempt private fiduciary  
15 may not be sold or otherwise transferred with the an exemption under AS 06.26.200.  
16 In any change of control, the exempt status of the private fiduciary automatically  
17 terminates on the effective date of the transfer, and the person acquiring control must  
18 comply with this chapter. After transfer of control, a separate application for an  
19 exemption under AS 06.26.200 must be filed with the department if the acquiring  
20 person wishes to obtain or continue an exemption under AS 06.26.200.

21 **Sec. 06.26.230. Revocation of exemption.** (a) The department may revoke  
22 an exemption under AS 06.26.200 if the exempt private fiduciary

23 (1) makes a false statement under oath on any document required to be  
24 filed by this chapter;

25 (2) fails to submit to an examination as required by AS 06.26.200;

26 (3) withholds requested information from the department; or

27 (4) violates a provision of this section applicable to exempt private  
28 fiduciaries.

29 (b) If the department determines from examination or other credible evidence  
30 that an exempt private fiduciary has violated a requirement of this chapter, the  
31 department may by personal delivery or registered or certified mail, return receipt

1 requested, notify the exempt private fiduciary in writing that the department will  
 2 revoke the private fiduciary's exemption as of a stated date, which may not be before  
 3 the fifth calendar day after the date that the notification is delivered or mailed, unless  
 4 the private fiduciary requests a hearing in writing before the stated date. The  
 5 notification must state the grounds for the revocation with reasonable certainty. After  
 6 a revocation takes effect, the revocation is final, the private fiduciary may not appeal  
 7 the revocation to the department, and the private fiduciary is subject to all of the  
 8 requirements and provisions of this chapter that are applicable to private fiduciaries not  
 9 exempt under AS 06.26.200.

10 (c) A private fiduciary shall comply with the provisions of this chapter from  
 11 which it was formerly exempt within five calendar days after the effective date of a  
 12 revocation of its exemption under this section. However, if the department determines  
 13 at the time of revocation that the private fiduciary has been engaging in or attempting  
 14 to engage in acts intended or designed to deceive or defraud, the department may, in  
 15 the department's sole discretion, shorten or eliminate the five-calendar-day compliance  
 16 period.

17 (d) If, within the time allowed under (c) of this section, the private fiduciary  
 18 does not comply with all of the provisions of this chapter, including the capitalization  
 19 requirements that have been determined by the department as necessary to assure the  
 20 safety and soundness of the private fiduciary, the department may

21 (1) file a court action or pursue another remedy provided by this  
 22 chapter; or

23 (2) refer the private fiduciary to the attorney general for institution of  
 24 appropriate legal proceedings against the private fiduciary.

25 **Sec. 06.26.240. Conversion to trust company.** (a) A private fiduciary may  
 26 not offer fiduciary services to the general public as a trust company until the private  
 27 fiduciary satisfies the requirements of this section.

28 (b) The private fiduciary shall file a notice with the department on a form  
 29 prescribed by the department, furnish a copy of a resolution adopted by the board  
 30 authorizing the private fiduciary to offer fiduciary services to the general public, pay  
 31 any filing fee established by the department by regulation, and comply with the

1 requirements of this chapter for trust companies. The notice must provide the name  
 2 of the private fiduciary and acknowledge that any exemption granted or otherwise  
 3 applicable to the private fiduciary under AS 06.26.200 ceases to apply on the effective  
 4 date of the notice.

5 (c) The department has 60 days after the department receives the notice under  
 6 (a) of this section to review the conversion, and a private fiduciary may begin offering  
 7 fiduciary services to the general public on the 61st day after the date that the  
 8 department receives a notice under (a) of this section from the private fiduciary, unless  
 9 the department specifies a different date.

10 (d) The department may extend the 60-day period of review provided by (c)  
 11 of this section if the department determines that the notice raises issues that require  
 12 additional information or if the department needs additional time for analysis. If the  
 13 60-day period of review is extended, the private fiduciary may offer fiduciary services  
 14 to the general public only after written approval by the department.

15 (e) The department may deny a private fiduciary permission to offer fiduciary  
 16 services to the general public as a trust company if the department finds that the  
 17 private fiduciary does not meet the requirements of this chapter for trust companies.

## 18 **Article 5. Investments, Loans, and Deposits.**

19 **Sec. 06.26.250. Regulations on investments.** The department may adopt  
 20 regulations to establish limits, requirements, or exemptions for particular classes or  
 21 categories of investment, or limit or expand investment authority for trust companies  
 22 for particular classes or categories of securities or other property.

23 **Sec. 06.26.260. Pledge of assets.** (a) A trust company may not pledge or  
 24 create a lien on any of the assets belonging to the trust company except to secure

25 (1) the repayment of money borrowed;

26 (2) trust deposits as specifically authorized or required by AS 06.26.370  
 27 or by regulations adopted under this chapter; or

28 (3) deposits made by the United States government, the state, or a  
 29 municipality, or an agency of those governmental bodies.

30 (b) An act, a deed, a conveyance, a pledge, or a contract that violates this  
 31 section is void.

**Article 6. Trust Assets.**

**Sec. 06.26.370. Deposits of trust assets.** (a) A trust company may deposit trust money or other trust assets with itself as an investment if the settlor or the beneficiary authorizes the deposit and if

(1) the trust company maintains as security for the deposits a separate fund of securities that may be used for trust investments and that are under the control of a federal reserve bank or a clearing corporation in this state or elsewhere; in this paragraph, "clearing corporation" has the meaning given in AS 45.08.102;

(2) the total market value of the security fund maintained under (1) of this subsection is at all times at least equal to the deposit;

(3) the security fund maintained under (1) of this subsection is expressly designated as a security fund; and

(4) the security fund maintained under (1) of this subsection is maintained under the control of a person listed in AS 06.26.010.

(b) A trust company may make periodic withdrawals from or additions to the security fund required by (a) of this section if the trust company maintains the value required by (a) of this section for the security fund. Income from the securities in the security fund belongs to the trust company.

(c) Notwithstanding (a) of this section, security under (a) of this section for a deposit is not required to the extent the deposit is insured by the Federal Deposit Insurance Corporation or its successor.

**Sec. 06.26.380. Common investment funds.** Subject to regulations adopted by the department, a trust company may invest trust assets in common investment funds.

**Sec. 06.26.390. Fee determination; investment and management costs.** (a) A trust company shall deal at arm's length with a person when arranging the compensation to be paid by the person for the services of the trust company. Any compensation paid to the trust company must be a reasonable amount with respect to the services rendered.

(b) When investing and managing trust assets, a trust company may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the

1 trust, and the skills of the trust company.

2 **Sec. 06.26.400. Disclosure of conflicts of interest.** Before accepting  
3 appointment as a trustee, a trust company shall disclose any conflict of interest that  
4 may reasonably be expected to arise in the relationship.

5 **Sec. 06.26.410. Standards for handling trust assets.** (a) A trust company,  
6 its representatives, and its appointees shall observe the standards of care applicable to  
7 trustees under AS 13.36.225 - 13.36.290 (Alaska Uniform Prudent Investor Act).

8 (b) A trust company may not lend trust assets, except that a trust company  
9 may make a loan to a beneficiary of the trust if the loan is expressly authorized or  
10 directed by the instrument or transaction that created the trust.

11 **Sec. 06.26.420. Duties at inception of trusteeship.** Within a reasonable time  
12 after accepting appointment as a trustee or receiving trust assets, a trust company shall  
13 review the trust assets and implement decisions concerning the retention and  
14 disposition of the trust assets in order to comply with the purposes, terms, distribution  
15 requirements, and other circumstances of the trust and with the requirements of this  
16 chapter.

17 **Sec. 06.26.430. Loyalty and impartiality.** (a) A trust company shall invest  
18 and manage the trust company's trust assets solely in the interest of the beneficiaries.

19 (b) If a trust has two or more beneficiaries, the trust company shall act  
20 impartially when investing and managing the trust assets and shall consider any  
21 differing interests of the beneficiaries.

22 **Sec. 06.26.440. Delegation of fiduciary functions.** (a) A trust company  
23 acting as a trustee may delegate an investment, management, or administrative function  
24 for the trust assets held by the trust company if the trust company

25 (1) exercises reasonable care, judgment, and caution when selecting the  
26 delegate and considers the delegate's financial standing, ability, and reputation;

27 (2) exercises reasonable care, judgment, and caution when establishing  
28 the scope and other terms of the delegation; and

29 (3) periodically reviews the delegate's actions, monitors the delegate's  
30 overall performance and compliance with the scope and other terms of the delegation,  
31 and exercises reasonable care, judgment, and caution when performing and monitoring

1 the delegate.

2 (b) A trust company that delegates a function under (a) of this section shall  
3 retain responsibility for the delegated fiduciary function.

4 (c) When performing a function delegated under (a) of this section, a delegate  
5 owes a duty to the trust to exercise reasonable care to comply with the terms of the  
6 delegation.

7 (d) A trust company that complies with the requirements of (a) of this section  
8 is not liable to the beneficiaries or to the trust for a decision or an action of the  
9 delegate to whom the function was delegated.

10 (e) By accepting the delegation of a function from a trust company, a delegate  
11 submits to the jurisdiction of the courts of this state.

12 (f) A trust company delegating a function under (a) of this section may hire  
13 and compensate as a delegate a person affiliated with the trust company if

14 (1) the delegation and compensation are authorized by a fiduciary  
15 instrument, a court order, or in writing by each affected customer; or

16 (2) the standards of (a) of this section are satisfied.

17 (g) Fees paid under (f) of this section to a person affiliated with a trust  
18 company must be competitive with fees charged by persons who are not affiliated with  
19 the trust company and who are providing substantially similar services.

20 (h) In this section,

21 (1) "affiliated" has the meaning given in AS 06.35.010(e);

22 (2) "delegate" means a person to whom a trust company has delegated  
23 a function under (a) of this section.

## 24 **Article 7. Ownership.**

25 **Sec. 06.26.450. Acquisition of control.** (a) Except as expressly otherwise  
26 permitted under this chapter, a person may not, without the prior written approval of  
27 the department, directly or indirectly acquire control of a trust company through a  
28 change in a legal or beneficial interest in voting securities of a trust company or a  
29 corporation or other person who owns voting securities of a trust company.

