

1 IN THE SENATE

BY SENATOR GORBUCH

2 SENATE BILL NO. 76

3 IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4 TWENTY-FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act to regulate the banking business;
7 creating a Territorial Banking Department,
8 defining its powers and duties; providing
9 for the organization, conversion, dis-
10 solution, reorganization and liquidation
11 of banks; prohibiting certain practices,
12 providing criminal penalties and in-
13 junctive relief; and repealing Subsection
14 34-3-5 (b) and Section 34-3-7 ACIA 1949,
15 and Chapter 129 SLA 1951; and declaring
16 an emergency."

17 BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

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19 ARTICLE I. SHORT TITLE, DEFINITIONS
20 AND MISCELLANEOUS

21 SECTION 1.101 SHORT TITLE.

22 This Act may be cited as the "Alaska Banking Code".

23 SECTION 1.102 "BANK;" "TERRITORIAL BANK;" "COMMERCIAL BANK;"
24 "SAVINGS BANK".

25 As used in this Act

26 "Bank" means any person doing a banking business whether
27 subject to the laws of this or any other jurisdiction.

28 "Territorial Bank" means any bank chartered by this
29 Territory.

1 "Commercial Bank" means any territorial bank chartered to
2 do a general commercial banking business.

3 "Savings Bank" means any bank whose charter limits its
4 power to accept deposits to accounts which may only be withdrawn
5 after notice.

6 SECTION 1.103 GENERAL DEFINITIONS.

7 In this Act, unless the context otherwise requires, "Action"
8 in the sense of a judicial proceeding includes rescoupment,
9 counterclaim, set-off, suit in equity and any other proceedings
10 in which rights are determined.

11 "Banking" means the negotiation for, and the discounting
12 of promissory notes, drafts, bills of exchange and other
13 evidences of indebtedness; receiving deposits, selling and
14 buying exchange, coin and bullion, and loaning money on personal,
15 real and other security, and other kindred financial operations.

16 "Board" when used with an initial capital letter means the
17 Banking Board of the Territory of Alaska.

18 "Branch bank" means an office or agency other than the
19 bank's principal place of business, kept for the purpose of
20 deposit and discount.

21 "Commissioner" means the Commissioner of Banking of this
22 Territory.

23 "Community" means a city, town or unincorporated village
24 in this Territory, or where not within any of the foregoing, a
25 trade area in this Territory.

26 "Court" means a court of competent jurisdiction.

27 "Department" means the Department of Banking of this Terri-
28 tory.

29 "Executive officer" when referring to a bank, means any

1 person designated as such in the by-laws and includes, whether
2 or not so designated, the president, any vice-president, the
3 treasurer, the cashier, the comptroller and the secretary, or
4 any person who performs the duties appropriate to those offices.

5 "Fiduciary" means trustee, agent, executor, administrator,
6 committee, guardian or conservator for a minor or other in-
7 competent person, receiver, trustee in bankruptcy, assignee for
8 creditors or any holder of a similar position of trust.

9 "Good faith" means honesty in fact in the transaction and
10 some reasonable ground for belief that the transaction is right-
11 ful or authorized.

12 "Item" means any instrument for the payment of money even
13 though not negotiable, but does not include money.

14 "Officer" when referring to a bank means any person desig-
15 nated as such in the by-laws and includes, whether or not so
16 designated, any executive officer, the chairman of the board of
17 directors, the chairman of the executive committee, and any
18 trust officer, assistant vice-president, assistant treasurer, an
19 assistant cashier, assistant comptroller, or any person who per-
20 forms the duties appropriate to those offices.

21 "Person" means an individual, corporation, partnership,
22 joint venture, trust estate, unincorporated association or body
23 politic, or agency thereof.

24 "Reason to know" means that upon the information available,
25 a person of ordinary intelligence in the particular business, or
26 of the superior intelligence or experience which the person in
27 question may have, would infer that the fact in question exists
28 or that there is such a substantial chance of its existence that,
29 if exercising reasonable care with reference to the matter in
30

1 question, conduct would be predicated upon the assumption of its
2 possible existence.

3 **SECTION 1.104 EFFECT ON EXISTING BANKS**

4 The charters of territorial banks existing at the time of
5 the adoption of this Act shall continue in full force and effect,
6 but all territorial banks and, to the extent applicable, all
7 banks, shall thereafter be operated in accordance with the
8 provisions of this Act, and any territorial bank, by filing an
9 application for an amendment of its charter or for a merger,
10 consolidation or sale of all, or substantially all, of its
11 assets or the assets of any department under this Act and its
12 charter shall thereafter be subject to this Act.

