

HOUSE BILL NO. 157

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE MURKOWSKI

Introduced: 2/28/01

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to trust companies and providers of fiduciary services; amending Rules**
2 **6 and 12, Alaska Rules of Civil Procedure, Rule 40, Alaska Rules of Criminal Procedure,**
3 **and Rules 204, 403, 502, 602, and 611, Alaska Rules of Appellate Procedure; and**
4 **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. (a)**

14 Notwithstanding other provisions of law and except as provided in AS 06.26.020, a

1 person may not act 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 that has a branch bank in this state established
11 or maintained under AS 06.05.550; in this paragraph, "international bank" has the
12 meaning given in AS 06.05.990;

13 (7) an interstate national bank with a branch bank in this state
14 established or maintained under AS 06.05.550; in this paragraph, "interstate national
15 bank" means a national bank whose principal office, as designated in the bank's
16 articles of incorporation, is not located in this state;

17 (8) an entity that

18 (A) is organized under the laws of a state of the United States
19 other than this state;

20 (B) holds a charter, license, certificate, or other type of
21 authorization from this or another state of the United States to engage in
22 banking; and

23 (C) has a branch bank located in this state established or
24 maintained under AS 06.05.550;

25 (9) an interstate state trust company or international trust company
26 with a trust office authorized by the department under AS 06.26.810 - 06.26.895; or

27 (10) a trustee of only charitable trusts, does not provide or offer
28 fiduciary services to the general public with regard to noncharitable trusts, and
29 observes the requirements applicable to trustees under AS 13.36.225 - 13.36.290
30 (Alaska Uniform Prudent Investor Act).

31 (b) In this section, "branch bank" has the meaning given in 06.05.990.

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

3 (1) is licensed to practice law in this state, is acting within the scope of
4 the license, and the fiduciary services provided by the person are solely incidental to
5 the person's activities under the license;

6 (2) acts as trustee under a deed of trust delivered only as security for
7 the payment of money or for the performance of another act;

8 (3) receives and distributes on behalf of a principal rents and proceeds
9 of sales as a real estate broker or other licensee under AS 08.88;

10 (4) is registered under AS 45.55 as a broker-dealer, a state investment
11 adviser, or an investment adviser representative, is acting within the scope of the
12 registration, and the fiduciary services provided by the person are solely incidental to
13 the person's activities as a broker-dealer, state investment adviser, or investment
14 adviser representative;

15 (5) engages in the sale and administration of an insurance product as
16 an insurance company licensed under AS 21 or insurance producer licensed under
17 AS 21, the person is acting within the scope of the license, and the fiduciary services
18 provided by the person are solely incidental to the person's activities under the license;

19 (6) is a cemetery association organized and acting under AS 10.30;

20 (7) is a trustee for a voting trust under AS 10.06 and is acting in that
21 capacity;

22 (8) has a certified public accountant certificate issued under AS 08.04,
23 the person is acting within the scope of the certificate, and the fiduciary services
24 provided by the person are solely incidental to the person's activities under the
25 certificate;

26 (9) holds real property in trust for the primary purpose of subdivision,
27 development, or sale or to facilitate a business transaction with respect to the real
28 property;

29 (10) does not provide or offer fiduciary services to the general public
30 and serves as a trustee of a trust created by

31 (A) the person's family members; or

1 (B) another person that is organized, formed, or created by the
 2 family members or at the direction of the family members; in this
 3 subparagraph, "person" has the meaning given in AS 01.10.060, but also
 4 includes trusts that are not business trusts;

5 (11) holds money or other assets as a homeowners' association or
 6 similar organization to pay maintenance and other related costs for commonly owned
 7 property; in this paragraph, "homeowners' association" includes an association of
 8 apartment owners under AS 34.07.450 and a unit owners' association or master
 9 association under AS 34.08.990;

10 (12) holds money or other assets in connection with the collection of
 11 debts or payments on loans by a person acting solely as the agent or representative at
 12 the sole direction of the person to whom the debt or payment is owed, including
 13 engaging in the business of an escrow agent;

14 (13) acts as a conservator if the person is appointed by a court of this
 15 or another state or is qualified to act as a conservator under AS 13.26.320;

16 (14) acts as a personal representative if the person is appointed a
 17 personal representative by a court of this or another state or is qualified to act as a
 18 personal representative under AS 13.21.035; in this paragraph, "personal
 19 representative" has the meaning given in AS 13.06.050;

20 (15) acts as a guardian or receiver if the person is appointed as a
 21 guardian or receiver by a court of this or another state;

22 (16) engages in other activities expressly excluded from the
 23 application of this chapter by regulations adopted by the department that are consistent
 24 with this chapter;

25 (17) is a business partner acting with regard to the business, or a co-
 26 owner of property acting with regard to the co-owned property;

27 (18) serves as a trustee of a trust created by 10 or fewer settlors who
 28 are not family members of the person and does not provide or offer fiduciary services
 29 to the general public.

30 **Sec. 06.26.030. Location of operation.** (a) A trust company may act as a
 31 fiduciary in this state, another state, or a foreign country, subject to complying with

1 applicable laws of the state or foreign country, at an office or branch established and
2 maintained under this chapter.

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

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

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

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

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

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

- 1 (8) receiving for safekeeping any type of personal property;
- 2 (9) acting as a custodian, an assignee, a transfer agent, an escrow
3 agent, a registrar, or a receiver;
- 4 (10) acting as an investment adviser, an agent, or an attorney-in-fact in
5 any agreed upon capacity;
- 6 (11) exercising additional powers expressly authorized by a regulation
7 adopted under this chapter; and
- 8 (12) exercising an incidental power that is reasonably necessary to
9 enable it to fully exercise the powers expressly conferred according to commonly
10 accepted fiduciary customs and usage.

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

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

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

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

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

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

31 (h) In (a) of this section, "national bank exclusively exercising trust powers"

1 means a person issued a charter by the United States Comptroller of the Currency if
2 the charter confers only trust powers.

3 **Sec. 06.26.060. Organizers.** One or more persons may organize a trust
4 company.

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

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

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

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

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

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

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

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

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

26 (b) The department has 60 days from the date that the department receives a
27 notice under (a) of this section to review the amendment, and the amendment becomes
28 effective on the 61st day after the department receives the notice unless the department
29 specifies a different date. The department may extend the 60-day period of review if
30 the department determines that the notice raises significant issues that require
31 additional information or if the department needs additional time for analysis. If the

1 60-day period of review is extended, the amendment becomes effective only when the
2 department approves the amendment in writing.

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

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

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

14 (1) the market to be served;

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

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

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

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

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

1 good 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) The department shall determine whether all of the applicable requirements
16 of this section have been satisfied and shall enter an order granting or denying the
17 certificate of authority. The department may deny the application if the department
18 determines that the requirements of this chapter have not been met. The department
19 may set conditions on the certificate of authority and shall include any conditions in
20 the order granting the certificate of authority.