30 (b) This section does not apply to

31 (1) the acquisition of securities in connection with the exercise of a

1 security or other interest in full or partial satisfaction of a debt previously contracted  
 2 for in good faith if the acquiring person files written notice of acquisition with the  
 3 department before the person votes the securities acquired;

4 (2) the acquisition of voting securities in any class or series by a person  
 5 in control who has previously complied with and received approval to acquire control  
 6 under AS 06.26.450 - 06.26.490 or who was identified as a person in control in an  
 7 earlier application filed with and approved by the department;

8 (3) an acquisition or transfer by operation of law, a will, or intestate  
 9 succession if the acquiring person files written notice of acquisition with the  
 10 department before the person votes the securities acquired; or

11 (4) a transaction exempted by the department by regulation or order  
 12 because the transaction is not within the purposes of AS 06.26.450 - 06.26.490.

13 **Sec. 06.26.460. Application for acquisition of control.** (a) A proposed  
 14 transferee seeking approval under AS 06.26.450 to acquire control of a trust company  
 15 shall file with the department

16 (1) an application in the form prescribed by the department;

17 (2) the filing fee established by the department by regulation; and

18 (3) all information required by regulation or that the department  
 19 requires for a particular application in order to make an informed decision to approve  
 20 or reject the proposed acquisition.

21 (b) If the proposed transferee under (a) of this section includes a group of  
 22 persons acting together, the department may require each member of the group to  
 23 provide information to the department.

24 (c) If the proposed transferee is not a resident of the state, a corporation  
 25 organized under AS 10.06, or a foreign corporation qualified under AS 10.06 to  
 26 transact business in this state, the proposed transferee shall file with the department a  
 27 written consent to service of process on a resident of this state for any court action  
 28 arising out of or connected with the proposed acquisition of control.

29 (d) Promptly after the department accepts the application as complete, the  
 30 proposed transferee shall publish notice of the application, the date of filing the  
 31 application, and the identity of each participant in the acquisition of control in the form

1 specified by the department in a newspaper of general circulation published in the  
 2 community proposed as the trust company's principal place of business. If a  
 3 newspaper of general circulation is not published in the community, the notice shall  
 4 be published in a newspaper of general circulation near the community. If the  
 5 acquisition of control is filed in contemplation of a public tender offer subject to the  
 6 requirements of 15 U.S.C. 78n(d)(1), publication of notice of an application may be  
 7 deferred for up to 31 days after the date the application is filed if

8 (1) the proposed transferee requests confidential treatment and  
 9 represents that a public announcement of the tender offer and the filing of appropriate  
 10 forms with the United States Securities and Exchange Commission or the appropriate  
 11 federal banking agency, as applicable, will occur within the period of deferral; and

12 (2) the department determines that public interest will not be harmed  
 13 by the requested confidential treatment.

14 (e) The department may waive the requirement that a notice be published or  
 15 permit delayed publication of the notice if the department makes a written  
 16 determination that waiver or delay is in the public interest.

17 **Sec. 06.26.470. Hearing and decision on application for acquisition of**  
 18 **control.** (a) Not later than the 60th day after the date that the notice regarding  
 19 acquisition of control is published under AS 06.26.460, the department shall approve  
 20 the application or hold a hearing on the application. If the department decides to hold  
 21 a hearing, the department shall conduct one or more prehearing conferences and other  
 22 opportunities for discovery that the department considers advisable and consistent with  
 23 AS 06.01.030 and regulations of the department under AS 06.01 or this chapter. A  
 24 hearing held under this subsection is a confidential proceeding and closed to the  
 25 public.

26 (b) If the department approves an application filed under AS 06.26.460, the  
 27 applicant may acquire control. Any written commitment from the proposed transferee  
 28 offered to and accepted by the department as a condition for approval of the  
 29 application is enforceable against the trust company and the transferee.

30 **Sec. 06.26.480. Appeal from adverse decision.** (a) If a hearing has been  
 31 held under AS 06.26.470, the department has entered an order denying the application,

1 and the order has become final, the applicant may appeal the final order to the superior  
2 court.

3 (b) Unless the court orders otherwise, the filing of an appeal under (a) of this  
4 section does not stay the order of the department.

5 **Sec. 06.26.490. Objection to other transfer.** AS 06.26.450 - 06.26.490 may  
6 not be construed to prevent the department from investigating, commenting on, or  
7 seeking to enjoin or set aside a transfer of voting securities that evidence a direct or  
8 indirect interest in a trust company if the department considers the transfer to be  
9 against the public interest.

### 10 **Article 8. Governance.**

11 **Sec. 06.26.500. Voting securities held as trust assets.** (a) Voting securities  
12 of a trust company held by the trust company as trust assets under a will or trust,  
13 whether registered in the trust company's own name or in the name of its nominee,  
14 may not be voted in the election of directors or on a matter affecting the compensation  
15 of directors, officers, or employees of the trust company unless

16 (1) under the terms of the will or trust, the manner in which the voting  
17 securities are to be voted may be determined by a donor or beneficiary of the will or  
18 trust and the donor or beneficiary actually makes the determination in the matter at  
19 issue;

20 (2) the terms of the will or trust expressly direct the manner in which  
21 the securities must be voted to the extent that no discretion is vested in the trust  
22 company as fiduciary; or

23 (3) the securities are voted solely by a person who is a joint fiduciary,  
24 but who is not a person who is affiliated with the trust company, as if the joint  
25 fiduciary were the sole fiduciary.

26 (b) Voting securities of a trust company that may not be voted under this  
27 section are considered to be authorized but unissued for the purpose of determining the  
28 procedures for and results of the vote under this section.

29 **Sec. 06.26.510. Board of directors.** (a) The board of directors of a trust  
30 company shall consist of at least five but not more than 25 directors, and the majority  
31 of the directors must be residents of this state. The principal executive officer of the

1 trust company is a member of the board and the board's presiding officer unless the  
2 board elects a different presiding officer. The presiding officer shall perform the  
3 duties designated by the board.

4 (b) Unless the department consents in writing, a person may not serve as a  
5 director of a trust company if

6 (1) the trust company incurs an unreimbursed loss attributable to a  
7 charged-off obligation of the person or holds a judgment against the person or against  
8 another person who was controlled by the person when the loan that gave rise to the  
9 judgment or charged-off obligation was funded and went into default;

10 (2) the person has been convicted of a felony, or of another crime  
11 involving moral turpitude or breach of trust; or

12 (3) the person, acting as a personal representative, made a loan of trust  
13 money or other assets, or a purchase or sale of trust assets, that is voidable under  
14 AS 13.16.400 and the person has not corrected the situation; in this paragraph,  
15 "personal representative" has the meaning given in AS 13.06.050.

16 (c) If a trust company does not elect directors before the 61st day after the  
17 date of its regular annual meeting, the department may appoint a person to operate the  
18 trust company and elect directors. If the appointed person is unable to locate or elect  
19 persons willing and able to serve as directors, the department may close the trust  
20 company for liquidation.

21 (d) A vacancy on a board that reduces the number of directors to fewer than  
22 five shall be filled not later than the 30th day after the date that the vacancy occurs.  
23 If the vacancy on the board is not filled within 30 days after the date that the vacancy  
24 occurs, the department may appoint a person to operate the trust company and elect  
25 a board of at least five persons. If the appointed person is unable to locate or elect  
26 five persons willing and able to serve as directors, the department may close the trust  
27 company for liquidation.

28 (e) Before beginning each term to which a person is elected to serve as a  
29 director of a trust company, the person shall submit an affidavit to be filed with the  
30 minutes of the trust company stating that the person, to the extent applicable,

31 (1) accepts the position and is not disqualified from serving in the

1 position;

2 (2) will not violate or knowingly permit a director, an officer, or an  
3 employee of the trust company to violate any law applicable to the conduct of business  
4 of the trust company; and

5 (3) will diligently perform the duties of the position.

6 **Sec. 06.26.520. Board meetings and reports.** (a) The board of directors of  
7 a trust company shall meet at least once every three months. The department or a  
8 director may call a special meeting of the board. A majority of the board constitutes  
9 a quorum. The board shall keep minutes of each board meeting, including a record  
10 of attendance and a record of all votes.

11 (b) At least once every three months, the board of directors of a trust company  
12 shall review written reports prepared by the president, other officers of the trust  
13 company, or a trust committee appointed under AS 06.26.540. The reports must  
14 include the accounts that have been opened or closed during the calendar quarter  
15 before the meeting and the trust accounts subject to annual review during the calendar  
16 quarter before the meeting.

17 **Sec. 06.26.530. Officers.** (a) The board shall annually appoint the officers  
18 of the trust company. The officers serve at the pleasure of the board.

19 (b) The president of the trust company is the principal executive officer  
20 primarily responsible for the execution of board policies and operation of the trust  
21 company. The trust company shall have an officer responsible for the maintenance  
22 and storage of all corporate books and records of the trust company and for required  
23 attestation of signatures. These positions may not be held by the same person. The  
24 board may appoint other officers of the trust company as the board considers  
25 necessary.

26 (c) Unless expressly authorized by a resolution of the board recorded in the  
27 minutes of the board, an officer or employee may not create or dispose of a trust  
28 company asset or create or incur a liability on behalf of the trust company.

29 **Sec. 06.26.540. Trust committee.** (a) The board may appoint a trust  
30 committee to act for the company in matters dealing with the initial and annual  
31 reviews of accounts, account acceptance, and investment strategies. A trust committee

1 shall consist solely of directors, officers, or employees of the trust company, or any  
 2 combination of these positions. The trust committee shall keep a record of its actions  
 3 and shall report in writing to the board on all actions taken by the trust committee  
 4 since the previous board meeting. The board shall ratify or rescind each action.

5 (b) The trust committee shall meet at least once a month to review existing  
 6 accounts and to ratify or rescind newly accepted accounts. The trust committee may  
 7 not ratify a new account unless it is approved by a majority of the members of the  
 8 trust committee present at the meeting at which the new account is considered.

9 (c) A trust committee may elect one or more officers to accept new accounts,  
 10 subject to the requirements of (b) of this section.

11 **Sec. 06.26.550. Conveyances; execution.** All conveyances of or other  
 12 instruments affecting real property owned or held in trust by a trust company must be  
 13 authorized by a resolution of the board or a trust committee appointed under  
 14 AS 06.26.540 and signed in the name of the trust company by its president or vice-  
 15 president.

16 **Sec. 06.26.560. Prohibited acts.** (a) A director, an officer, an employee, or  
 17 a shareholder of a trust company may not

18 (1) conceal information or a fact, or remove, destroy, or conceal a book  
 19 or record of the trust company, for the purpose of concealing information or a fact  
 20 from the department or an agent of the department; or

21 (2) for the purpose of concealing, remove or destroy a book or record  
 22 of the trust company that is material to a pending or anticipated court or administrative  
 23 proceeding.

24 (b) A director, an officer, or an employee of a trust company may not make  
 25 a false entry in the books, the records, a report, or a statement of the trust company.

