

CS FOR HOUSE BILL NO. 85(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 4/22/21

Referred: Finance

Sponsor(s): REPRESENTATIVES LEBON BY REQUEST, Merrick, Rasmussen, Thompson, Schrage

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Banking Code; relating to mutual savings banks; relating**
2 **to interstate state banks and international banks; relating to the pledging of bank assets**
3 **as collateral security to tribal organizations; relating to the pledging of bank assets for**
4 **interest swap agreements; relating to state business licenses; relating to persons who**
5 **make loans secured by interests in vessels or facilities; relating to liability for the release**
6 **or threatened release of hazardous substances; relating to the Model Foreign Bank Loan**
7 **Act; and providing for an effective date."**

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

9 *** Section 1.** AS 06.05.005(a) is amended to read:

10 (a) The department shall

11 (1) exercise general supervision over all state financial institutions and
12 their subsidiaries and affiliated corporations;

13 (2) adopt regulations necessary to implement this chapter, including

1 regulations providing for the retention and preservation of state bank records;

2 (3) review and approve or disapprove applications for new state banks
3 under AS 06.05.344, new bank branches under the regulations adopted under
4 AS 06.05.399, and international bank branches or interstate state bank branches under
5 AS 06.05.555;

6 (4) issue permits authorizing certain acquisitions by bank holding
7 companies under AS 06.05.235 and 06.05.570;

8 (5) determine for each state bank the amount of paid-in capital
9 necessary to operate under AS 06.05.305(a);

10 (6) review and approve transfers of state bank ownership under
11 AS 06.05.327;

12 (7) perform examinations of state banks, branch banks, and
13 subsidiaries under AS 06.01.015.

14 * **Sec. 2.** AS 06.05.005 is amended by adding a new subsection to read:

15 (c) Notwithstanding the other provisions of this chapter, the department may
16 not adopt a regulation that

17 (1) places a restriction, including a requirement relating to
18 collateralization, approval, reporting, or a monetary limit, on a credit card that a state
19 bank issues to an officer of the state bank; or

20 (2) sets a time limit on the disposal of real or personal property of a
21 banking business.

22 * **Sec. 3.** AS 06.05.050 is amended to read:

23 **Sec. 06.05.050. Publication of reports.** (a) Condensed forms of all reports of
24 condition required by AS 06.05.045(a) shall be immediately posted on the primary
25 Internet website of the state bank and may also be

26 (1) published by the state bank in a newspaper of general circulation
27 published in the place where the state bank is located; if a newspaper of general
28 circulation is not published in that place, the report may [SHALL] be published in the
29 newspaper of general circulation published nearest to that place; or

30 (2) posted

31 [(A) AT THE PRIMARY INTERNET WEBSITE OF THE

1 STATE BANK; AND

2 (B)] in the lobby of the principal office and all branches of the
3 state bank.

4 (b) Notice of the publication or posting of the reports of condition under (a) of
5 this section shall be posted on the primary Internet website of the state bank and
6 may also be posted in the lobby of the principal office and all branches of the state
7 bank. Upon request, a copy of a report of condition shall be supplied to any person at
8 no cost.

9 * **Sec. 4.** AS 06.05.166(c) is amended to read:

10 (c) In an emergency, a bank may elect not to open any of its banking offices
11 on a business or banking day or, having opened, to close any banking office. The bank
12 shall notify the department of the nonopening or the closing before taking the action, if
13 possible, and [AS SOON AS POSSIBLE], in any event, not later than 15 days after
14 the nonopening or closing. Any act relating to the banking office that has been closed
15 for any period of time under this subsection may be performed on the next business
16 day that the office is open for business. No liability or loss of rights of any kind on the
17 part of any person, firm, or corporation or of the bank results from the nonopening or
18 closing, and the rights of all parties are suspended during the nonopening or closing.