21 (f) If a protest of the application is not filed with the department on or before
22 the 15th day after the last date that the notice is published under AS 06.26.100, the
23 department may immediately determine whether the application meets the
24 requirements of this section based on the application and investigation.

25 **Sec. 06.26.100. Department notices regarding application.** (a) The
26 department shall notify the organizers of a proposed trust company when the
27 application under AS 06.26.090 is complete and accepted for filing and all required
28 fees and deposits have been paid. Promptly after notification, the organizers shall
29 publish in a form specified by the department notice of the filing of the application in
30 a newspaper of general circulation published in the community proposed as the trust
31 company's principal place of business. If a newspaper of general circulation is not

1 published in the community, the organizers shall publish the notice in a newspaper of
 2 general circulation near the community. The department may require the organizers to
 3 publish the notice at other locations reasonably necessary to solicit the views of
 4 potentially affected persons. The notice must include a solicitation of comments and
 5 protests.

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

9 **Sec. 06.26.110. Issuance of certificate of authority; required operation.**

10 (a) The department may not deliver a certificate of authority to a person to act as a
 11 trust company until the person has

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

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

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

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

26 **Sec. 06.26.120. Required capital; change in outstanding capital and**
 27 **surplus.** (a) A trust company may not act as a fiduciary unless the trust company has
 28 paid-in capital in an amount acceptable to the department, but not less than \$400,000,
 29 and paid-in surplus equal to 20 percent of paid-in capital. The trust company shall
 30 hold its unimpaired capital as security for the faithful discharge of the fiduciary duties
 31 undertaken by the trust company and for the claims of creditors.

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

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

22 (c) If the department orders a trust company to increase or adjust its capital,
23 the order must state the date by which the increase or adjustment must be made. An
24 order under this subsection does not prohibit the trust company from later applying to
25 the department to reduce capital requirements for the trust company under (b) of this
26 section.

27 (d) Subject to (b) of this section, a trust company to which the department
28 issues a certificate of authority shall at all times maintain capital in at least the amount
29 required under (a) of this section, as increased or decreased under (b) of this section.

30 (e) A trust company may not reduce or increase its outstanding capital through
31 dividend, redemption, issuance of shares, or otherwise without the prior written

1 approval of the department, unless otherwise permitted by this chapter.

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

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

13 (b) A trust company may not retire capital notes or debentures if the
14 retirement creates an impairment of its capital. Capital notes and debentures are
15 subordinated in right of payment in the event of insolvency or liquidation of the trust
16 company to the prior payment of all deposits and all claims of other creditors except
17 the holders of securities on a parity with the capital notes and debentures and the
18 holders of securities expressly subordinated to the capital notes and debentures.

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

22 **Article 3. Operation of Offices.**

23 **Sec. 06.26.150. Trust company home office.** (a) A trust company shall
24 continuously maintain in this state a home office where the trust company operates
25 and keeps its records. At least one executive officer shall maintain an office at the
26 home office.

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

29 (c) A trust company may change its home office to any of its offices existing
30 at the time of the change within this state by filing a written notice with the
31 department setting out the name of the trust company, the street address of its home

1 office before the change, the street address to which the home office is to be changed,
2 and a copy of a resolution adopted by the trust company's board authorizing the
3 change.

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

11 **Sec. 06.26.160. Trust company branch offices.** (a) A trust company may
12 establish branch offices anywhere in the state by

13 (1) filing a written notice with the department setting out the name of
14 the trust company, the street address of the proposed branch office, and a description
15 of the activities proposed to be conducted at the branch office;

16 (2) filing with the department a copy of a resolution adopted by the
17 trust company's board authorizing the establishment or acquisition of the branch
18 office; and

19 (3) paying the filing fee established by the department by regulation.

20 (b) The department has 60 days from the date the department receives the
21 notice under (a) of this section to review the proposal for the branch office, and the
22 trust company may begin operating the branch office on the 61st day after the date the
23 department receives the notice, unless the department specifies a different date.

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

31 **Sec. 06.26.170. Trust company representative offices.** (a) A trust company

1 may establish or acquire representative trust offices anywhere in this state. To
2 establish or acquire a representative office, a trust company shall

3 (1) file a written notice with the department that sets out the name of
4 the trust company and the location of the proposed representative office;

5 (2) file with the department a copy of a resolution adopted by the trust
6 company's board authorizing the establishment or acquisition of the representative
7 office; and

8 (3) pay the filing fee established by the department by regulation.

9 (b) The department has 60 days from the date the department receives the
10 notice filed under (a) of this section to review the establishment or acquisition of a
11 representative office, and the trust company may begin operating the representative
12 office on the 61st day after the date the department receives the notice, unless the
13 department specifies a different date.

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

21 **Sec. 06.26.180. Offices outside the state.** (a) With the prior written approval
22 of the department, a trust company may establish a branch office or a representative
23 office outside this state. To establish a branch office or representative office outside
24 this state, a trust company shall

25 (1) submit an application to the department specifying the location of
26 the proposed office, the business to be conducted at the proposed office, and the laws
27 of the jurisdiction where the office will be located that permit the office to be
28 established;

29 (2) file with the department a copy of a resolution adopted by the trust
30 company's board authorizing the establishment or acquisition of the office; and

31 (3) pay the filing fee established by the department by regulation.

1 (b) The department may approve an application under (a) of this section for a
2 branch office or representative office if the department finds that

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

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

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

14 (d) The department may deny a trust company permission to establish a
15 branch office or representative office outside this state if the department has safety or
16 soundness concerns regarding

17 (1) the market to be served;

18 (2) whether the proposed organizational structure, capital structure,
19 and amount of capitalization are adequate;

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

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

27 **Sec. 06.26.190. Hours of operation.** (a) A trust company and an interstate
28 state trust company or an international national trust company maintaining a trust
29 office under AS 06.26.810 - 06.26.895 may close on the legal holidays described in
30 AS 44.12.010 - 44.12.025. A notice of holiday closings shall be made available to the
31 trust company's customers by mail, by the Internet, or by other means.

1 (b) A trust company and an interstate state trust company or international trust
 2 company maintaining a trust office under AS 06.26.810 - 06.26.895 may close on any
 3 business day if the trust company

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

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

7 (c) The hours of operation, and any changes in the hours of operation, of a
 8 trust company and an interstate state trust company or international trust company
 9 maintaining a trust office under AS 06.26.810 - 06.26.895 must be submitted to the
 10 department and must be made available to the trust company's customers by mail, by
 11 the Internet, or by other means.

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

14 **Article 4. Private Fiduciaries.**

15 **Sec. 06.26.200. Private fiduciaries.** (a) Unless the department expressly in
 16 writing exempts the person under this section from all or some of the provisions of this
 17 chapter, a private fiduciary shall comply with the provisions of this chapter applicable
 18 to a trust company.

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

23 (c) At the expense of the private fiduciary, the department may examine or
 24 investigate the private fiduciary in connection with an application for an exemption
 25 under this section. Unless the application presents novel or unusual questions, the
 26 department shall approve or deny the application for exemption not later than the 61st
 27 day after the date that the department considers the application complete and accepted
 28 for filing. If the application presents novel or unusual questions, the department may
 29 extend the time for approving or denying the application. The department may require
 30 the private fiduciary to submit additional information the department considers
 31 necessary to make an informed decision.