26 **Sec. 06.26.570. Transactions with management and affiliates; penalties.**  
 27 (a) Without the prior approval of a disinterested majority of the board recorded in the  
 28 minutes, or, if a disinterested majority cannot be obtained, the prior written approval  
 29 of the department, a trust company may not directly or indirectly

30 (1) sell or lease an asset of the trust company to a director, an officer,  
 31 a principal shareholder, or an affiliate of the trust company;

1 (2) purchase or lease property in which a director, an officer, a  
2 principal shareholder, or an affiliate of the trust company has an interest; or

3 (3) extend credit to a director, an officer, a principal shareholder, or an  
4 affiliate of the trust company.

5 (b) In addition to the requirements of (a) of this section, a lease transaction  
6 described in (a)(2) of this section involving real property may not be consummated,  
7 renewed, or extended by the trust company without the prior written approval of the  
8 department.

9 (c) A trust company may not extend credit to a director, an officer, an  
10 employee, a principal shareholder, or an affiliate of the trust company unless the  
11 extension of credit

12 (1) is made on substantially the same terms, including interest rates and  
13 collateral requirements, as the terms prevailing at the time for comparable transactions  
14 by the trust company with persons who are not directors, officers, employees, principal  
15 shareholders, or affiliates of the trust company;

16 (2) does not involve more than the normal risk of loss or present other  
17 unfavorable features; and

18 (3) follows credit underwriting procedures that are as stringent as the  
19 underwriting procedures applicable to comparable transactions by the trust company  
20 with persons who are not directors, officers, employees, principal shareholders, or  
21 affiliates of the trust company.

22 (d) The department may adopt regulations to implement this section, including  
23 regulations to establish limits, requirements, or exemptions other than those specified  
24 by this section for particular categories of transactions.

25 (e) In this section, "affiliate" does not include a subsidiary of the trust  
26 company.

27 **Sec. 06.26.580. Trust asset transactions involving certain securities, assets,**  
28 **or information.** (a) Except as provided in this chapter, or as authorized under the  
29 instrument creating the relationship, a trust company may not invest trust assets in the  
30 stock or obligations of, or use trust assets to acquire property from, the trust company  
31 or any of the trust company's officers, directors, or employees. A trust company may

1 not sell trust assets to the trust company or to any of the trust company's directors,  
2 officers, or employees.

3 (b) A trust company may retain and vote the stock of the trust company, or  
4 of a person affiliated with the trust company, that the trust company receives as trust  
5 assets unless the trust document establishing the trust company as a fiduciary for the  
6 trust assets provides otherwise.

7 (c) A trust company may not use material inside information in connection  
8 with a decision or recommendation to purchase or sell a security that is a trust asset.

9 **Sec. 06.26.585. Policies and procedures.** A trust company shall adopt written  
10 policies and procedures regarding decisions or recommendations to purchase or sell a  
11 security that is a trust asset to facilitate compliance with federal and state securities  
12 laws. These policies and procedures must include the prohibition in AS 06.26.580(c).

13 **Sec. 06.26.590. Fiduciary responsibility.** The board of a trust company is  
14 responsible for the proper exercise of fiduciary powers by the trust company and for  
15 each matter that is related to the exercise of fiduciary powers, including

- 16 (1) the determination of policies;  
17 (2) the investment and disposition of trust assets; and  
18 (3) the direction and review of the actions of each officer, employee,  
19 and committee employed or used by the trust company in the exercise of its fiduciary  
20 powers.

21 **Sec. 06.26.600. Trust account record keeping.** A trust company shall keep  
22 its trust assets records separate and distinct from other records of the trust company  
23 in the manner required by state and federal law. The fiduciary records must contain  
24 all material information relating to each trust assets account, as appropriate under the  
25 circumstances.

26 **Sec. 06.26.610. Customer records confidential.** (a) The trust company  
27 records relating to customers are confidential and may not be made public unless

- 28 (1) disclosure is compelled by a court or administrative order;  
29 (2) disclosure is required by federal or state law;  
30 (3) disclosure is authorized in writing by the customer;  
31 (4) disclosure is made to the holder of a negotiable instrument drawn

1 on the trust company as to whether the drawer has sufficient money or other assets in  
2 the financial institution to cover the instrument; or

3 (5) an inquiry has been made by a state financial institution, or by a  
4 credit-reporting agency regulated under 15 U.S.C. 1681 - 1681u (Fair Credit Reporting  
5 Act) solely for the express purpose of determining the credit worthiness of the  
6 customer as an applicant for credit, and the information disclosed by the trust  
7 company, state financial institution, or credit-reporting agency relates only to the  
8 payment habits of the customer in connection with loans or other credit  
9 accommodations and does not pertain to records concerning deposit balances in savings  
10 or checking accounts.

11 (b) When disclosure of trust company records is required or allowed under  
12 (a)(1) or (2) of this section, the trust company shall notify the customer of the  
13 disclosure. If notification before disclosure is not possible, the trust company shall  
14 immediately notify the customer of the disclosure or inquiry. However, the trust  
15 company may not notify the customer if disclosure is made under a search warrant or  
16 under a court order issued at the request of a grand jury.

17 (c) When disclosure of trust company records is compelled by a court order  
18 under (a)(1) of this section, the court may provide in the order for the reimbursement  
19 of the trust company for the costs allowed by the rules of court and incurred by the  
20 trust company to comply with the order.

21 **Sec. 06.26.620. Insurance; bonds.** (a) The board of directors of a trust  
22 company shall maintain bonding and other insurance for the trust company against  
23 dishonesty, fraud, defalcation, forgery, theft, embezzlement, burglary, robbery, theft,  
24 and other similar insurable losses and hazards as required by the department by  
25 regulation. The board shall obtain the bonding and other insurance from a person  
26 authorized under AS 21 to act as an insurer or a surety insurer in this state.

27 (b) The board of directors shall procure errors and omissions insurance in the  
28 amount of at least \$500,000.

29 (c) At least once each year, the board of directors shall review the bonding and  
30 other insurance required by this section to determine whether the coverage is adequate  
31 in relation to the exposure of the trust company. The minimum amount of insurance

1 required by this section does not automatically represent adequate bonding and  
 2 insurance coverage in relation to the exposure. Immediately after procuring the  
 3 bonding and other insurance, the board shall file copies of the documents representing  
 4 the bonding and other insurance with the department.

5 **Sec. 06.26.630. Reports of apparent crime.** (a) A trust company that is the  
 6 victim of a robbery, that has a shortage of money or other assets in excess of \$5,000,  
 7 or that is the victim of an apparent or suspected misapplication of its money or other  
 8 assets in any amount by a director, an officer, or an employee shall report the robbery,  
 9 shortage, or apparent or suspected misapplication to the department within 48 hours  
 10 after it is discovered. The initial report may be oral if the trust company promptly  
 11 confirms the report in writing to the department. The trust company or a director, an  
 12 officer, an employee, or an agent of the trust company is not liable for defamation to  
 13 or subject to any another cause of action based on supplying the information in the  
 14 report.

15 (b) A trust company may satisfy the requirements of (a) of this section by  
 16 filing with the department a copy of a written report filed with the appropriate law  
 17 enforcement agency.

## 18 **Article 9. Organic Change.**

19 **Sec. 06.26.650. General provisions for conversions, mergers, and**  
 20 **consolidations.** (a) A national bank or state bank whose main office is located in the  
 21 state may convert to a trust company or merge or consolidate with a trust company,  
 22 and a trust company may merge or consolidate with another trust company, if the  
 23 conversion, merger, or consolidation is consistent with federal and state law and  
 24 approved by the department. The requirements of AS 06.26.650 - 06.26.670 are in  
 25 addition to the merger and consolidation requirements of AS 10.06.

26 (b) Before merger or consolidation under (a) of this section, a trust company  
 27 shall file with the department a merger or consolidation application and other  
 28 information and reports that the department requires under AS 06.26.660.

29 (c) The department, in the exercise of its power to approve or disapprove  
 30 applications for merger or consolidation under (a) of this section, shall act in the  
 31 interests of promoting and maintaining a sound trust company system, promoting the

1 security of deposits and customers, preserving of the liquid position of trust companies,  
2 and preventing injurious credit expansions and contractions.

3 (d) A trust company converting to or merging or consolidating with a national  
4 bank shall submit to the department a copy of any application to the United States  
5 Comptroller of the Currency for a national bank charter or any other application to the  
6 United States Comptroller of the Currency to convert, merge, or consolidate when the  
7 applications are forwarded to the United States Comptroller of the Currency.

8 (e) In this section, "national bank" has the meaning given in AS 06.05.540.

9 **Sec. 06.26.660. Merger or consolidation.** (a) To merge or consolidate under  
10 AS 06.26.650, the merging persons shall file with the department the original articles  
11 of merger or consolidation, a number of copies of the articles of merger or  
12 consolidation equal to the number of trust companies involved in the merger or  
13 consolidation, and an application in the form required by the department. The  
14 department may require the submission of additional information it considers necessary  
15 to make an informed decision.

16 (b) The department may approve a merger or a consolidation if

17 (1) the surviving or new trust company will be solvent and have  
18 adequate capitalization for its operations and location;

19 (2) the surviving or new trust company has in all respects complied  
20 with the statutes and regulations governing the organization of a trust company in this  
21 state;

22 (3) all obligations and liabilities of each trust company that is a party  
23 to the merger or consolidation have been properly discharged or otherwise lawfully  
24 assumed or retained by a trust company or other fiduciary;

25 (4) a surviving or new trust company is not authorized to act as a  
26 fiduciary under this chapter, will not act as a fiduciary, and has otherwise complied  
27 with the laws of this state;

28 (5) the surviving or new trust company satisfies the provisions in  
29 AS 06.26.090 that the department determines apply to the trust company; and

30 (6) all conditions imposed by the department have been satisfied.

31 (c) If the department approves the merger or consolidation and finds that all

1 investigative expenses incurred by the department and all required filing fees have  
2 been paid, the department shall issue a certificate of merger.

3 **Sec. 06.26.670. Rights of dissenters.** In addition to the dissenter's rights  
4 under AS 10.06 for a merger or consolidation, if a shareholder of a trust company  
5 objects to a conversion of the trust company, the dissenting shareholder's rights shall  
6 be exercised under and governed by AS 10.06.574 - 10.06.582 as if the conversion  
7 were a merger.