13 **SECTION 1.105 SEPARABILITY**

14 If any provision, clause or phrase of this Act or the
15 application thereof to any person or circumstance is held invalid,
16 such invalidity shall not affect other provisions or applications
17 of the Act which can be given effect without the invalid pro-
18 vision or application, and to this end provisions of this Act
19 are declared to be separable.

20 **SECTION 1.106 COMMENCEMENT OF TERM OF FIRST COMMISSIONER AND**
21 **BOARD MEMBERS**

22 A. The term of office of the first Commissioner and of the
23 members of the Board appointed under this Act shall commence on
24 April 1, 1953.

25 B. Until the Board as constituted under this Act shall have
26 been appointed and qualified, the members of the Board under the
27 terms of Chapter 129, SLA 1951, shall constitute the Board.

28 **SECTION 1.107 REPEALER**

29 A. The following acts and all other acts and parts of acts

1 inconsistent herewith are hereby repealed.

2 Subsection 34-3-5 (b) and Section 34-3-7 ACLA 1949, and
3 Chapter 129 SLA 1951.

4 B. This Act being a general act intended as a unified
5 coverage of its subject matter, no part of it shall be deemed
6 to be implicatively repealed by subsequent legislation not spec-
7 ifically repealing it if such construction can be avoided.

8 C. No law of this Territory prescribing or limiting
9 interest rates upon loans shall be deemed to apply to loans made
10 pursuant to the provisions of Sections 3.161 and 3.162 of this
11 Act.

12 **SECTION 1.108 SAVING CLAUSE**

13 Rules, regulations, standards and orders promulgated by the
14 Territorial Banking Board under the terms of Chapter 129, SLA
15 1951 and by the predecessor Territorial Banking Board under the
16 terms of Title 34, ACLA 1949 shall remain in effect except
17 as herein modified or as hereafter modified or amended by the
18 Board or the Commissioner, under the terms of this Act.

19 **ARTICLE II. BANKING DEPARTMENT**

20 **SECTION 2.101 ESTABLISHMENT: OFFICERS AND EMPLOYEES**

21 A. There is hereby established a Banking Department which
22 shall be a separate department of the Territorial government
23 charged with supervision of the activities in this Territory
24 as provided in this Act and in other legislation conferring
25 jurisdiction upon the Department.

26 B. The head of the Department shall be the Commissioner
27 of Banking. He shall be appointed by the Governor, with the
28 consent of two-thirds of the members of the Board, other than
29 the Commissioner, subject to approval by a majority of all

1 of the members of the Senate and House of Representatives of
2 the Legislature in joint session assembled. His term of office
3 shall be 6 years and until his successor qualifies, except that
4 the first Commissioner so appointed under this Act shall be
5 appointed to serve until April 1, 1959, or until his successor
6 is appointed and qualified. The Commissioner may not be removed
7 by the Governor except for cause and only upon recommendation
8 by the Board, after notice and hearing before the Board. A
9 successor to a Commissioner who dies, resigns or is removed
10 shall be appointed to fill the unexpired term.

11 G. The Commissioner shall appoint a Deputy Commissioner
12 who shall hold office at the will of the Commissioner. If the
13 office of the Commissioner is vacant or if the Commissioner is
14 absent or unable to act, the Deputy Commissioner shall be the
15 Acting Commissioner.

16 D. The Commissioner and the Deputy Commissioner shall
17 receive salaries as fixed by law, to be paid them in equal
18 monthly installments, at the end of each month out of any moneys
19 in the Treasury not otherwise appropriated.

20 E. All officers, employees, examiners, attorneys and
21 agents of the Department, other than the Commissioner and the
22 Deputy Commissioner, shall be appointed by the Commissioner,
23 subject to the approval of the Board, and shall hold their
24 position unless removed for cause by the Commissioner with
25 the approval of the Board. Their compensation shall be fixed
26 by the Board subject to the limitations provided in the legis-
27 lative appropriation for the Department. Any person who served
28 in another position in the Department for 3 years or more im-
29 mediately prior to his service as Commissioner or Deputy Com-

1 missioner, or both, shall, upon vacating the office of either,
2 be reinstated in such other position with full credit for his
3 period of service as Commissioner or Deputy Commissioner, or
4 both.

5 F. The Commissioner may delegate to any officer, employee,
6 examiner, attorney or agent of the Department any of his powers
7 and may designate any of them to perform any of his duties.

8 G. Such persons handling money or securities in the course
9 of their duties, as the Board may determine, shall be bonded
10 in such amounts as the Board may fix.