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

4 (e) The department may adopt regulations that are consistent with this chapter
 5 defining the activities that do not constitute providing or offering fiduciary services to
 6 the general public, specifying the provisions of this chapter that are subject to an
 7 exemption under this section, and establishing procedures and requirements for
 8 obtaining, maintaining, or revoking an exemption granted under this section.

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

12 (1) a nonrefundable application fee established by the department by
 13 regulation;

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

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

18 (4) a statement under oath that the private fiduciary currently does not
 19 provide or offer fiduciary services to the general public and that the private fiduciary
 20 will not provide or offer fiduciary services to the general public without the prior
 21 written permission of the department;

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

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

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

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

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

2 (2) shall file an annual certification on or before December 31 of each
3 year on a form provided by the department that the private fiduciary is maintaining the
4 conditions and limitations of its exempt status; the annual certification must be
5 accompanied by a fee established by the department by regulation.

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

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

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

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

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

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

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

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

31 (4) violates a provision of this section applicable to exempt private

1 fiduciaries.

2 (b) If the department determines from examination or other credible evidence
3 that an exempt private fiduciary has violated a requirement of this chapter, the
4 department may by personal delivery or registered or certified mail, return receipt
5 requested, notify the exempt private fiduciary in writing that the department will
6 revoke the private fiduciary's exemption as of a stated date, which may not be before
7 the fifth calendar day after the date that the notification is delivered or mailed. The
8 notification must state the grounds for the revocation with reasonable certainty. After
9 a revocation takes effect, the revocation is final, and the private fiduciary is subject to
10 all of the requirements and provisions of this chapter that are applicable to private
11 fiduciaries not exempt under AS 06.26.200.

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

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

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

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

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

30 (b) The private fiduciary shall file a notice with the department on a form
31 prescribed by the department, furnish a copy of a resolution adopted by the board

1 authorizing the private fiduciary to provide or offer fiduciary services to the general
 2 public, pay any filing fee established by the department by regulation, and comply
 3 with the requirements of this chapter for trust companies. The notice must provide the
 4 name of the private fiduciary and acknowledge that any exemption granted or
 5 otherwise applicable to the private fiduciary under AS 06.26.200 ceases to apply on
 6 the effective date of the notice.

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

12 (d) The department may extend the 60-day period of review provided by (c) of
 13 this section if the department determines that the notice raises issues that require
 14 additional information or if the department needs additional time for analysis. If the
 15 60-day period of review is extended, the private fiduciary may provide or offer
 16 fiduciary services to the general public only after written approval by the department.

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

21 **Article 5. Investments, Loans, and Deposits.**

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

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

28 (1) the repayment of money borrowed;

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

31 (3) deposits made by the United States government, the state, or a

1 municipality, or an agency of those governmental bodies.

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

4 **Article 6. Trust Assets.**

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

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

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

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

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

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

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

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

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

1 the services rendered.

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

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

8 **Sec. 06.26.410. Requirements for handling trust assets.** A trust company,
9 its representatives, and its appointees shall observe the requirements applicable to
10 trustees under AS 13.36.225 - 13.36.290 (Alaska Uniform Prudent Investor Act).

11 **Article 7. Ownership.**

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

17 (b) This section does not apply to

18 (1) the acquisition of securities in connection with the exercise of a
19 security or other interest in full or partial satisfaction of a debt previously contracted
20 for in good faith if the acquiring person files written notice of acquisition with the
21 department before the person votes the securities acquired;

22 (2) the acquisition of voting securities in any class or series by a
23 person in control who has previously complied with and received approval to acquire
24 control under AS 06.26.450 - 06.26.480 or who was identified as a person in control in
25 an earlier application filed with and approved by the department;

26 (3) an acquisition or transfer by operation of law, a will, or in testate
27 succession if the acquiring person files written notice of acquisition with the
28 department before the person votes the securities acquired; or

29 (4) a transaction exempted by the department by regulation or order
30 because the transaction is not within the purposes of AS 06.26.450 - 06.26.480.

31 **Sec. 06.26.460. Application for acquisition of control.** (a) A proposed

1 transferee seeking approval under AS 06.26.450 to acquire control of a trust company
2 shall file with the department

3 (1) an application in the form prescribed by the department;
4 (2) the filing fee established by the department by regulation; and
5 (3) all information required by regulation or that the department
6 requires for a particular application in order to make an informed decision to approve
7 or reject the proposed acquisition.

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

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

16 (d) Promptly after the department accepts the application as complete, the
17 proposed transferee shall publish notice of the application, the date of filing the
18 application, and the identity of each participant in the acquisition of control in the
19 form specified by the department in a newspaper of general circulation published in
20 the community proposed as the trust company's principal place of business. If a
21 newspaper of general circulation is not published in the community, the notice shall be
22 published in a newspaper of general circulation near the community. Publication of
23 notice of an application may be deferred for up to 31 days after the date the
24 application is filed if

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

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

31 (e) The department may waive the requirement that a notice be published or

1 permit delayed publication of the notice if the department makes a written
2 determination that waiver or delay is in the public interest.

3 **Sec. 06.26.470. Decision on application for acquisition of control.** (a) The
4 department shall approve or deny an application for acquisition of control not later
5 than the 60th day after the date that the notice regarding acquisition of control is
6 published under AS 06.26.460.

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

11 **Sec. 06.26.480. Objection to other transfer.** AS 06.26.450 - 06.26.480 may
12 not be construed to prevent the department from investigating, commenting on, or
13 seeking to enjoin or set aside a transfer of voting securities that evidence a direct or
14 indirect interest in a trust company if the department considers the transfer to be
15 against the public interest.

16 **Article 8. Governance.**

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

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

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

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

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

4 **Sec. 06.26.510. Board of directors.** (a) The board of directors of a trust
 5 company shall consist of at least five but not more than 25 directors, and the majority
 6 of the directors must be residents of this state. The principal executive officer of the
 7 trust company is a member of the board and the board's presiding officer unless the
 8 board elects a different presiding officer. The presiding officer shall perform the
 9 duties designated by the board.

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

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

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

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

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

27 (d) A vacancy on a board that reduces the number of directors to fewer than
 28 five shall be filled not later than the 30th day after the date that the vacancy occurs. If
 29 the vacancy on the board is not filled within 30 days after the date that the vacancy
 30 occurs, the department may appoint a person to operate the trust company and elect a
 31 board of at least five persons. If the appointed person is unable to locate or elect five

1 persons willing and able to serve as directors, the department may close the trust
2 company for liquidation.

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

6 (1) accepts the position and is not disqualified from serving in the
7 position;

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

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

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

17 (b) At least once every three months, the board of directors of a trust company
18 shall review written reports prepared by the president, other officers of the trust
19 company, or a trust committee appointed under AS 06.26.550. The reports must
20 include the accounts that have been opened or closed during the calendar quarter
21 before the meeting and the trust accounts subject to annual review during the calendar
22 quarter before the meeting.