19 * **Sec. 5.** AS 06.05.210(a) is amended to read:

20 (a) Subject to the same terms and conditions applicable to other loans and to
21 applicable federal law, a director or executive officer of a state bank may borrow up
22 to \$500,000 [100,000, OR UP TO \$250,000 FOR THE DIRECTOR'S OR
23 EXECUTIVE OFFICER'S PRIMARY RESIDENCE,] from the state bank at the
24 discretion of the chief executive or managing officer of the state bank. A loan to a
25 director or executive officer that makes the total amount owed to the state bank by the
26 director or executive officer in excess of the limit [LIMITS] in this subsection, or
27 loans of any amount to the chief executive or managing officer of the state bank, shall
28 have the prior approval of the board of directors and [,] shall be reported to the
29 department within 30 days [, AND SHALL BE SECURED BY ADEQUATE
30 COLLATERAL].

31 * **Sec. 6.** AS 06.05.245 is amended to read:

1 **Sec. 06.05.245. Disposition of property [NOT NEEDED IN THE**
 2 **CONDUCT OF A BANKING BUSINESS].** All investments in real and personal
 3 property, regardless of how acquired, not permitted under AS 06.05.230 that come
 4 into the possession of a state bank shall be disposed of as soon as possible. [IF THE
 5 REAL OR PERSONAL PROPERTY IS NOT SOLD WITHIN THE TIME LIMIT
 6 SET BY THE DEPARTMENT IN REGULATIONS, IT SHALL BE WRITTEN OFF
 7 AND MAY NOT BE CARRIED AS AN ASSET OF THE STATE BANK.]

8 * **Sec. 7.** AS 06.05.260(a) is amended to read:

9 (a) A bank may not give preference to a depositor or creditor by pledging any
 10 of the assets of a bank as collateral security except

11 (1) to the state to secure state funds, or to a municipal corporation or
 12 other public corporation, municipal utility or municipal utility board, or political
 13 subdivision of the state to secure its funds, and to the United States as may be required
 14 to make the bank a depository for United States funds;

15 (2) to secure a mortgage or deed of trust in connection with the
 16 purchase of banking premises as provided in AS 06.05.230, if the only property
 17 pledged is property purchased in the transaction; [OR]

18 (3) to a federal reserve bank or federal home loan bank in the manner
 19 required by the applicable laws, regulations, and rules of the federal reserve bank or
 20 federal home loan bank, as applicable;

21 **(4) to a federally recognized tribe or a wholly owned subdivision or**
 22 **wholly owned subsidiary of a federally recognized tribe;**

23 **(5) to a business enterprise that is wholly owned by a federally**
 24 **recognized tribe;**

25 **(6) to an inter-tribal consortium as defined in 25 U.S.C. 3202; or**

26 **(7) to a tribal organization as defined in 25 U.S.C. 5304.**

27 * **Sec. 8.** AS 06.05.260 is amended by adding new subsections to read:

28 (d) A bank may pledge the assets of the bank

29 (1) to a party to an interest rate swap agreement as collateral to secure
 30 the party's financial risk arising out of the agreement; the bank may make the pledge
 31 on the same terms and conditions applicable to a bank chartered by the United States

1 in a pledge of assets in an interest rate swap agreement;

2 (2) to allow the bank to enter into an interest rate swap agreement to
3 manage the bank's risk of fluctuating interest rates, but not for a purpose that involves
4 a high risk of loss.

5 (e) In this section,

6 (1) "federally recognized tribe" means a tribe that the United States
7 Secretary of the Interior recognizes as an Indian tribe under 25 U.S.C. 5131 (Federally
8 Recognized Indian Tribe List Act of 1994);

9 (2) "interest rate swap agreement" means an agreement in which one
10 stream of future interest payments is exchanged for another stream of future interest
11 payments.

12 * **Sec. 9.** AS 06.05.355(a) is amended to read:

13 (a) The department **shall** [MAY] require a state bank, [EITHER] at the time
14 the bank applies for a certificate of authority **under AS 06.05.350** [OR DURING THE
15 BANK'S EXISTENCE], to become a member of the Federal Deposit Insurance
16 Corporation.