11 **SECTION 2.102 BANKING BOARD; MEMBERS; MEETINGS**

12 A. There is hereby established in the Department a Terri-
13 torial Banking Board which shall consist of 6 members and
14 the Commissioner, who shall be Chairman. The Board shall elect
15 its Secretary, who need not be a member of the Board.

16 B. There shall be at least 3 members who are executive
17 officers of banks, and at least 3 members who are not directors,
18 trustees, officers, employees or stockholders of any bank.

19 C. The 3 members who are executive officers of banks shall
20 be appointed by the Governor from a list of 5 nominees who shall
21 be residents of Alaska and who are officers of banks regulated
22 by the Board, the names of which nominees shall have been proposed
23 to the Governor by the Board of Directors of the Alaska Bankers
24 Association. Such members shall be appointed for terms of 5
25 years, subject to approval by a majority of all of the members
26 of the Senate and House of Representatives of the Legislature in
27 joint session assembled, except that the first members so ap-
28 pointed under this Act shall be appointed to serve until April
29 1, 1955, April 1, 1957 and April 1, 1959, as the Governor shall

1 designate, or until their successors are appointed and qualified.
2 D. The 3 members who are not directors, trustees, officers,
3 employees or stockholders of any bank shall be appointed by the
4 Governor for terms of 6 years, subject to approval by a majority
5 of all of the members of the Senate and House of Representatives
6 of the Legislature in joint session assembled, except that the
7 first members so appointed under this Act shall be appointed to
8 serve until April 1, 1955, April 1, 1957 and April 1, 1959, as
9 the Governor shall designate, or until their successors are
10 appointed and qualified.

11 E. All succeeding appointments, except those to fill un-
12 expired terms, shall be for a term expiring on April 1 of the
13 sixth year following the date of appointment, and the names of
14 the appointees to succeed members whose terms of office expire
15 on the first day of April following, shall be submitted to the
16 Legislature for consideration within 5 days after the opening
17 of the biennial session of the Legislature; provided, that when
18 an appointment is made at a time when the Legislature is not in
19 session, the appointment shall be submitted to the Legislature
20 for approval within 5 days after the opening of the first session
21 of the Legislature after such appointment, and such appointee
22 may discharge the functions of the office until the Legislature
23 either approves or fails to approve the appointment. If any
24 such appointment be disapproved or fails to secure approval by
25 the Legislature, another name shall be submitted by the Governor
26 within 3 days, and in the appointments of members who are
27 executive officers of banks, preference shall be given to any
28 remaining nominees furnished by the Alaska Bankers Association.

29 F. Promptly upon the passage of this Act, the Governor

1 shall request, by means of a telegram addressed to the Secretary
2 of the Alaska Bankers Association at his last known address, a
3 list of 7 nominees for the 3 appointive positions herein provided
4 fer. If such list is delivered to the Governor's office in
5 writing within 14 days after the date of the sending of such
6 telegram, the positions shall be promptly filled from such
7 nominees. If no such list is delivered to the Governor's office
8 within such period of time, he shall nevertheless proceed promptly
9 to appoint members to fill such positions.

10 G. On or before January 10th of the year in which any
11 appointive member's term of office expires, the Board of Directors
12 of the Alaska Bankers Association shall submit a list of nominees
13 as provided above, to the Governor's office. The number of
14 nominees submitted shall be equal to the number of vacancies of
15 executive officers on the Board to be filled, plus 4. If such
16 lists are not furnished by such date, the Governor, nevertheless,
17 shall proceed promptly to appoint a member or members to fill
18 such positions, upon the expiration of the terms of the incumbents.

19 H. Vacancies in the appointive members of the Board shall
20 be filled by the Governor immediately upon notice by the Board
21 that a vacancy exists. Prior to so filling a vacancy of a
22 position to be filled by an executive officer of a bank, the
23 Governor shall request, by means of a telegram addressed to the
24 Secretary of the Alaska Bankers Association, at his last known
25 address, a list of 5 members to be furnished in the manner
26 provided above. If such list is delivered to the Governor's
27 office in writing within 14 days from the date of the sending
28 of such telegram, the vacancy shall be filled from such nominees.
29 If no such list is delivered to the Governor's office within such

1 period of time, he shall nevertheless proceed promptly to appoint
2 a member to fill such vacancy.