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

25 (b) The president of the trust company is the principal executive officer
26 primarily responsible for the execution of board policies and operation of the trust
27 company. The trust company shall have an officer responsible for the maintenance
28 and storage of all records of the trust company and for required attestation of
29 signatures. These positions may not be held by the same person. The board may
30 appoint other officers of the trust company as the board considers necessary.

31 **Sec. 06.26.540. Prohibition of certain action by officer or employee.**

1 Unless expressly authorized by a resolution of the board recorded in the minutes of the
 2 board, an officer or employee may not create or dispose of a trust company asset or
 3 create or incur a liability on behalf of the trust company.

4 **Sec. 06.26.550. Trust committee.** (a) The board may appoint a trust
 5 committee to act for the company in matters dealing with the initial and annual
 6 reviews of accounts, account acceptance, and investment strategies. A trust committee
 7 shall consist solely of directors, officers, or employees of the trust company, or any
 8 combination of these positions. The trust committee shall keep a record of its actions
 9 and shall report in writing to the board on all actions taken by the trust committee
 10 since the previous board meeting. The board shall ratify or rescind each action.

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

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

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

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

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

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

27 **Sec. 06.26.570. Transactions with management and affiliates; penalties.**

28 (a) Without the prior approval of a disinterested majority of the board recorded in the
 29 minutes, or, if a disinterested majority cannot be obtained, the prior written approval
 30 of the department, a trust company may not directly or indirectly

31 (1) sell or lease an asset of the trust company to a director, an officer, a

1 principal shareholder, or an affiliate of the trust company;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 26 (1) disclosure is compelled by a court or administrative order;
 27 (2) disclosure is required by federal or state law;
 28 (3) disclosure is authorized in writing by the customer;
 29 (4) disclosure is made to the holder of a negotiable instrument drawn
 30 on the trust company as to whether the drawer has sufficient money or other assets in
 31 the financial institution to cover the instrument; or

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

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

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

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

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

27 (c) At least once each year, the board of directors shall review the bonding and
28 other insurance required by this section to determine whether the coverage is adequate
29 in relation to the exposure of the trust company. The minimum amount of insurance
30 required by this section does not automatically represent adequate bonding and
31 insurance coverage in relation to the exposure. Immediately after procuring the

1 bonding and other insurance, the board shall file copies of the documents representing
2 the bonding and other insurance with the department.

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

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

16 **Article 9. Organic Change.**

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

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

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

1 companies, and preventing injurious credit expansions and contractions.

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

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

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

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

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

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

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

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

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

29 (c) If the department approves the merger or consolidation and finds that all
30 investigative expenses incurred by the department and all required filing fees have
31 been paid, the department shall issue a certificate of merger or consolidation.

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

6 **Sec. 06.26.680. Authority to purchase assets of another trust company.**

7 (a) A trust company with the prior written approval of the department may purchase
 8 all or substantially all of the assets of another trust company, including the right to
 9 control accounts established with the trust accounts. Except as otherwise expressly
 10 provided by another statute, the purchase by a trust company of all or part of the assets
 11 of another trust company does not make the purchasing trust company responsible for
 12 a liability or obligation of the selling trust company that the purchasing trust company
 13 does not expressly assume. Except as otherwise provided by statute, AS 06.26.450 -
 14 06.26.480 do not govern or prohibit the purchase by a trust company of all or part of
 15 the assets of a person who is not a trust company or an exempt private fiduciary.

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

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

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

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

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

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

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

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

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

17 (2) is not responsible for

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

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

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

31 **Sec. 06.26.710. Payment to creditors.** A purchasing trust company may pay

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

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

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

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

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

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

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

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

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

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

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

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

4 **Article 10. Dissolution and Liquidation.**

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

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

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

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

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

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

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

29 (1) begin revocation proceedings under AS 06.26.740;

30 (2) take possession of the trust company's trust business in this state in
 31 the same manner, with the same effect, and subject to the same rights accorded to the

1 trust company under AS 06.26.750.

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

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

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

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

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

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

23 **Sec. 06.26.740. Revocation.** (a) If the department determines that any of the
24 following factors exist, the department may revoke, consistent with AS 06.01.030 and
25 regulations adopted by the department under AS 06.01.030 and this chapter, a trust
26 company's certificate of authority:

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

30 (2) the trust company's authority to act as fiduciary has been
31 terminated or suspended under the laws of the state or other jurisdiction in which the

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

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

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

10 (A) a law or regulation;

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

14 (C) a written agreement that the trust company entered into
 15 with the department;

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

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

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

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

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

29 (b) If the department has reasonable cause to believe any of the factors
 30 identified in (a) of this section is true, and if the department determines it is necessary
 31 to protect the persons and interests in this state for whom the trust company acts as a

1 fiduciary or to protect the property in this state to which the trust company holds title
2 as a fiduciary or in which the trust company holds an interest as a fiduciary, the
3 department may immediately suspend the trust company's certificate of authority.

4 **Sec. 06.26.750. Authority to take possession.** If the department revokes a
5 trust company's certificate of authority under AS 06.26.740(a), the department may
6 take possession of the trust company's fiduciary operations in this state and may
7 appoint a receiver for the liquidation of the trust company's fiduciary operations in this
8 state. If the trust company has its principal place of business in this state, the
9 department may take possession of, and appoint a receiver for the liquidation of all the
10 trust company's fiduciary operations wherever they are conducted.

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

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

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

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

30 (c) A judgment, lien, or attachment may not be enforced against trust company
31 assets while the assets are in possession of the department. Upon the election of the

1 department in connection with a liquidation or reorganization,

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

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

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

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

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

24 (b) A plan of reorganization may not be established under this chapter unless,
25 in the opinion of the department,

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

28 (2) subject to a fair adjustment for new capital that a class will pay
29 under the plan, the face amount of the trust company asset interest provided to a class
30 of depositors, other customers, creditors, or shareholders under the plan does not
31 exceed the value of the assets at liquidation less the full amount of the claims of all

1 prior classes;

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

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

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

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

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

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

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

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

22 (1) sell trust company assets having an appraised value in excess of
23 \$100,000;

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

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

29 (b) Within six months after beginning the liquidation of a trust company, the
30 department may terminate an executory contract for services or advertising to which
31 the trust company is a party or an obligation of the trust company as a lessee. A lessor

1 who receives 60 days' notice of the department's decision to terminate a lease does not
 2 have a claim for rent other than rent accrued to the date of termination or for damages
 3 due to the termination.