8 **Sec. 06.26.680. Authority to purchase assets of another trust company.** (a)  
9 A trust company with the prior written approval of the department may purchase all  
10 or substantially all of the assets of another trust company, including the right to control  
11 accounts established with the trust accounts. Except as otherwise expressly provided  
12 by another statute, the purchase by a trust company of all or part of the assets of  
13 another trust company does not make the purchasing trust company responsible for a  
14 liability or obligation of the selling trust company that the purchasing trust company  
15 does not expressly assume. Except as otherwise provided by statute, AS 06.26.430 -  
16 06.26.490 do not govern or prohibit the purchase by a trust company of all or part of  
17 the assets of a person who is not a trust company or an exempt private fiduciary.

18 (b) To purchase assets under (a) of this section, a trust company shall file with  
19 the department an application in the form required by the department. The department  
20 shall investigate the condition of the purchaser and seller and may require the  
21 submission of additional information it considers necessary to make an informed  
22 decision. The department shall approve the purchase if

23 (1) the purchasing trust company will be solvent after the purchase and  
24 have sufficient capitalization for its operations and location;

25 (2) the purchasing trust company has complied with all applicable  
26 statutes and regulations in this state;

27 (3) all fiduciary obligations and liabilities of the purchasing trust  
28 company and selling trust company have been properly discharged or otherwise  
29 lawfully assumed by the purchasing trust company;

30 (4) all conditions imposed by the department have been satisfied or  
31 otherwise resolved; and

1 (5) all expenses incurred by the department and all required fees have  
2 been paid.

3 (c) A purchase under this section is effective on the date the department  
4 approves the purchase unless the purchase agreement provides for, and the department  
5 consents to, a different effective date.

6 **Sec. 06.26.690. Authority to act as disbursing agent.** A purchasing trust  
7 company may hold the purchase price and any additional money or other assets  
8 delivered to it by the selling trust company in trust for the selling trust company and  
9 may act as an agent of the selling trust company in disbursing the money or other  
10 assets by paying the creditors of the selling trust company. If the purchasing trust  
11 company acts under a written contract of agency approved by the department that  
12 specifically names each creditor and the amount to be paid each creditor, and if the  
13 agency is limited to the purely ministerial act of paying creditors the amounts due  
14 them as determined by the selling trust company and reflected in the contract of  
15 agency and does not involve discretionary duties or authority other than the  
16 identification of the creditors named, the purchasing trust company

17 (1) may rely on the contract of agency and the instructions included in  
18 it; and

19 (2) is not responsible for

20 (A) an error made by the selling trust company when  
21 determining its liabilities, the creditors to whom the liabilities are due, or the  
22 amounts due to the creditors; or

23 (B) a preference that results from the payments made under the  
24 contract of agency and the instructions included in the contract.

25 **Sec. 06.26.700. Liquidation of selling trust company.** If a selling trust  
26 company is at any time after the sale of assets voluntarily or involuntarily closed for  
27 liquidation by a state or federal regulatory agency, the purchasing trust company shall  
28 pay to the receiver of the selling trust company the balance of the money or other  
29 assets held by the purchasing trust company in trust for the selling trust company and  
30 not yet paid to the creditors of the selling trust company. Without further action, the  
31 purchasing trust company is then discharged of all responsibilities to the selling trust

1 company and the selling trust company's receiver, creditors, and shareholders.

2 **Sec. 06.26.710. Payment to creditors.** A purchasing trust company may pay  
3 a creditor of the selling trust company the amount to be paid the creditor under the  
4 terms of the contract of agency entered into under AS 06.26.690 by opening an agency  
5 account in the name of the creditor, crediting the account with the amount to be paid  
6 the creditor under the terms of the agency contract, and mailing or personally  
7 delivering a duplicate of the written evidence of the credit to the creditor at the  
8 creditor's address shown in the records of the selling trust company. With regard to  
9 the creditor, the purchasing trust company is an agent of the selling trust company only  
10 to the extent of the credit reflected by the written evidence of the credit.

11 **Sec. 06.26.720. Sale of assets.** (a) The board of a trust company, with the  
12 department's approval, may cause a trust company to sell all or substantially all of its  
13 assets, including the right to control accounts established with the trust company for  
14 trust assets, without shareholder approval if the department finds

15 (1) the interests of the trust company's creditors and depositors and  
16 other customers are not jeopardized because of an unsafe or unsound condition of the  
17 trust company;

18 (2) the sale is in the best interest of the trust company's creditors and  
19 depositors and other customers; and

20 (3) the Federal Deposit Insurance Corporation or its successor approves  
21 the transaction unless the deposits of the trust company are not insured by the Federal  
22 Deposit Insurance Corporation or its successor.

23 (b) A sale under this section must include an assumption and promise by the  
24 purchaser to pay or otherwise discharge

25 (1) all of the trust company's liabilities to customers;

26 (2) all of the trust company's liabilities for the salaries of the trust  
27 company's employees incurred before the date of the sale;

28 (3) the obligations incurred by the department arising out of the  
29 supervision or sale of the trust company; and

30 (4) the fees and any other payment due to the department under this  
31 chapter and assessments due to the department under AS 06.01.010.

1 (c) This section does not limit the incidental power of a trust company to buy  
2 and sell assets in the ordinary course of its operations.

3 (d) The sale by a trust company of all or substantially all of its assets with  
4 shareholder approval is considered a voluntary dissolution and liquidation and is  
5 governed by AS 06.26.730 - 06.26.800.

6 **Article 10. Dissolution and Liquidation.**

7 **Sec. 06.26.730. Voluntary liquidation.** (a) Without department approval, a  
8 trust company may not cease acting as a fiduciary in this state and voluntarily  
9 surrender its certificate of authority and as a consequence be relieved of the necessity  
10 to comply with the requirements of this chapter.

11 (b) A trust company proposing to cease acting as a fiduciary in this state shall  
12 submit to the department

13 (1) a certified copy of a resolution of the trust company's board of  
14 directors reflecting the board's decision that the trust company should cease acting as  
15 a fiduciary in this state; and

16 (2) the trust company's plan adopted by its board for winding up its  
17 fiduciary operations in this state.

18 (c) The department may approve or disapprove the trust company's plan for  
19 winding up its fiduciary operations in this state based on the department's evaluation  
20 of whether the plan provides adequate protection for those persons and interests for  
21 whom the trust company acts as a fiduciary. The department's approval may be  
22 subject to any condition the department determines appropriate under the  
23 circumstances.

24 (d) During the implementation of a trust company's plan for winding up its  
25 fiduciary operations in this state, the department retains the authority to supervise the  
26 trust company and may conduct any examination relating to either the trust company  
27 or the plan for winding up that the department considers necessary or appropriate.

28 (e) If the department has reason to conclude that the trust company is not  
29 safely or expeditiously implementing the approved plan for winding up the trust  
30 company's fiduciary operations in this state, the department may

31 (1) begin revocation proceedings under AS 06.26.740;

1                   (2) take possession of the trust company's trust business in this state  
2 in the same manner, with the same effect, and subject to the same rights accorded to  
3 the trust company under AS 06.26.750.

4                   (f) The department shall cancel the trust company's certificate of authority if  
5 the department approves the trust company's plan for winding up its fiduciary  
6 operations in this state and if all of the following conditions that apply to the trust  
7 company have been met:

8                   (1) the trust company has completed its plan for winding up its  
9 fiduciary operations in this state consistent with any conditions that the department  
10 imposed on the plan under (c) of this section;

11                   (2) the trust company has been relieved under all applicable laws of all  
12 duties as trustee, executor, administrator, registrar of stocks and bonds, or any other  
13 type of fiduciary position under court, private, or other appointment that the trust  
14 company had accepted;

15                   (3) if the trust company has its principal place of business in this state,  
16 the trust company has, under all applicable laws, wound up its fiduciary operations in  
17 each of the other jurisdictions where the trust company solicited appointment or served  
18 as a fiduciary, or otherwise acted as a fiduciary;

19                   (4) if the trust company has its principal place of business in this state  
20 and is not authorized to engage in activities other than acting as a fiduciary, the trust  
21 company is being liquidated under AS 06.26.760 - 06.26.800.

22                   (g) Upon the department's canceling the trust company's certificate of  
23 authority, the trust company may not without obtaining a new certificate of authority  
24 act as a fiduciary in this state, or in any jurisdiction.

25                   **Sec. 06.26.740. Revocation.** (a) If the department determines, after notice  
26 and opportunity for a hearing under AS 06.01.030 and regulations adopted by the  
27 department, that any of the following factors exist, the department may revoke a trust  
28 company's certificate of authority:

29                   (1) the existence of the trust company, or its authority to act as a  
30 fiduciary, has been terminated or suspended under the laws of the state or other  
31 jurisdiction in which the trust company is organized;

1 (2) the trust company's authority to act as fiduciary has been terminated  
2 or suspended under the laws of the state or other jurisdiction in which the trust  
3 company is organized, or its license to act as a fiduciary has been terminated or  
4 suspended under the laws of any other jurisdiction in which the trust company had  
5 been authorized to act as a fiduciary;

6 (3) a receiver, liquidator, or conservator has been appointed for the trust  
7 company under the laws of the state or other jurisdiction in which the trust company  
8 is organized, or for its operation in any other jurisdiction in which the trust company  
9 operates;

10 (4) the trust company is violating or has violated or the department has  
11 reasonable cause to believe is about to violate

12 (A) a law or regulation;

13 (B) a condition imposed by the department in writing in  
14 connection with approving an application or notice under this chapter or  
15 granting any other request of the trust company under this chapter;

16 (C) a written agreement that the trust company entered into with  
17 the department;

18 (D) a cease and desist order issued by the department under  
19 AS 06.01.030;

20 (5) the trust company is engaging in or has engaged in, or the  
21 department has reasonable cause to believe the trust company is about to engage in an  
22 unsafe or unsound practice;

23 (6) the trust company has ceased to pay its debts in the ordinary course  
24 of business, is incapable of paying its debts as they mature, has liabilities in excess of  
25 its assets, or is subject to or has applied for an adjudication in bankruptcy,  
26 reorganization, or other relief under any bankruptcy, reorganization, insolvency, or  
27 moratorium law;

28 (7) the trust company has ceased to act as a fiduciary in this state;

29 (8) the trust company has failed to pay any fees, charges, forfeitures,  
30 penalties, or other payment due to the department under this title.

31 (b) If the department has reasonable cause to believe any of the factors

1 identified in (a) of this section is true, and if the department determines it is necessary  
 2 to protect the persons and interests in this state for whom the trust company acts as  
 3 a fiduciary or to protect the property in this state to which the trust company holds title  
 4 as a fiduciary or in which the trust company holds an interest as a fiduciary, the  
 5 department may immediately suspend the trust company's certificate of authority.