17 * **Sec. 10.** AS 06.05.399 is repealed and reenacted to read:

18 **Sec. 06.05.399. Changes of location; branch banks.** A state bank may apply
19 for and establish a branch bank, request a change of the location of the bank's principal
20 office, or request a change of the location of a branch bank as allowed under
21 regulations adopted by the department under this chapter.

22 * **Sec. 11.** AS 06.05.438(a) is amended to read:

23 (a) The board of directors of each bank shall hold a meeting at least once each
24 **calendar quarter of** [MONTH FOR AT LEAST 10 MONTHS IN] each calendar
25 year.

26 * **Sec. 12.** AS 06.05.555(a) is amended to read:

27 (a) Before acquiring a branch bank under AS 06.05.550(a) or establishing a
28 branch bank under AS 06.05.550(b), an interstate state bank or international bank shall
29 file an application with the department for and receive a certificate of authority to
30 operate a branch bank. The application must include

31 (1) all information and fees required **under the regulations adopted**

1 under AS 06.05.399;

2 (2) the name of the bank and the address of its principal office;

3 (3) if an international bank, the country under whose laws it is
4 organized;

5 (4) the amount of the bank's capital actually paid in cash and the
6 amount subscribed for and unpaid;

7 (5) a complete and detailed statement of the bank's financial condition;

8 (6) the names of all other states and countries in which the bank is
9 admitted or qualified to do business;

10 (7) a copy of the bank's charter, articles of incorporation, and bylaws,
11 as applicable;

12 (8) if an international bank, evidence satisfactory to the department
13 that the bank is authorized to conduct a banking business under the laws of the country
14 of its organization, and the nature of the bank's business;

15 (9) a properly executed designation of the department as the bank's
16 agent for service of process in an action or proceeding arising out of a transaction
17 involving the branch bank; the designation must include the name and address of the
18 officer, agent, or other person to whom the department is to forward the process; and

19 (10) other information necessary or appropriate for the department to
20 determine whether the bank is entitled to a certificate of authority from the
21 department.

22 * **Sec. 13.** AS 06.05.990(4) is amended to read:

23 (4) "branch bank" includes an office, agency, or other place of
24 business located in the state and at which deposits are received, checks are paid, or
25 money is lent, but does not include [EITHER] the principal office of a bank or **a**
26 **remote service unit; in this paragraph, "remote service unit" means** an automated
27 teller machine, **automated loan machine, automated device for receiving deposits,**
28 **personal computer, telephone, or similar automated or electronic device that**
29 **allows a customer of a bank to contact the bank to make deposits, make**
30 **withdrawals, or perform other banking functions and that may be equipped with**
31 **a telephonic device, a video device, or both;**

1 * **Sec. 14.** AS 06.15.180 is repealed and reenacted to read:

2 **Sec. 06.15.180. Borrowing.** The aggregate amount of outstanding liabilities of
3 a mutual bank for money borrowed may not at any time exceed 15 percent of the total
4 assets of the mutual bank unless the department approves a larger percentage of the
5 total assets of the mutual bank.

6 * **Sec. 15.** AS 06.15.190 is amended to read:

7 **Sec. 06.15.190. Deposits.** A mutual bank may accept [SAVINGS] deposits to
8 be held solely and absolutely in its own right by or in trust or other fiduciary capacity
9 for any person, including an adult or minor individual, male or female, single or
10 married, a partnership, nonprofit organization, association, fiduciary, corporation, or
11 political subdivision or public or governmental unit. The bank may issue a passbook
12 or other evidence of its obligation to repay the [SAVINGS] deposits.

13 * **Sec. 16.** AS 06.15.220 is amended to read:

14 **Sec. 06.15.220. Interest on deposits.** A mutual bank may pay interest on
15 deposits from net earnings and undivided profits at the rates and intervals that its
16 trustees **or the persons to whom the trustees have delegated the trustees' authority**
17 approve.