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

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

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

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

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

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

26 (c) A safe deposit box whose contents have not been removed within 30 days
 27 after demand shall be opened. The department shall retain the contents of the box and
 28 the other unclaimed property held by the trust company as bailee until the conclusion
 29 of the liquidation proceedings. At the conclusion of the liquidation proceedings under
 30 this section, the property held by the department under this subsection is considered
 31 abandoned, and the department shall deliver the property to the Department of

1 Revenue under AS 34.45.110 - 34.45.780.

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

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

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

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

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

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

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

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

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

27 (2) wages and salaries of officers and employees earned during the
28 three-month period preceding the department's possession in an amount not exceeding
29 \$3,000 for each person;

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

31 (4) deposits;

1 (5) claims secured by trust company assets.

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

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

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

10 (k) After payment of the expenses of the liquidation and the claims against the
11 trust company arising from its fiduciary obligations in this state under AS 06.26.760 -
12 06.26.800, the receiver shall distribute any remaining money or other assets from the
13 liquidation of the trust company's fiduciary operations in this state equitably among, as
14 applicable, the receivers for liquidation of the trust company's fiduciary operations in
15 other states of the United States and under the laws of the United States, for payment
16 of the expenses of liquidation and claims against the trust company's fiduciary
17 operations. If the trust company's fiduciary operations are not being liquidated in
18 another state or under the laws of the United States, the receiver shall, after satisfying
19 the requirements of AS 06.26.760 - 06.26.800, pay any remaining money or other
20 assets from the liquidation of the trust company's fiduciary operations in this state to
21 the trust company.

22 (l) When the receiver has completed the liquidation of the trust company's
23 fiduciary operations in this state, the receiver shall, with notice to the department,
24 petition the court for an order declaring the trust company's fiduciary operations in this
25 state properly wound up under AS 06.26.760 - 06.26.800. Upon the filing of the
26 petition, the court shall proceed as provided in AS 06.26.760 - 06.26.800.

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

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

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

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

7 **Sec. 06.26.800. Federal Deposit Insurance Corporation as receiver or**
8 **liquidator.** The department may appoint the Federal Deposit Insurance Corporation
9 or its successor as receiver for a trust company that the department has taken
10 possession of if the deposits of the trust company are insured by that corporation or its
11 successor. Upon filing with the court a certificate indicating the acceptance of the
12 appointment by the Federal Deposit Insurance Corporation or its successor, the
13 possession of and title to all the assets, business, and property of the trust company are
14 transferred to that corporation. The department is then relieved of all responsibility
15 and liability with respect to the reorganization or liquidation of the trust company.
16 The Federal Deposit Insurance Corporation or its successor may liquidate, reorganize,
17 merge, or consolidate the trust company in the manner permitted by the laws of the
18 United States or by this chapter, and possesses all the rights, powers, duties, and
19 obligations of the department in the liquidation, reorganization, merger, or
20 consolidation of the trust company under this chapter.

21 **Article 11. Interstate State Trust Company, Interstate National**
22 **Trust Company, and International Trust Company Offices.**

23 **Sec. 06.26.810. Fiduciary operations at a branch or trust office.** (a) An
24 interstate state trust company, interstate national trust company, or international trust
25 company may not act as a fiduciary in this state unless the trust company maintains a
26 trust office in this state as permitted under AS 06.26.810 - 06.26.895.

27 (b) If an interstate state trust company, interstate national trust company, or
28 international trust company establishes or acquires a trust office in this state under
29 AS 06.26.810 - 06.26.895, the trust company may conduct at the trust office any
30 activity that a trust company may conduct at a trust office under this chapter.

31 **Sec. 06.26.820. Establishing or acquiring a trust office.** If an interstate state

1 trust company, interstate national trust company, or international trust company that
 2 does not operate a trust office in this state meets the requirements of AS 06.26.810 -
 3 06.26.895, the trust company may establish a new trust office in this state or acquire a
 4 trust office in this state that is in existence at the time of acquisition.

5 **Sec. 06.26.830. Requirement of notice.** To establish a new trust office or
 6 acquire a trust office that is in existence at the time of acquisition in this state under
 7 AS 06.26.810 - 06.26.895, an interstate state trust company, interstate national trust
 8 company, or international trust company shall provide, or cause its home jurisdiction
 9 regulator to provide, written notice of the proposed transaction to the department on or
 10 after the date on which the trust company applies to its home jurisdiction regulator for
 11 approval to establish or acquire the trust office. The trust company shall file with the
 12 notice and maintain a copy of a resolution adopted by the board of the trust company
 13 authorizing the establishment or acquisition of the office and shall pay the filing fee
 14 established by the department by regulation.

15 **Sec. 06.26.840. Conditions for approval.** (a) An interstate state trust
 16 company or international trust company may not establish or acquire a trust office in
 17 this state under AS 06.26.810 - 06.26.895 unless

18 (1) the trust company confirms in writing to the department that, while
 19 the trust company maintains a trust office in this state, the trust company will comply
 20 with all applicable laws of this state, including, except where the context or this
 21 section indicates otherwise, the provisions of this chapter applicable to trust
 22 companies organized under this chapter;

23 (2) the trust company provides satisfactory evidence to the department
 24 of compliance with the

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

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

28 (3) the department, acting within 90 days after receiving notice under
 29 AS 06.26.830, certifies to the home jurisdiction regulator that the requirements of
 30 AS 06.26.810 - 06.26.895 have been met and the notice has been approved or, if
 31 applicable, that any conditions imposed by the department under (b) of this section

1 have been satisfied;

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

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

8 (b) An interstate state trust company or international trust company may begin
9 acting as a fiduciary at a trust office on the 91st day after the date that the department
10 receives the notice under (a) of this section for the trust office unless the department
11 specifies a different date.

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

17 (d) The department may deny an interstate state trust company or international
18 trust company permission to establish or acquire the trust office if the department finds
19 that the trust company lacks sufficient financial resources to undertake the proposed
20 expansion without adversely affecting its safety or soundness or that the proposed trust
21 office would be contrary to the public interest. When acting on the notice provided
22 under (a) of this section, the department shall consider the views of the home
23 jurisdiction regulator.

24 (e) If an interstate state trust company or international trust company is not
25 required by AS 10.06 or another law of this state to maintain a registered agent in this
26 state, the trust company shall file a written consent with the department permitting the
27 commissioner to act as the agent for the trust company for service of process in a court
28 action arising out of or connected with the proposed trust office.

29 (f) An interstate national trust company may not establish or acquire a trust
30 office in this state unless the trust company provides satisfactory evidence to the
31 department of compliance with the applicable requirements of its home jurisdiction

1 regulator for establishing or acquiring and maintaining the office.

2 **Sec. 06.26.850. Representative office business; registration.** (a) An
3 interstate state trust company, interstate national trust company, or international trust
4 company may not provide fiduciary services, but may otherwise engage in trust
5 business, at a representative office as permitted by AS 06.26.810 - 06.26.895.

6 (b) Subject to the requirements contained in AS 06.26.810 - 06.26.895, an
7 interstate state trust company, interstate national trust company, or international trust
8 company may establish or acquire representative offices in any location in this state.