6 (c) Within 10 days after an order of the department suspending a trust  
 7 company's certificate of authority is served on a trust company, the trust company may  
 8 apply to the superior court in the jurisdiction where the trust company is acting as a  
 9 fiduciary for an injunction setting aside, limiting, or suspending enforcement of the  
 10 suspension order pending an opportunity for a hearing on whether the trust company's  
 11 certificate of authority should be revoked.

12 **Sec. 06.26.750. Authority to take possession.** If the department revokes a  
 13 trust company's certificate of authority under AS 06.26.740(a), the department may  
 14 take possession of the trust company's fiduciary operations in this state and may  
 15 appoint a receiver for the liquidation of the trust company's fiduciary operations in this  
 16 state. If the trust company has its principal place of business in this state, the  
 17 department may take possession of, and appoint a receiver for the liquidation of all the  
 18 trust company's fiduciary operations wherever they are conducted.

19 **Sec. 06.26.760. Department in possession.** (a) When the department has  
 20 taken possession of a trust company, it is vested with the full and exclusive power of  
 21 management and control, including the power to act as a trustee for trust assets, to  
 22 continue or discontinue the operation of the trust company, to stop or limit the  
 23 payment of the trust company's obligations, to employ necessary assistants, to execute  
 24 an instrument in the name of the trust company, to commence, defend, and conduct  
 25 in the trust company's name any action or proceeding to which the trust company may  
 26 be a party, to terminate the possession by restoring the trust company to its board, and  
 27 to reorganize or liquidate the trust company under this chapter. As soon as practicable  
 28 after taking possession, the department shall make an inventory of the trust assets and  
 29 the trust company assets and file a copy of the inventory with the superior court.

30 (b) When the department has taken possession, the following dates are  
 31 postponed until six months after the possession begins:

1 (1) notwithstanding other provisions of law, the date on which any  
2 period of limitation fixed by a statute or agreement would otherwise expire on a claim  
3 or right of action of the trust company; or

4 (2) the date on which an appeal must be taken or a pleading or other  
5 document must be filed by the trust company in any pending court action or other  
6 proceeding.

7 (c) A judgment, lien, or attachment may not be enforced against trust company  
8 assets while the assets are in possession of the department. Upon the election of the  
9 department in connection with a liquidation or reorganization,

10 (1) any lien or attachment, other than an attorney's or mechanic's lien,  
11 obtained upon a trust company asset during the department's possession or within four  
12 months before beginning that possession may be vacated, except liens created by the  
13 department while in possession; and

14 (2) any transfer of trust company assets made after or in contemplation  
15 of the trust company's insolvency or in anticipation of the department's takeover, with  
16 intent to effect a preference of one creditor over another creditor or to prevent the  
17 distribution of the trust company assets according to law, is void.

18 (d) The department may borrow money in the name of the trust  
19 company in the department's possession and may pledge trust company assets as  
20 security for the loan.

21 (e) All necessary and reasonable expenses resulting from the  
22 department's possession of a trust company and of its reorganization or liquidation  
23 shall be paid from trust company assets.

24 **Sec. 06.26.770. Reorganization.** (a) If the department decides to reorganize  
25 a trust company, the department, after providing a hearing to all interested parties,  
26 shall enter an order proposing a reorganization plan. The department shall send a copy  
27 of the plan to each depositor and other customers and to each creditor who will not  
28 receive payment of a claim in full under the plan and a notice that, unless within 30  
29 days the plan is disapproved in writing by persons holding one-third or more of the  
30 aggregate amount of the claims, the department will reorganize the trust company.

31 (b) A plan of reorganization may not be established under this chapter unless,

1 in the opinion of the department,

2 (1) the plan is fair to all classes of depositors, other customers,  
3 creditors, and shareholders;

4 (2) subject to a fair adjustment for new capital that a class will pay  
5 under the plan, the face amount of the trust company asset interest provided to a class  
6 of depositors, other customers, creditors, or shareholders under the plan does not  
7 exceed the value of the assets at liquidation less the full amount of the claims of all  
8 prior classes;

9 (3) the plan provides for the issuance of common stock in an amount  
10 that will provide an adequate ratio to deposits;

11 (4) any exchange of new common stock for obligations or stock of the  
12 trust company will be made

13 (A) in the inverse order of the priorities in liquidation of the  
14 classes that will retain an interest in the trust company; and

15 (B) upon terms that adjust in a fair manner any change in the  
16 relative interest of the respective classes that will be produced by the exchange;

17 (5) the plan assures the removal of a director, an officer, or an  
18 employee responsible for a problem identified by the department, including an unsafe,  
19 unsound, or unlawful action or the existence of an unsafe or unsound condition;

20 (6) any merger or consolidation provided by the plan complies with this  
21 chapter.

22 (c) When in the course of reorganization, supervening conditions render a plan  
23 of reorganization unfair or its execution impractical, the department may modify the  
24 plan or liquidate the trust company.

25 **Sec. 06.26.780. Involuntary liquidation powers.** (a) When liquidating a trust  
26 company, the department may exercise any power incidental to liquidating a trust  
27 company, but it may not, without the approval of the superior court,

28 (1) sell trust company assets having an appraised value in excess of  
29 \$100,000;

30 (2) compromise or release a claim that exceeds \$100,000 exclusive of  
31 interest;

1 (3) make full payment on a claim, other than a claim upon an  
2 obligation incurred by the department, before preparing and filing a schedule of the  
3 department's determinations under AS 06.26.790(d)(3).

4 (b) Within six months after beginning the liquidation of a trust company, the  
5 department may terminate an executory contract for services or advertising to which  
6 the trust company is a party or an obligation of the trust company as a lessee. A  
7 lessor who receives 60 days' notice of the department's decision to terminate a lease  
8 does not have a claim for rent other than rent accrued to the date of termination or for  
9 damages due to the termination.

10 (c) As soon as practical after beginning the involuntary liquidation of a trust  
11 company, the department shall take the steps necessary to terminate all fiduciary  
12 positions held by the trust company, to surrender all property held by the trust  
13 company as a fiduciary, and to settle the trust accounts of the trust company.

14 **Sec. 06.26.790. Claims.** (a) As soon as practical after beginning the  
15 liquidation of a trust company, the department shall

16 (1) mail a notice of the liquidation proceedings to the last known post  
17 office address of each depositor, creditor, lessee of a safe deposit box, bailor of  
18 property, and trustor and beneficiary of trust assets held by the trust company;

19 (2) post a notice of the proceedings conspicuously on the premises of  
20 the trust company; and

21 (3) publish a notice that the department determines to be appropriate  
22 for the proceedings.

23 (b) The department shall mail with the notice sent under (a)(1) of this section  
24 a statement of the amount shown on the trust company's books to be the claim of the  
25 depositor or creditor. The notice must also include a demand that a person who is  
26 entitled to property held by the trust company as bailee or trustee or in a safe deposit  
27 box of the trust company withdraw the property within 30 days. The notice must  
28 direct those depositors and creditors who claim amounts different from the amounts  
29 in the notice to file their claims with the trust company under the procedure described  
30 in the notice and before a specified date. The specified day may not be less than 60  
31 days from the date of the first publication of the notice.

1 (c) A safe deposit box whose contents have not been removed within 30 days  
2 after demand shall be opened. The department shall retain the contents of the box and  
3 the other unclaimed property held by the trust company as bailee until the conclusion  
4 of the liquidation proceedings. At the conclusion of the liquidation proceedings under  
5 this section, the property held by the department under this subsection is considered  
6 abandoned, and the department shall deliver the property to the Department of Revenue  
7 under AS 34.45.110 - 34.45.780.

8 (d) Within six months after the last day specified in the notice for the filing  
9 of claims, or within a longer period if allowed by the superior court, the department  
10 shall

11 (1) reject a claim that it determines to be invalid;

12 (2) determine the amount, if any, owing to each known creditor or  
13 depositor and the priority class of the person's claim under this chapter;

14 (3) prepare a schedule of its determinations for filing in the superior  
15 court;

16 (4) publish a notice in a newspaper once each week for three successive  
17 weeks, of the times and places where the schedule of determinations will be available  
18 for inspection and the date when the department will file its schedule in court; the date  
19 may not be sooner than 30 days after the first publication.

20 (e) Within 30 days after the filing with the superior court of the department's  
21 schedule under (d)(3) of this section, a creditor, depositor, or stockholder may file with  
22 the court an objection to a determination. The court shall hear and determine the filed  
23 objections after the notice to the department and interested claimants that the court  
24 establishes. If the court sustains an objection, the court shall direct that the schedule  
25 be modified appropriately.

26 (f) After filing its schedule, the department may make partial distribution to  
27 the holders of the claims that are undisputed or are allowed by the court if an adequate  
28 reserve is established for the payment of disputed claims. As soon as practicable after  
29 the determination of all objections, the department shall make the final distribution.

30 (g) The following claims have priority in liquidation proceedings, in the order  
31 listed:

1 (1) obligations incurred by the department in liquidating the trust  
2 company;

3 (2) wages and salaries of officers and employees earned during the  
4 three-month period preceding the department's possession in an amount not exceeding  
5 \$3,000 for each person;

6 (3) fees and assessments owed by the trust company to the department;

7 (4) deposits;

8 (5) claims secured by trust company assets.

9 (h) After the payment of all other claims, including interest at the rate of 10.5  
10 percent a year, the department shall pay claims that are otherwise valid but that were  
11 not filed within the time prescribed.

12 (i) If the sum available for a class of creditors is insufficient to provide  
13 payment in full, the sum shall be distributed pro rata to the claimants in the class.

14 (j) Unclaimed property remaining after the completion of the liquidation  
15 proceedings under this section is presumed abandoned, and the property shall be  
16 delivered to the Department of Revenue for handling under AS 34.45.110 - 34.45.780.

17 (k) After payment of the expenses of the liquidation and the claims against the  
18 trust company arising from its fiduciary obligations in this state under AS 06.26.760 -  
19 06.26.800, the receiver shall distribute any remaining money or other assets from the  
20 liquidation of the trust company's fiduciary operations in this state equitably among,  
21 as applicable, the receivers for liquidation of the trust company's fiduciary operations  
22 in other states of the United States and under the laws of the United States, for  
23 payment of the expenses of liquidation and claims against the trust company's  
24 fiduciary operations. If the trust company's fiduciary operations are not being  
25 liquidated in another state or under the laws of the United States, the receiver shall,  
26 after satisfying the requirements of AS 06.26.760 - 06.26.800, pay any remaining  
27 money or other assets from the liquidation of the trust company's fiduciary operations  
28 in this state to the trust company.