18 * **Sec. 17.** AS 06.15.240 is repealed and reenacted to read:

19 **Sec. 06.15.240. Investments authorized.** (a) In addition to loans and
20 acquisitions expressly authorized by this chapter, a mutual bank may deal in,
21 underwrite, and invest in for its own account the obligations that the department by
22 regulation authorizes the bank to deal in, underwrite, or invest in for its own account.

23 (b) If a mutual bank does not assume responsibility for the risk of
24 nonperformance or nonpayment of a security, the bank may purchase or sell the
25 security upon the order of a customer and for the customer's account.

26 * **Sec. 18.** AS 06.15.250 is repealed and reenacted to read:

27 **Sec. 06.15.250. Investment in first mortgages.** Subject to the provisions of
28 this chapter and the regulations adopted under this chapter, a mutual bank may invest
29 in first mortgages in the same manner and with the same limitations as a bank
30 organized under AS 06.05.

31 * **Sec. 19.** AS 06.15.290 is repealed and reenacted to read:

1 **Sec. 06.15.290. Changes of location; branch banks.** A mutual bank may
 2 apply for and establish a branch bank, request a change of the location of the bank's
 3 principal office, or request a change of the location of a branch bank as allowed under
 4 regulations adopted by the department under this chapter.

5 * **Sec. 20.** AS 43.70.105(a) is amended to read:

6 (a) This chapter does not apply to

7 (1) a fisheries business;

8 (2) the sale of liquor under a license issued under AS 04.11;

9 (3) an insurance business;

10 (4) a mining business;

11 (5) supplying services as an employee;

12 (6) furnishing goods or services by a person who does not represent to
 13 be regularly engaged in furnishing goods or services;

14 (7) the activities of an investment club; in this paragraph,

15 (A) "investment club" means a group of individuals,
 16 incorporated or otherwise organized, that engages primarily in investing in
 17 securities, that does not sell investment services to another person, that does
 18 not advertise, and the primary purpose of which is educational;

19 (B) "security" has the meaning given in AS 45.56.900;

20 **(8) a bank organized under AS 06.05 or the laws of another state;**

21 **(9) a national bank chartered by the United States;**

22 **(10) a credit union organized under AS 06.45 or the laws of**
 23 **another state;**

24 **(11) a credit union regulated by the National Credit Union**
 25 **Administration;**

26 **(12) a mutual savings bank chartered under AS 06.15 or organized**
 27 **under the laws of another state.**

28 * **Sec. 21.** AS 46.03.822(a) is amended to read:

29 (a) Notwithstanding any other provision or rule of law and subject only to the
 30 defenses set out in (b) of this section, the exceptions set out in (i), [AND] (m), **and (o)**
 31 of this section, the exception set out in AS 09.65.240, and the limitation on liability

provided under AS 46.03.825, the following persons are strictly liable, jointly and severally, for damages, for the costs of response, containment, removal, or remedial action incurred by the state, a municipality, or a village, and for the additional costs of a function or service, including administrative expenses for the incremental costs of providing the function or service, that are incurred by the state, a municipality, or a village, and the costs of projects or activities that are delayed or lost because of the efforts of the state, the municipality, or the village, resulting from an unpermitted release of a hazardous substance or, with respect to response costs, the substantial threat of an unpermitted release of a hazardous substance:

(1) the owner of, and the person having control over, the hazardous substance at the time of the release or threatened release; this paragraph does not apply to a consumer product in consumer use;

(2) the owner and the operator of a vessel or facility, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(3) any person who, at the time of disposal of any hazardous substance, owned or operated any facility or vessel at which the hazardous substances were disposed of, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(4) any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by the person, other than domestic sewage, or by any other party or entity, at any facility or vessel owned or operated by another party or entity and containing hazardous substances, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance;

(5) any person who accepts or accepted any hazardous substances, other than refined oil, for transport to disposal or treatment facilities, vessels or sites selected by the person, from which there is a release, or a threatened release that causes the incurrence of response costs, of a hazardous substance.