9 (c) If an interstate state trust company or international trust company that does
10 not maintain a trust office in this state wants to establish or acquire a representative
11 office in this state, the trust company shall file a notice with the department on a form
12 prescribed by the department. The trust company shall furnish a copy of a resolution
13 adopted by its board authorizing the establishment or acquisition of the representative
14 office and shall pay the filing fee established by the department by regulation. The
15 notice required under this subsection must provide the name of the trust company, the
16 location of the proposed representative office, and satisfactory evidence that the trust
17 company is chartered or otherwise organized in another jurisdiction to act as a
18 fiduciary.

19 (d) An interstate state trust company or international trust company may
20 commence business at a representative office on the 61st day after the date that the
21 department receives the notice required under (c) of this section unless the department
22 specifies a different date.

23 (e) The department may extend the 60-day period of review provided by (d) of
24 this section if the department determines that the written notice raises issues that
25 require additional information or additional time for analysis by the department. If the
26 60-day period of review is extended, the trust company may establish the
27 representative office only after written approval by the department.

28 (f) In addition to the other requirements of this section, in order to receive
29 permission to establish or acquire a representative office in this state, an interstate
30 state trust company or international trust company must have sufficient financial
31 resources to undertake the proposed expansion without adversely affecting its safety or

1 soundness and the proposed representative office may not be contrary to the public
2 interest. When acting on the notice provided under (c) of this section, the department
3 shall consider the views of the home jurisdiction regulator.

4 (g) The department may determine by order that an interstate state trust
5 company or international trust company does not meet the requirements for
6 establishing or acquiring a representative office in this state under this section. An
7 order issued under this subsection is effective on the date of its issuance or on another
8 date as the department may determine.

9 (h) An interstate national trust company shall give the department notice of its
10 intent to establish or acquire a representative office in this state.

11 **Sec. 06.26.860. Additional trust offices.** If an interstate state trust company
12 or international trust company maintains a trust office in this state under AS 06.26.810
13 - 06.26.895, the trust company may establish or acquire additional trust offices or
14 representative offices in this state to the same extent and in the same manner that a
15 trust company may establish or acquire branch offices in this state under the
16 procedures for establishing or acquiring branch offices under AS 06.26.160.

17 **Sec. 06.26.870. Examinations; periodic reports; cooperative agreements;
18 assessment of fees.** (a) When the department considers it necessary to protect the
19 public interest, the department or a competent person designated by the department
20 may examine an interstate state trust company or international trust company that has
21 a trust office or a representative office in the state. The trust company shall pay a fee
22 established under AS 06.01.010 for the examination.

23 (b) The department may require periodic reports from an interstate state trust
24 company or international trust company if the trust company maintains a trust office in
25 this state and from a bank holding company that controls the trust company. The
26 reports shall be made under oath and filed as frequently as required by the department.
27 The reports must contain the information and detail that the department determines to
28 be appropriate as required under regulations adopted by the department.

29 (c) If an interstate state trust company or international trust company
30 maintains a trust office or a representative office in this state, the trust company may
31 be assessed and, if assessed, shall pay supervisory and examination fees as required by

1 the laws of this state and regulations of the department. Fees may be shared with other
 2 governmental regulators or any organization affiliated with or representing
 3 governmental regulators under agreements between the department and the regulators
 4 or organization.

5 **Sec. 06.26.880. Enforcement.** (a) Consistent with AS 06.01.030 and
 6 regulations adopted by the department under AS 06.01.030 or this chapter, the
 7 department may determine that

8 (1) an office maintained by an interstate state trust company or
 9 international trust company is being operated in violation of a provision of the laws of
 10 this state or in an unsafe and unsound manner; or

11 (2) an interstate state trust company or international trust company is
 12 engaged in an activity that the trust company may not engage in under this chapter.

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

18 (c) If a matter involves extraordinary circumstances that require immediate
 19 action, the department may take any action permitted by this section without providing
 20 notice or an opportunity for a hearing before taking the action. The department shall
 21 promptly give notice to the home jurisdiction regulator of each enforcement action
 22 taken against an interstate state trust company or international trust company and, to
 23 the extent practicable, shall consult and cooperate with the home jurisdiction regulator
 24 when pursuing and resolving an enforcement action.

25 **Sec. 06.26.890. Notice of subsequent merger, consolidation, or closing.** If
 26 an interstate state trust company, interstate national trust company, or international
 27 trust company maintains a trust office or a representative office in this state under this
 28 chapter, the trust company shall give at least 60 days' prior written notice, or, in the
 29 case of an emergency transaction, shorter notice that is consistent with applicable state
 30 and federal law, to the department of

31 (1) a merger, consolidation, or other transaction that would cause a

1 change of control with respect to the trust company or any bank holding company that
 2 controls the trust company if an application would be required to be filed under 12
 3 U.S.C. 1817(j) (Change in Bank Control Act of 1978) or 12 U.S.C. 1841 - 1850 (Bank
 4 Holding Company Act of 1956);

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

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

9 **Sec. 06.26.895. Definitions.** In AS 06.26.810 - 06.26.895,

10 (1) "international trust company" means an international trust company
 11 whose home office is not located in this state;

12 (2) "interstate national trust company" means an interstate national
 13 trust company whose home office is not located in this state;

14 (3) "interstate state trust company" means an interstate state trust
 15 company whose home office is not located in this state.

16 **Article 12. Miscellaneous Provisions.**

17 **Sec. 06.26.900. Powers of department.** The department may

18 (1) exercise general supervision over trust companies, interstate trust
 19 companies, and international trust companies, and the subsidiaries and affiliated
 20 corporations of trust companies, interstate state trust companies, and international trust
 21 companies;

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

25 (3) review and approve or disapprove applications for trust companies
 26 under AS 06.26.090, trust company branch offices under AS 06.26.160, representative
 27 offices under AS 06.26.170, and trust offices and representative offices under
 28 AS 06.26.810 - 06.26.895;

29 (4) issue permits authorizing trust company holding companies to do
 30 business in this state;

31 (5) determine for each trust company the amount of paid-in capital

1 necessary to operate under AS 06.26.120;

2 (6) review and approve transfers of trust company ownership under
3 AS 06.26.450;

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

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

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

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

15 (11) approve certain trust company subsidiaries;

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

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

22 (14) require a trust company to

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

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

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

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

30 (E) record liens and other interests in property;

31 (F) obtain a financial statement from a borrower or prospective

1 borrower to the extent that the trust company can obtain the statement;

2 (G) obtain insurance against damage to real property taken as
3 security;

4 (H) search or obtain insurance on the title to real property taken
5 as security;

6 (I) maintain adequate insurance against risks as the department
7 determines necessary and appropriate for the protection of depositors and the
8 public;

9 (J) charge off that portion of an asset classified as a loss, or
10 charge off or reserve up to 50 percent of loans classified as doubtful, in a state
11 or federal report of examination; or

12 (K) charge off all debts owed to the trust company in which
13 interest is past due and unpaid for a period of six months, unless the debt
14 principal is adequately secured and the trust company is in the process of
15 collection;

16 (15) require the board of directors of a trust company to hold a meeting
17 under AS 06.26.520;

18 (16) order the removal of a board member of a trust company under
19 AS 06.26.510;

20 (17) order a trust company to suspend the payment of dividends under
21 AS 06.26.120 and regulations adopted by the department;

22 (18) require a trust company to increase its capital accounts under
23 AS 06.26.120;

24 (19) take possession of a trust company in the manner provided in
25 AS 06.26.730 - 06.26.750, and operate, reorganize, or liquidate the trust company after
26 taking possession;

27 (20) issue an order under AS 06.01.030 that the department determines
28 is necessary to ensure compliance with this chapter; and

29 (21) exercise other powers expressly or implicitly granted under this
30 chapter.