29 (l) When the receiver has completed the liquidation of the trust company's  
30 fiduciary operations in this state, the receiver shall, with notice to the department,  
31 petition the court for an order declaring the trust company's fiduciary operations in this

1 state properly wound up under AS 06.26.760 - 06.26.800. Upon the filing of the  
2 petition, the court shall proceed as provided in AS 06.26.760 - 06.26.800.

3 (m) An order issued by the court under a petition filed under (l) of this section  
4 may only declare the trust company's fiduciary operations in this state have been  
5 properly wound up and may not declare the trust company is dissolved. The court  
6 may make whatever additional orders and grant whatever additional relief that the  
7 court determines is proper under the evidence submitted.

8 (n) After an order is issued under (m) of this section declaring the trust  
9 company's fiduciary operations in this state are properly wound up,

10 (1) the trust company shall, except for any further winding up, cease  
11 acting as a fiduciary in this state or in any jurisdiction; and

12 (2) the receiver shall promptly file with the department a copy of the  
13 order certified by the clerk of the court.

14 (o) If the trust company is a bank doing business under authority granted by  
15 the department and is being liquidated under AS 06.26.760 - 06.26.800, the trust  
16 company's fiduciary operations shall also be liquidated even if there would not be  
17 independent grounds for liquidation of the fiduciary operations under this section.

18 (p) If the trust company is a bank doing business under authority granted by  
19 the department, its fiduciary operations are being liquidated under this chapter, and the  
20 trust company as a whole is being liquidated, the department shall merge the  
21 liquidations.

22 (q) If the trust company is a bank doing business under AS 06.05 and is not  
23 authorized to engage in any business other than fiduciary operations, the entire bank  
24 shall be liquidated under AS 06.05.466 - 06.05.474.

25 **Sec. 06.26.800. Federal Deposit Insurance Corporation as receiver or**  
26 **liquidator.** The department may appoint the Federal Deposit Insurance Corporation  
27 or its successor as receiver for a trust company that the department has taken  
28 possession of if the deposits of the trust company are insured by that corporation or  
29 its successor. Upon filing with the court a certificate indicating the acceptance of the  
30 appointment by the Federal Deposit Insurance Corporation or its successor, the  
31 possession of and title to all the assets, business, and property of the trust company are

1 transferred to that corporation. The department is then relieved of all responsibility  
2 and liability with respect to the reorganization or liquidation of the trust company.  
3 The Federal Deposit Insurance Corporation or its successor may liquidate, reorganize,  
4 merge, or consolidate the trust company in the manner permitted by the laws of the  
5 United States or by this chapter, and possesses all the rights, powers, duties, and  
6 obligations of the department in the liquidation, reorganization, merger, or  
7 consolidation of the trust company under this chapter.

8 **Article 11. Interstate and International Trust Company Offices.**

9 **Sec. 06.26.810. Fiduciary operations at a branch or trust office.** (a) An  
10 interstate or international trust company whose home office is not located in this state  
11 may not act as a fiduciary in this state unless the trust company maintains a trust  
12 office in this state as permitted under AS 06.26.810 - 06.26.890.

13 (b) An interstate or international trust company whose home office is not  
14 located in this state and that establishes or acquires a trust office in this state under  
15 AS 06.26.810 - 06.26.890 may conduct at the trust office any activity that a trust  
16 company may conduct at a trust office under this chapter.

17 **Sec. 06.26.820. Establishing or acquiring a trust office.** An interstate or  
18 international trust company whose home office is not located in this state, that does  
19 not operate a trust office in this state, and that meets the requirements of AS 06.26.810  
20 - 06.26.890 may establish a new trust office in this state or acquire a trust office in this  
21 state that is in existence at the time of acquisition.

22 **Sec. 06.26.830. Requirement of notice.** To establish a new trust office or  
23 acquire a trust office that is in existence at the time of acquisition in this state under  
24 AS 06.26.810 - 06.26.890, an interstate or international trust company whose home  
25 office is not located in this state shall provide, or cause its home jurisdiction regulator  
26 to provide, written notice of the proposed transaction to the department on or after the  
27 date on which the trust company applies to its home jurisdiction regulator for approval  
28 to establish or acquire the trust office. The trust company shall file with the notice  
29 and maintain a copy of a resolution adopted by the board of the trust company  
30 authorizing the establishment or acquisition of the office and shall pay the filing fee  
31 established by the department by regulation.

1           **Sec. 06.26.840. Conditions for approval.** (a) An interstate or international  
2 trust company whose home office is not located in this state may not establish or  
3 acquire a trust office in this state under AS 06.26.810 - 06.26.890 unless

4                   (1) the trust company confirms in writing to the department that the  
5 trust company will comply with all applicable laws of this state while it maintains a  
6 trust office in this state;

7                   (2) the trust company provides satisfactory evidence to the department  
8 of compliance with the

9                           (A) requirements for foreign corporations under AS 10.06; and

10                           (B) applicable requirements of its home jurisdiction regulator  
11 for establishing or acquiring and maintaining the office;

12                   (3) the department, acting within 90 days after receiving notice under  
13 AS 06.26.830, certifies to the home jurisdiction regulator that the requirements of  
14 AS 06.26.810 - 06.26.890 have been met and the notice has been approved or, if  
15 applicable, that any conditions imposed by the department under (b) of this section  
16 have been satisfied;

17                   (4) the department receives evidence from the trust company that the  
18 department determines clearly demonstrates that the establishment or acquisition will  
19 serve the public interest and well-being; the evidence must address the factors listed  
20 in AS 06.26.090(b); and

21                   (5) the department has received all required fees and the affidavit of  
22 publication required by AS 06.26.100(b).

23           (b) An interstate or international trust company whose home office is not  
24 located in this state may begin acting as a fiduciary at a trust office on the 91st day  
25 after the date that the department receives the notice under (a) of this section for the  
26 trust office unless the department specifies a different date.

27           (c) The department may extend the 90-day period of review provided by (a)  
28 of this section if the department determines that the written notice raises issues that  
29 require additional information or additional time for analysis by the department. If the  
30 department extends the 90-day period of review, the trust company may establish the  
31 trust office only after written approval by the department.

1 (d) The department may deny the trust company permission to establish or  
2 acquire the trust office if the department finds that the trust company lacks sufficient  
3 financial resources to undertake the proposed expansion without adversely affecting its  
4 safety or soundness or that the proposed trust office would be contrary to the public  
5 interest. When acting on the notice provided under (a) of this section, the department  
6 shall consider the views of the home jurisdiction regulator.

7 (e) If the trust company is not a resident of this state, a corporation organized  
8 under AS 10.06, or a foreign corporation authorized to transact business in this state,  
9 the trust company shall file a written consent with the department permitting the  
10 commissioner to act as the agent for the trust company for service of process in a court  
11 action arising out of or connected with the proposed trust office.

12 **Sec. 06.26.850. Representative office business; registration.** (a) An  
13 interstate or international trust company whose home office is not located in this state  
14 may not provide fiduciary services, but may otherwise engage in trust business, at a  
15 representative office as permitted by AS 06.26.810 - 06.26.890.

16 (b) Subject to the requirements contained in AS 06.26.810 - 06.26.890, an  
17 interstate or international trust company whose home office is not located in this state  
18 may establish or acquire representative offices in any location in this state.

19 (c) If an interstate or international trust company whose home office is not  
20 located in this state does not maintain a trust office in this state wants to establish or  
21 acquire a representative office in this state, the trust company shall file a notice with  
22 the department on a form prescribed by the department. The trust company shall  
23 furnish a copy of a resolution adopted by its board authorizing the establishment or  
24 acquisition of the representative office and shall pay the filing fee established by the  
25 department by regulation. The notice required under this subsection must provide the  
26 name of the trust company, the location of the proposed representative office, and  
27 satisfactory evidence that the trust company is chartered or otherwise organized in  
28 another jurisdiction to act as a fiduciary.

29 (d) An interstate or international trust company whose home office is not  
30 located in this state may commence business at a representative office on the 61st day  
31 after the date that the department receives the notice required under (c) of this section

1 unless the department specifies a different date.

2 (e) The department may extend the 60-day period of review provided by (d)  
3 of this section if the department determines that the written notice raises issues that  
4 require additional information or additional time for analysis by the department. If the  
5 60-day period of review is extended, the trust company may establish the  
6 representative office only after written approval by the department.

7 (f) The department may deny the trust company permission to establish or  
8 acquire a representative office if the department finds that the trust company lacks  
9 sufficient financial resources to undertake the proposed expansion without adversely  
10 affecting its safety or soundness or that the proposed representative office would be  
11 contrary to the public interest. When acting on the notice provided under (c) of this  
12 section, the department shall consider the views of the home jurisdiction regulator.

13 (g) The department may determine by order that an interstate or international  
14 trust company whose home office is not located in this state does not meet the  
15 requirements for establishing a representative office in this state under this section.  
16 An order issued under this subsection is effective on the date of its issuance or on  
17 another date as the department may determine.

18 **Sec. 06.26.860. Additional trust offices.** An interstate or international trust  
19 company whose home office is not located in this state and that maintains a trust office  
20 in this state under AS 06.26.810 - 06.26.890 may establish or acquire additional trust  
21 offices or representative offices in this state to the same extent and in the same manner  
22 that a trust company may establish or acquire branch offices in this state under the  
23 procedures for establishing or acquiring branch offices under AS 06.26.160.

24 **Sec. 06.26.870. Examinations; periodic reports; cooperative agreements;  
25 assessment of fees.** (a) When the department considers it necessary to protect the  
26 public interest, the department or a competent person designated by the department  
27 may examine an interstate or international trust company whose home office is not  
28 located in this state but that has a trust office or a representative office in the state.  
29 The trust company shall pay a fee established under AS 06.01.010 for the examination.

30 (b) The department may require periodic reports from an interstate or  
31 international trust company whose home office is not located in this state and that

1 maintains a trust office in this state and from a bank holding company that controls  
2 the trust company. The reports shall be made under oath and filed as frequently as  
3 required by the department. The reports must contain the information and detail that  
4 the department determines to be appropriate as required under regulations adopted by  
5 the department.

6 (c) An interstate or international trust company whose home office is not  
7 located in this state and that maintains a trust office or a representative office in this  
8 state may be assessed and, if assessed, shall pay supervisory and examination fees as  
9 required by the laws of this state and regulations of the department. Fees may be  
10 shared with other governmental regulators or any organization affiliated with or  
11 representing governmental regulators under agreements between the department and  
12 the regulators or organization.