* **Sec. 22.** AS 46.03.822 is amended by adding a new subsection to read:

(o) A person who holds or held a security interest in a vessel or facility to secure a loan made by the person is not liable because of the security interest for a release or threatened release of a hazardous substance from the vessel or facility, if the person

(1) did not participate in the management of the vessel or facility before a foreclosure on the vessel or facility, even if the person

(A) forecloses on the vessel or facility; and

(B) after foreclosing on the vessel or facility, acts to preserve or protect the vessel or facility or prepare the vessel or facility for sale or disposition, including

(i) selling the vessel or facility;

(ii) if the vessel or facility is the subject of a lease finance transaction, re-leasing or liquidating the vessel or facility;

(iii) maintaining business activities involving the vessel or facility;

(iv) undertaking with respect to the vessel or facility a response action in accordance with state law; and

(2) seeks to sell the vessel or facility, re-lease or liquidate the vessel or facility in the case of a lease finance transaction, or otherwise divest the person of the vessel or facility at the earliest practicable commercially reasonable time, on commercially reasonable terms, taking into account market conditions and legal and regulatory requirements.

* **Sec. 23.** AS 06.05.265; AS 06.10.010, 06.10.020, 06.10.030, 06.10.040, 06.10.050; AS 06.15.150, 06.15.160, 06.15.170, and 06.15.230 are repealed.

* **Sec. 24.** 3 AAC 02.121 and 3 AAC 02.135 are annulled.

* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) Section 3 of this Act applies to a report of condition published or posted on or after the effective date of sec. 3 of this Act and to a notice of the publication or posting given on or after the effective date of sec. 3 of this Act.

(b) Section 4 of this Act applies to the nonopening or closing of a banking office for

1 an emergency if the nonopening or closing occurs on or after the effective date of sec. 4 of
2 this Act.

3 (c) The requirement for the disposition of investments in real and personal property
4 under sec. 6 of this Act applies to real and personal property that a state bank acquires on or
5 after the effective date of sec. 6 of this Act.

6 (d) Section 9 of this Act applies to a state bank that applies for a certificate of
7 authority under AS 06.05.350 on or after the effective date of sec. 9 of this Act.

8 (e) Section 10 of this Act applies to a state bank that submits an application to
9 establish a branch bank, a request for a location change of the state bank's principal office, or
10 a request for a change of the location of a branch bank to the department on or after the
11 effective date of sec. 10 of this Act.

12 (f) Section 12 of this Act applies to an interstate state bank or international bank that
13 files an application to acquire or establish a branch bank with the department on or after the
14 effective date of sec. 12 of this Act.

15 (g) Section 16 of this Act applies to deposit interest that is approved on or after the
16 effective date of sec. 16 of this Act.

17 (h) Section 18 of this Act applies to first mortgages that a mutual bank invests in on
18 or after the effective date of sec. 18 of this Act.

19 (i) Section 19 of this Act applies to a mutual bank that submits an application to
20 establish a branch bank, a request for a location change of the mutual bank's principal office,
21 or a request for a change of the location of a branch bank to the department on or after the
22 effective date of sec. 19 of this Act.

23 (j) In this section,

24 (1) "branch bank" has the meaning given in AS 06.05.990;

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

27 (3) "international bank" has the meaning given in AS 06.05.990;

28 (4) "interstate state bank" has the meaning given in AS 06.05.990;

29 (5) "mutual bank" has the meaning given in AS 06.15.370;

30 (6) "state bank" has the meaning given in AS 06.05.990.

31 * **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: REGULATIONS. The commissioner of commerce, community, and
3 economic development may adopt regulations necessary to implement the changes made by
4 secs. 1, 10, 12, and 19 of this Act. The regulations take effect under AS 44.62 (Administrative
5 Procedure Act), but not before the effective date of secs. 1, 10, 12, and 19 of this Act.

6 * **Sec. 27.** Sections 1, 10, 12, and 19 of this Act take effect January 1, 2022.

7 * **Sec. 28.** Except as provided by sec. 27 of this Act, this Act takes effect immediately under
8 AS 01.10.070(c).