31 **Sec. 06.26.905. Cooperative agreements.** (a) The department may enter into

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

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

- 20 (1) a denial of an application under AS 06.26.090(e);
 21 (2) an order under AS 06.26.120 to increase or adjust capital;
 22 (3) a denial under AS 06.26.150 of a change of the location of a home
 23 office under AS 06.26.150;
 24 (4) a denial under AS 06.26.160 of permission for a trust company to
 25 establish a branch office;
 26 (5) a denial under AS 06.26.170 of permission to establish or acquire
 27 a representative office;
 28 (6) a denial under AS 06.26.180(d) of permission to establish an office
 29 outside this state;
 30 (7) a denial of a private fiduciary exemption under AS 06.26.200 and
 31 06.26.210;

1 (8) the conditions or limitations established for an exemption under
2 AS 06.26.200(d);

3 (9) the revocation of an exemption under AS 06.26.230;

4 (10) a denial of permission for a private fiduciary to convert to a trust
5 company under AS 06.26.240;

6 (11) a denial under AS 06.26.470 of an application to acquire control
7 of a trust company;

8 (12) the disapproval under AS 06.26.650 of a conversion, merger, or
9 consolidation;

10 (13) a denial under AS 06.26.840(d) of permission to establish or
11 acquire a trust office in this state;

12 (14) a denial under AS 06.26.850(g) of permission to establish or
13 acquire a representative office in this state; and

14 (15) a denial under AS 06.26.860 of permission for additional trust
15 offices or representative offices.

16 (b) The department shall adopt regulations, consistent with the provisions of
17 this chapter, establishing the procedures for appeals allowed under (a) of this section.

18 (c) The provisions of AS 44.62 (Administrative Procedure Act), including
19 judicial review under AS 44.62.560, apply to an appeal under this chapter to the extent
20 the provisions of AS 44.62 do not conflict with the procedures established under (b) of
21 this section or other provisions of this chapter.

22 **Sec. 06.26.920. Civil enforcement.** The department may bring any
23 appropriate civil court action against a person who the department determines has
24 committed or is about to commit a violation of this chapter.

25 **Sec. 06.26.930. Trust company reports to the department; publication of**
26 **reports.** (a) A trust company shall make at least four reports of its condition each
27 year to the department as required by and on forms prescribed by the department.
28 Each report shall be signed by a duly authorized officer of the trust company verified
29 by at least one independent director, and each verifying director shall certify under
30 oath that the director has personal knowledge of the facts stated in the report and that
31 the facts are true. Each report must exhibit in detail and under appropriate headings

1 the resources and liabilities of the trust company and must be received by the
2 department within 30 calendar days after the end of the period covered by the report.

3 (b) The department may require that a trust company submit special reports
4 whenever the department considers a report necessary in order to obtain full
5 knowledge of the trust company's condition.

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

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

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

20 **Sec. 06.26.950. Limitation on powers.** This chapter does not allow a trust
21 company to engage in banking.

22 **Article 13. General Provisions.**

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

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

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

3 (1) "banking" has the meaning given in AS 06.05.990;

4 (2) "board" means board of directors;

5 (3) "certificate of authority" means the certificate of authority issued to
6 a corporation under AS 06.26.110;

7 (4) "chapter" includes regulations adopted under this chapter;

8 (5) "commissioner" means the commissioner of community and
9 economic development;

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

12 (7) "department" means the Department of Community and Economic
13 Development;

14 (8) "depository" means a person authorized by state or federal law to
15 accept deposits of trust assets;

16 (9) "exempt private fiduciary" means a private fiduciary that has
17 received an exemption under AS 06.26.200;

18 (10) "family member" means an individual who is related, including
19 relation established by adoption, within the fourth degree by blood or marriage, to the
20 individual whom the relationship is measured;

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

23 (12) "fiduciary operations" means operations performed by a fiduciary;

24 (13) "fiduciary services" means services of a fiduciary;

25 (14) "financial institution" has the meaning given in AS 06.05.990;

26 (15) "governmental regulator" means a governmental agency
27 responsible for regulating persons who act as fiduciaries;

28 (16) "home jurisdiction regulator" means the governmental agency
29 responsible for regulating an interstate state trust company, interstate national trust
30 company, or international trust company in the jurisdiction where the trust company is
31 chartered or otherwise organized;

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

2 (18) "international trust company" means an organization that provides
3 fiduciary services and has offices in countries other than the country in which the
4 home office of the entity is located;

5 (19) "interstate national trust company" means an organization

6 (A) that is chartered as a bank by the United States;

7 (B) whose powers are limited to providing fiduciary services;

8 and

9 (C) that has offices in a state of the United States other than the
10 state in which the home office of the organization is located;

11 (20) "interstate state trust company" means an organization that

12 (A) provides fiduciary services;

13 (B) holds a charter, license, certificate, or other type of
14 authorization from this or another state of the United States that authorizes the
15 organization to provide fiduciary services; and

16 (C) has offices in a state of the United States other than the
17 state in which the home office of the organization is located;

18 (21) "issuer" has the meaning given in AS 45.55.990;

19 (22) "national bank" has the meaning given in AS 06.05.990;

20 (23) "private fiduciary" means a person who acts as a fiduciary, is not
21 exempt under AS 06.26.020, and does not provide or offer fiduciary services to the
22 general public;

23 (24) "provide or offer fiduciary services to the general public" means
24 to make any sales, solicitations, offers, arrangements, agreements, or transactions to
25 provide fiduciary services, regardless of whether a fee, commission, or any other type
26 of remuneration is charged, unless the person to whom the fiduciary services are
27 provided or offered is

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

30 (B) owned entirely by a family member of an individual who
31 owns 100 percent of the person providing or offering the fiduciary services; or

1 (C) controlled by a trust or charitable organization established
 2 by a family member of an individual who owns 100 percent of the person
 3 providing or offering the fiduciary services;

4 (25) "purchasing trust company" means a trust company purchasing all
 5 or substantially all of the assets of another trust company;

6 (26) "representative office" means an office that provides support
 7 services for a trust company, but at which the trust company does not provide
 8 fiduciary services;

9 (27) "resident of this state" means an individual who is physically
 10 present in Alaska and who intends to remain indefinitely in Alaska;

11 (28) "selling trust company" means a trust company selling all or
 12 substantially all of its assets;

13 (29) "state bank" has the meaning given in AS 06.05.990;

14 (30) "state financial institution" means a state bank or a mutual savings
 15 bank chartered under AS 06.15;

16 (31) "trust account" means an account at a trust company for trust
 17 assets;

18 (32) "trust assets" means assets held in trust for another person;

19 (33) "trust company" means a person who is organized under this
 20 chapter to act as a fiduciary and to provide fiduciary services to the general public;

21 (34) "trust company assets" means assets that are not trust assets and
 22 that are owned by a trust company;

23 (35) "trust holding company" means an organization formed for the
 24 purpose of owning a trust company;

25 (36) "trust office" means an office that provides fiduciary services;

26 (37) "within the fourth degree" means a child, a grandchild, a great-
 27 grandchild, a parent, a sister, a brother, a niece, a nephew, a grandniece, a
 28 grandnephew, a grandparent, an aunt, an uncle, a first cousin, a great-grandparent, a
 29 great-aunt, a great-uncle, and a great-great-grandparent.