13 **Sec. 06.26.880. Enforcement.** (a) Consistent with AS 06.01.030 and  
14 regulations adopted by the department under AS 06.01.030 or this chapter and after  
15 notice and an opportunity for a hearing, the department may determine that

16 (1) an office maintained by an interstate or international trust company  
17 whose home office is not located in this state is being operated in violation of a  
18 provision of the laws of this state or in an unsafe and unsound manner; or

19 (2) an interstate or international trust company whose home office is  
20 not located in this state is engaged in an activity that the foreign trust company may  
21 not engage in under this chapter.

22 (b) If either of the conditions in (a) of this section exists, the department may  
23 take the enforcement actions it would be empowered to take if the office or the  
24 company were a trust company established under this chapter, including issuing an  
25 order temporarily or permanently prohibiting the trust company from acting as a  
26 fiduciary in this state.

27 (c) If a matter involves extraordinary circumstances that require immediate  
28 action, the department may take any action permitted by this section without notice or  
29 an opportunity for a hearing, but shall promptly provide an interstate or international  
30 trust company whose home office is not located in this state a hearing if the trust  
31 company files an application to rescind the action. The department shall promptly give

1 notice to the home jurisdiction regulator of each enforcement action taken against an  
 2 interstate or international trust company whose home office is not located in this state  
 3 and, to the extent practicable, shall consult and cooperate with the home jurisdiction  
 4 regulator when pursuing and resolving an enforcement action.

5 **Sec. 06.26.890. Notice of subsequent merger, consolidation, or closing.** An  
 6 interstate or international trust company whose home office is not located in this state  
 7 and that maintains a trust office or a representative office in this state under this  
 8 chapter shall give at least 60 days' prior written notice, or, in the case of an emergency  
 9 transaction, shorter notice that is consistent with applicable state and federal law, to  
 10 the department of

11 (1) a merger, consolidation, or other transaction that would cause a  
 12 change of control with respect to the trust company or any bank holding company that  
 13 controls the trust company if an application would be required to be filed under 12  
 14 U.S.C. 1817(j) (Change in Bank Control Act of 1978) or 12 U.S.C. 1841 - 1850 (Bank  
 15 Holding Company Act of 1956);

16 (2) a transfer of all or substantially all of the trust accounts or trust  
 17 assets of the trust company to another person;

18 (3) the closing or other disposition of any trust office of the trust  
 19 company in this state.

## 20 **Article 12. Miscellaneous Provisions.**

21 **Sec. 06.26.900. Powers of department.** (a) The department may

22 (1) exercise general supervision over all trust companies and  
 23 subsidiaries and affiliated corporations of the trust companies;

24 (2) in addition to other authority in this chapter to adopt regulations,  
 25 adopt regulations necessary to interpret and implement this chapter, including  
 26 regulations providing for the retention and preservation of trust company records;

27 (3) review and approve or disapprove applications for trust companies  
 28 under AS 06.26.090, trust company branch offices under AS 06.26.160, representative  
 29 offices under AS 06.26.170, and trust offices and representative offices under  
 30 AS 06.26.810 - 06.26.890;

31 (4) issue permits authorizing trust company holding companies to do

1 business in this state;

2 (5) determine for each trust company the amount of paid-in capital  
3 necessary to operate under AS 06.26.120;

4 (6) review and approve transfers of trust company ownership under  
5 AS 06.26.450;

6 (7) perform examinations of trust companies, branch offices,  
7 representative offices, and subsidiaries of trust companies and private fiduciaries under  
8 AS 06.01.015 and this chapter;

9 (8) relieve a trust company from the examination requirements of  
10 AS 06.01.015 if the trust company's deposits are insured by the Federal Deposit  
11 Insurance Corporation, a successor of the Federal Deposit Insurance Corporation, or  
12 another agency of the United States that insures trust company deposits;

13 (9) approve under AS 06.26.190 the operation of a branch trust  
14 company on a schedule different than normal banking days;

15 (10) approve the operation by a trust company of an automated teller  
16 machine in accordance with AS 06.05;

17 (11) approve certain trust company subsidiaries;

18 (12) approve the acceptance by a trust company of the trust company's  
19 stock or of the stock of the trust company's holding company as security for a loan  
20 under circumstances approved by the department;

21 (13) restrict the withdrawal of deposits from a trust company if the  
22 department finds that extraordinary circumstances make restriction necessary for the  
23 proper protection of depositors;

24 (14) require a trust company to

25 (A) maintain its capital and reserve accounts in amounts  
26 determined appropriate by the department;

27 (B) observe the methods and standards that the trust company  
28 adopts for determining the value of various types of assets;

29 (C) charge off part or all of an asset that has not been lawfully  
30 acquired;

31 (D) write down an asset to its market value;

- 1 (E) record liens and other interests in property;
- 2 (F) obtain a financial statement from a borrower or prospective  
3 borrower to the extent that the trust company can obtain the statement;
- 4 (G) obtain insurance against damage to real property taken as  
5 security;
- 6 (H) search or obtain insurance on the title to real property taken  
7 as security;
- 8 (I) maintain adequate insurance against risks as the department  
9 determines necessary and appropriate for the protection of depositors and the  
10 public;
- 11 (J) charge off that portion of an asset classified as a loss, or  
12 charge off or reserve up to 50 percent of loans classified as doubtful, in a state  
13 or federal report of examination; or
- 14 (K) charge off all debts owed to the trust company in which  
15 interest is past due and unpaid for a period of six months, unless the debt  
16 principal is adequately secured and the trust company is in the process of  
17 collection;
- 18 (15) require the board of directors of a trust company to hold a meeting  
19 under AS 06.26.520;
- 20 (16) order the removal of a board member of a trust company under  
21 AS 06.26.510;
- 22 (17) order a trust company to suspend the payment of dividends under  
23 AS 06.26.120 and regulations adopted by the department;
- 24 (18) require a trust company to increase its capital accounts under  
25 AS 06.26.120;
- 26 (19) take possession of a trust company in the manner provided in  
27 AS 06.26.730 - 06.26.750, and operate, reorganize, or liquidate the trust company after  
28 taking possession;
- 29 (20) issue an order under AS 06.01.030 that the department determines  
30 is necessary to ensure compliance with this chapter; and
- 31 (21) exercise other powers expressly or implicitly granted under this

1 chapter.

2 **Sec. 06.26.905. Cooperative agreements.** (a) The department may enter into  
3 cooperative, coordinating, or information-sharing agreements with other governmental  
4 regulators or with an organization affiliated with or representing governmental  
5 regulators to handle the periodic examination or other supervision of a trust office that  
6 is located in this state and owned by an interstate trust company or of a trust office  
7 that is located in a host state and owned by a trust company. Under the agreements,  
8 the department may accept reports of examination and reports of investigation instead  
9 of conducting the department's own examinations or investigations.

10 (b) The department may enter into joint enforcement action agreements with  
11 other governmental regulators having concurrent jurisdiction over a trust company that  
12 is located in this state and owned by an interstate trust company organized in another  
13 state or over a trust office that is located in a host state and owned by a trust company.

14 (c) Notwithstanding the existence of an agreement under this section, the  
15 department may at any time make an examination or take independent supervisory or  
16 enforcement action if the department determines that the examination or action is  
17 necessary or appropriate to carry out the department's responsibilities under this  
18 chapter or to ensure compliance with the laws of this state.

19 **Sec. 06.26.910. Civil enforcement.** The department may bring any  
20 appropriate civil court action against a person who the department determines has  
21 committed or is about to commit a violation of this chapter.

22 **Sec. 06.26.920. Interest of department officers and employees in trust**  
23 **companies.** (a) A state financial institution examiner of the department who deals  
24 with the regulation of financial institutions, a special agent selected by the department  
25 to do work relating to financial institutions, the commissioner, the deputy  
26 commissioner of the department, or the director of the division of banking, securities,  
27 and corporations

28 (1) may not

29 (A) be an officer, an employee, a director, a trustee, an attorney,  
30 or a shareholder of a trust company;

31 (B) receive, directly or indirectly, a payment or gratuity from

- 1 a trust company;
- 2 (C) borrow money from a trust company, except as provided in
- 3 this section;
- 4 (2) may
- 5 (A) be a depositor in a trust company;
- 6 (B) name a trust company to act as a trustee under a trust
- 7 agreement;
- 8 (C) be indebted to a trust company upon an installment debt
- 9 incurred by the employee in the purchase of goods for personal use only and
- 10 transferred as security to the financial institution in the regular course of
- 11 business, including debts for household goods, mobile homes, motor vehicles,
- 12 or boats; or
- 13 (D) be indebted to a trust company for a loan secured by the
- 14 person's primary residence, if the loan closed before the person became an
- 15 employee subject to this section.

16 (b) This section does not limit the authority of an officer or employee of the

17 department when acting in the person's official capacity in the business of the

18 department.

19 (c) In this section, "trust company" includes an interstate or international trust

20 company whose home office is not located in this state.

21 **Sec. 06.26.930. Trust company reports to the department; publication of**

22 **reports.** (a) A trust company shall make at least four reports of its condition each

23 year to the department as required by and on forms prescribed by the department.

24 Each report shall be signed by a duly authorized officer of the trust company verified

25 by at least one independent director, and each verifying director shall certify under

26 oath that the director has personal knowledge of the facts stated in the report and that

27 the facts are true. Each report must exhibit in detail and under appropriate headings

28 the resources and liabilities of the trust company and must be received by the

29 department within 30 calendar days after the end of the period covered by the report.

30 (b) The department may require that a trust company submit special reports

31 whenever the department considers a report necessary in order to obtain full knowledge

1 of the trust company's condition.

2 (c) In addition to the other reports required by this section, a trust company  
3 shall make at least one report of income and dividends to the department each year.  
4 The trust company shall submit the report to the department within 30 days after the  
5 end of the calendar year covered by the report.

6 (d) All of the reports of condition required by this section shall be made  
7 available to all customers on request and at no charge to the customer.

8 **Sec. 06.26.940. Remedy of person damaged by violation.** In addition to any  
9 other remedies available under law to the person, a person who suffers damages as a  
10 result of a violation of this chapter by a person subject to this chapter may bring an  
11 action in court against the person violating this chapter to recover the damages. In this  
12 section, "person subject to this chapter" means a trust company, a private fiduciary, an  
13 exempt private fiduciary, a person who is required to obtain a certificate of authority  
14 under AS 06.26.090, and an interstate or international trust company.

15 **Sec. 06.26.950. Limitation on powers.** This chapter does not allow a trust  
16 company to engage in banking. In this section, "banking" has the meaning given in  
17 AS 06.05.540.