30 (b) In AS 06.26.220, 06.26.450 - 06.26.470, 06.26.510, 06.26.860, and
 31 06.26.880, "control" means owning, or holding with the power to vote, 25 percent or

1 more of the voting securities or other capital stock.

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

4 * **Sec. 3.** AS 13.36.025 is amended by adding a new subsection to read:

5 (b) The provisions of (a) of this section are not intended to override any
6 provision of AS 06.26, and AS 06.26 governs to the extent of any conflict.

7 * **Sec. 4.** AS 13.36.320(a) is amended to read:

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

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

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

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

17 * **Sec. 5.** AS 13.36.390(2) is amended to read:

18 (2) "qualified person" means

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

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

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

30 * **Sec. 6.** AS 21.66.250 is amended to read:

31 **Sec. 21.66.250. Trust funds.** Except as provided in AS 34.80, trust funds or

1 assets held in a fiduciary capacity by a title insurance company that is authorized to do
2 a trust business shall be invested in accordance with AS 06.26 [AS 06.25].

3 * **Sec. 7.** AS 34.77.100(a) is amended to read:

4 (a) An arrangement is a community property trust if one or both spouses
5 transfer property to a trust, the trust expressly declares that some or all the property
6 transferred is community property under this chapter, and at least one trustee is a
7 qualified person whose powers include or are limited to maintaining records for the
8 trust on an exclusive or a nonexclusive basis and preparing or arranging for the
9 preparation of, on an exclusive or a nonexclusive basis, any income tax returns that
10 must be filed by the trust. A community property trust is enforceable without
11 consideration. Both spouses or either spouse may be a trustee. The trust must be
12 signed by both spouses. In this subsection, "qualified person" means

13 (1) an individual

14 (A) who, except for brief intervals, military service, attendance
15 at an educational or training institution, or absences for good cause shown,
16 resides in this state;

17 (B) whose true and permanent home is in this state;

18 (C) who does not have a present intention of moving from this
19 state; and

20 (D) who intends to return to this state when away;

21 (2) a trust company that is organized under AS 06.26 [AS 06.25] and
22 that has its principal place of business in this state; or

23 (3) a bank that is organized under AS 06.05 or a national banking
24 association that is organized under 12 U.S.C. 21 - 216d if the bank or national banking
25 association possesses and exercises trust powers and has its principal place of business
26 in this state.

27 * **Sec. 8.** AS 06.25.010, 06.25.020, 06.25.030, 06.25.040, 06.25.050, 06.25.080, 06.25.085,
28 06.25.090, 06.25.100, 06.25.105, 06.25.110, 06.25.120, 06.25.130, 06.25.140, 06.25.150,
29 06.25.160, 06.25.170, 06.25.180, 06.25.190, 06.25.200, 06.25.210, 06.25.215, 06.25.220,
30 06.25.230, 06.25.240, 06.25.255, 06.25.260, 06.25.270, 06.25.280, 06.25.290, 06.25.300,
31 06.25.310, 06.25.315, and 06.25.350 are repealed.

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

3 COURT RULE CHANGES. AS 06.26.760(b)(2), enacted by sec. 2 of this Act,
4 amends

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

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

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

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

22 (5) Rule 403, Alaska Rules of Appellate Procedure, by postponing the
23 deadline for the filing of petitions for review or cross-petitions for review by a trust company
24 when the Department of Community and Economic Development has taken possession of the
25 trust company;

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

30 (7) Rule 602, Alaska Rules of Appellate Procedure, by postponing the
31 deadlines for the filing of appeals to the superior court from a district court or an

1 administrative agency by a trust company when the Department of Community and Economic
2 Development has taken possession of the trust company;

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

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

10 TRANSITION. (a) The certificate of authority of a trust company incorporated under
11 former AS 06.25 before January 1, 2002, remains in effect until the department either issues
12 the trust company an amended certificate of authority under (c) of this section or revokes the
13 certificate of authority issued under former AS 06.25 under (d) of this section.

14 (b) An existing trust company shall, before April 1, 2002, submit to the department, if
15 the capital of the trust company

16 (1) meets the minimum capital requirements, a request that the department
17 issue the trust company an amended certificate of authority; the request must be accompanied
18 by

19 (A) a statement signed under oath by an officer of the trust company
20 that the capital of the trust company meets the minimum capital requirements; and

21 (B) a copy of a balance sheet for the trust company showing that the
22 capital of the trust company meets the minimum capital requirements; or

23 (2) does not meet the minimum capital requirements, a plan acceptable to the
24 department to meet the minimum capital requirements before January 1, 2007, and a request
25 that the department issue the trust company an amended certificate of authority.

26 (c) Notwithstanding AS 06.26.110(a), enacted by sec. 2 of this Act, upon satisfaction
27 of the requirements of (b)(1) or (2) of this section by an existing trust company, the
28 department shall issue the trust company an amended certificate of authority under AS 06.26,
29 enacted by sec. 2 of this Act.

30 (d) The department may revoke the certificate of authority issued to an existing trust
31 company under former AS 06.25 if the trust company fails to comply with the submittal

1 requirements of (b) of this section that apply to the trust company.

2 (e) If the department issues, under (c) of this section, an amended certificate of
3 authority to an existing trust company that submitted a plan under (b)(2) of this section, the
4 department may revoke the amended certificate of authority if the trust company fails to meet
5 the minimum capital requirements before January 1, 2007.

6 (f) In this section,

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

9 (2) "existing trust company" means a trust company that has a certificate of
10 authority issued under former AS 06.25 before January 1, 2002;

11 (3) "minimum capital requirements" means the minimum capital requirements
12 under AS 06.26.120(a), enacted by sec. 2 of this Act.

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

15 TRANSITION: REGULATIONS. The Department of Community and Economic
16 Development may proceed to adopt regulations necessary to implement the changes made by
17 secs. 1 - 8 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure
18 Act), but not before January 1, 2002.

19 * **Sec. 12.** Sections 10 and 11 of this Act take effect immediately under AS 01.10.070(c).

20 * **Sec. 13.** Except as provided in sec. 12 of this Act, this Act takes effect January 1, 2002.