### 18 **Article 13. General Provisions.**

19 **Sec. 06.26.960. Application of laws relating to general business**  
20 **corporations.** (a) Unless expressly authorized by this chapter, a trust company may  
21 not take an action that is authorized by AS 10.06 regarding its corporate status, capital  
22 structure, or a matter of corporate governance and for which AS 10.06 requires a filing  
23 with the department unless the trust company first makes the required filing with the  
24 department and receives the department's approval.

25 (b) The department may adopt regulations to alter or supplement the  
26 procedures and requirements of AS 10.06 applicable to an act taken under this chapter  
27 by a trust company.

28 **Sec. 06.26.990. Definitions.** (a) In this chapter, unless the context otherwise  
29 requires,

30 (1) "board" means board of directors;

31 (2) "certificate of authority" means the certificate of authority issued

1 to a corporation under AS 06.26.110;

2 (3) "chapter" includes regulations adopted under this chapter;

3 (4) "commissioner" means the commissioner of community and  
4 economic development;

5 (5) "customer" means a person using the services of a trust company  
6 or a private fiduciary, and includes a depositor;

7 (6) "department" means the Department of Community and Economic  
8 Development;

9 (7) "depository" means a person authorized by state or federal law to  
10 accept deposits of trust assets;

11 (8) "exempt private fiduciary" means a private fiduciary that has  
12 received an exemption under AS 06.26.200;

13 (9) "family member" means an individual who is related within the  
14 fourth degree of affinity or consanguinity;

15 (10) "fiduciary" means a person to whom the property of another  
16 person is entrusted for a purpose specified in a trust instrument or by a court order;

17 (11) "fiduciary operations" means operations performed by a fiduciary;

18 (12) "fiduciary services" means services to act as a fiduciary;

19 (13) "financial institution" has the meaning given in AS 06.05.540;

20 (14) "governmental regulator" means a governmental agency  
21 responsible for regulating persons who act as fiduciaries;

22 (15) "home jurisdiction regulator" means the governmental agency  
23 responsible for regulating an interstate or international trust company in the jurisdiction  
24 where the trust company is chartered or otherwise organized;

25 (16) "insider" has the meaning given in 12 C.F.R. 215.2;

26 (17) "international" means an entity having offices in countries other  
27 than the country in which the home office is located;

28 (18) "interstate" means an entity having offices in states of the United  
29 States other than the state in which the home office is located;

30 (19) "issuer" has the meaning given in AS 45.55.990;

31 (20) "national bank" has the meaning given in AS 06.05.540;

1 (21) "private fiduciary" means a person who acts as a fiduciary, is not  
 2 exempt under AS 06.26.020, and does not offer its fiduciary services to the general  
 3 public;

4 (22) "provide fiduciary services to the general public" means to make  
 5 any sales, solicitations, arrangements, agreements, or transactions to provide fiduciary  
 6 services, regardless of whether a fee, commission, or any other type of remuneration  
 7 is charged, unless the person to whom the fiduciary services are provided is

8 (A) a family member of an individual who owns 100 percent  
 9 of the person providing the fiduciary services;

10 (B) owned entirely by a family member of the individual who  
 11 owns 100 percent of the person providing the fiduciary services;

12 (C) controlled by a trust or charitable organization established  
 13 by a family member of the individual who owns 100 percent of the person  
 14 providing the fiduciary services;

15 (23) "purchasing trust company" means a trust company purchasing all  
 16 or substantially all of the assets of another trust company;

17 (24) "representative office" means an office that provides support  
 18 services for a trust company, but at which the trust company does not provide  
 19 fiduciary services;

20 (25) "resident of this state" means an individual who is physically  
 21 present in Alaska and who intends to remain indefinitely in Alaska;

22 (26) "selling trust company" means a trust company selling all or  
 23 substantially all of its assets;

24 (27) "state bank" has the meaning given in AS 06.05.540;

25 (28) "trust account" means an account at a trust company for trust  
 26 assets;

27 (29) "trust assets" means assets held in trust for another person;

28 (30) "trust company" means a person who is organized to act as a  
 29 fiduciary and to offer its fiduciary services to the general public;

30 (31) "trust company assets" means assets that are not trust assets and  
 31 that are owned by a trust company;

1 (32) "trust holding company" means an organization formed for the  
2 purpose of owning a trust company;

3 (33) "trust office" means an office that provides fiduciary services.

4 (b) In AS 06.26.220, 06.26.450 - 06.26.470, 06.26.510, 06.26.860, and  
5 06.26.880, "control" means owning, or holding with the power to vote, 25 percent or  
6 more of the voting securities or other capital stock.

7 **Sec. 06.26.995. Short title.** This chapter may be cited as the Revised Alaska  
8 Trust Company Act.

9 \* **Sec. 3.** AS 13.36.320(a) is amended to read:

10 (a) If at least one qualified person serves as trustee of a trust whose state  
11 jurisdiction provision is valid, effective, and conclusive under AS 13.36.035(c), then  
12 the following persons also may serve as trustees even though they are not qualified  
13 persons:

14 (1) individuals who do not reside in **the state** [ALASKA];

15 (2) trust companies that have their principal place of business outside  
16 **the state** [OF ALASKA] and that are not organized under **AS 06.26** [AS 06.25]; and

17 (3) banks that have their principal place of business outside **the state**  
18 [OF ALASKA] or that are not organized under AS 06.05.

19 \* **Sec. 4.** AS 13.36.390(1) is amended to read:

20 (1) "qualified person" means

21 (A) an individual who, except for brief intervals, military  
22 service, attendance at an educational or training institution, or for absences for  
23 good cause shown, resides in this state, whose true and permanent home is in  
24 this state, who does not have a present intention of moving from this state, and  
25 who has the intention of returning to this state when away;

26 (B) a trust company that is organized under **AS 06.26**  
27 [AS 06.25] and that has its principal place of business in this state; or

28 (C) a bank that is organized under AS 06.05, or a national  
29 banking association that is organized under 12 U.S.C. 21 - 216d, if the bank  
30 or national banking association possesses and exercises trust powers and has  
31 its principal place of business in this state;

1     \* **Sec. 5.** AS 21.66.250 is amended to read:

2             **Sec. 21.66.250. Trust funds.** Except as provided in AS 34.80, trust funds or  
3             assets held in a fiduciary capacity by a title insurance company that is authorized to  
4             do a trust business shall be invested in accordance with AS 06.26 [AS 06.25].

5     \* **Sec. 6.** AS 06.25.010, 06.25.020, 06.25.030, 06.25.040, 06.25.050, 06.25.080, 06.25.085,  
6     06.25.090, 06.25.100, 06.25.105, 06.25.110, 06.25.120, 06.25.130, 06.25.140, 06.25.150,  
7     06.25.160, 06.25.170, 06.25.180, 06.25.190, 06.25.200, 06.25.210, 06.25.215, 06.25.220,  
8     06.25.230, 06.25.240, 06.25.255, 06.25.260, 06.25.270, 06.25.280, 06.25.290, 06.25.300,  
9     06.25.310, 06.25.315, and 06.25.350 are repealed.

10    \* **Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section  
11    to read:

12            **COURT RULE CHANGES.** AS 06.26.760(b)(2), enacted by sec. 2 of this Act,  
13    amends

14            (1) Rule 6, Alaska Rules of Civil Procedure, by postponing the deadlines for  
15    the filing of pleadings and other documents by a trust company in a civil action when the  
16    Department of Community and Economic Development has taken possession of the trust  
17    company;

18            (2) Rule 12, Alaska Rules of Civil Procedure, by postponing the deadlines for  
19    serving an answer to a complaint, a third-party answer, a reply to a counterclaim, a cross-  
20    claim, and an answer to a cross-claim by a trust company in a civil action when the  
21    Department of Community and Economic Development has taken possession of the trust  
22    company;

23            (3) Rule 40, Alaska Rules of Criminal Procedure, by postponing the deadlines  
24    set in the Alaska Rules of Criminal Procedure for the filing of documents by a trust company  
25    in a criminal action when the Department of Community and Economic Development has  
26    taken possession of the trust company;

27            (4) Rule 204, Alaska Rules of Appellate Procedure, by postponing the  
28    deadlines for the filing of appeals to the supreme court and the court of appeals by a trust  
29    company when the Department of Community and Economic Development has taken  
30    possession of the trust company;

31            (5) Rule 403, Alaska Rules of Appellate Procedure, by postponing the deadline

1 for the filing of petitions for review or cross-petitions for review by a trust company when the  
2 Department of Community and Economic Development has taken possession of the trust  
3 company;

4 (6) Rule 502, Alaska Rules of Appellate Procedure, by postponing the  
5 deadlines set in the Alaska Rules of Appellate Procedure for the filing of documents by a trust  
6 company when the Department of Community and Economic Development has taken  
7 possession of the trust company;

8 (7) Rule 602, Alaska Rules of Appellate Procedure, by postponing the  
9 deadlines for the filing of appeals to the superior court from a district court or an  
10 administrative agency by a trust company when the Department of Community and Economic  
11 Development has taken possession of the trust company;

12 (8) Rule 611, Alaska Rules of Appellate Procedure, by postponing the  
13 deadlines set in the Alaska Rules of Appellate Procedure for the filing of petitions for review  
14 to the superior court from a district court of an administrative agency by a trust company  
15 when the Department of Community and Economic Development has taken possession of the  
16 trust company.

17 \* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section  
18 to read:

19 TRANSITION. (a) The certificate of authority of a corporation incorporated under  
20 former AS 06.25 before January 1, 2001, remains in effect until the corporation has either  
21 revoked the original certificate of authority or has been issued an amended certificate of  
22 authority.

23 (b) A trust company with a certificate of authority issued under AS 06.25 before the  
24 effective date of this Act shall, before April 1, 2001, submit a plan acceptable to the  
25 department to attain the minimum capital requirements provided for in AS 06.26.120(a),  
26 enacted by sec. 1 of this Act. The plan must provide for attaining the minimums contained  
27 in AS 06.26.120(a), enacted by sec. 1 of this Act, before January 1, 2006.

28 \* **Sec. 9.** The uncodified law of the State of Alaska is amended by adding a new section  
29 to read:

30 TRANSITION: REGULATIONS. Notwithstanding sec. 10 of this Act, the Department  
31 of Community and Economic Development may proceed to adopt regulations necessary to

- 1 implement the changes made by secs. 1 - 6 of this Act. The regulations take effect under
- 2 AS 44.62 (Administrative Procedure Act), but not before January 1, 2001.
- 3 \* **Sec. 10.** Sections 8 and 9 of this Act take effect immediately under AS 01.10.070(c).
- 4 \* **Sec. 11.** Except as provided in sec. 10 of this Act, this Act takes effect January 1, 2001.