3 I. Each appointive member of the Board shall receive his
4 actual traveling expenses and subsistence while attending a
5 meeting of the Board, and in addition thereto the sum of \$15.00
6 per day, or such other sum as the Legislature may by general
7 legislation provide, for each day such member is actually and
8 necessarily absent from his place of residence to attend Board
9 meetings. Per diem and traveling expenses of Board members shall
10 be paid by warrants drawn on the Territorial Treasury against the
11 appropriations made to cover expenses and salaries of the Board.

12 J. The Board shall meet at least once in each semi-annual
13 period. The Commissioner may call additional meetings of the
14 Board upon at least 3 days notice, and shall do so upon the
15 request of 2 members.

16 K. A majority of the Board shall constitute a quorum and
17 action taken by a majority of those present at any meeting at
18 which a quorum is present, shall be the action of the Board. No
19 member shall participate in a proceeding before the Board to
20 which any corporation, partnership or unincorporated association
21 of which he is or was at any time in the preceding twelve months
22 a director, officer, partner, employee, member, stockholder or
23 debtor is a party. A member may disqualify himself from parti-
24 cipating in a proceeding for any other cause deemed to be
25 sufficient.

26 L. The Governor may after notice and hearing remove a
27 member for cause.

28 M. At any meeting at which a quorum is not present, whether
29 by reason of the inability of a member to participate or his

1 voluntary disqualification, or otherwise, the Governor may design-
2 nate the heads of any departments of the Territorial Government
3 as acting members of the Board for the purpose of constituting a
4 quorum, but he shall not designate more acting members than
5 shall be necessary to constitute a quorum.

6 N. Such clerical, technical and legal assistance as the
7 Board may require shall be provided by the Department.

8 **SECTION 2.103 POWERS OF BOARD AND COMMISSIONER**

9 A. In addition to other powers conferred by this Act, the
10 Board shall have power to:

11 (1) Adopt and use a seal of office which shall be
12 designed by the Board and shall contain the words "Seal of the
13 Banking Board of the Territory of Alaska", and shall be judicial-
14 ly noticed.

15 (2) Regulate its own procedure and practice.

16 (3) Affirm, modify, reverse or stay the enforcement
17 of any order, assessment or ruling of the Commissioner.

18 (4) Implement by regulation any provisions of this
19 Act, and to define any term not defined in this Act; provided,
20 that no such rules and regulations shall in any way conflict
21 with any of the provisions of law.

22 (5) Restrict the withdrawal of deposits from one or
23 more of all territorial banks where the Board finds that extra-
24 ordinary circumstances make such restriction necessary for the
25 proper protection of depositors in the affected institution.

26 (6) Authorize a territorial bank until the close of
27 the next regular session of the Legislature:

28 (a) To participate in a public agency hereafter
29 created under the laws of this Territory or of the United States,

1 the purpose of which is to afford advantages or safeguards to
2 banks or to depositors and to comply with all requirements and
3 conditions imposed upon such participants.

4 (b) To engage in any banking activity in which
5 banks subject to the jurisdiction of the federal government
6 may hereafter be authorized by federal legislation to engage.

7 (7) Order the holder of shares in a bank to refrain
8 from voting said shares on any matter if it finds that such or-
9 der is necessary to protect the institution against reckless,
10 incompetent or careless management, safeguard the funds of de-
11 positors, or prevent the wilful violation of this Act or of any
12 lawful rule or order issued thereunder. In such a case the
13 shares of such a holder shall not be counted in determining the
14 existence of a quorum or a percentage of the outstanding shares
15 necessary to take any corporate action.

16 (8) Order any person to cease violating a provision
17 of this Act or a lawful regulation issued thereunder or to cease
18 engaging in any unsound banking practice.

19 B. The Board may remove a director, trustee, officer or
20 employee of a territorial bank who becomes ineligible to hold
21 his position or who, after receipt of an order to cease under
22 the preceding subsection, violates this Act or a lawful regula-
23 tion or order issued thereunder, or who is dishonest or who is
24 reckless or grossly incompetent in the conduct of banking bus-
25 iness. It shall be a criminal offense against this Act for
26 any such person, after receipt of a removal order, to perform
27 any duty or exercise any power of any territorial bank for a
28 period of 3 years. A removal order shall specify the grounds
29 thereof and a copy of the order shall be sent to the bank con-

1 earned.

2 G. Notice and hearing shall be provided in advance of any
3 action taken by the Board except the formulation of regulations
4 of general application. In cases involving extraordinary cir-
5 cumstances requiring immediate action the Board may take such
6 action but shall promptly afford a subsequent hearing upon ap-
7 plication to rescind the action taken.

8 D. Members of the Board shall have access to any record
9 of the Department.

10 E. In addition to other powers conferred by this Act, the
11 Commissioner shall have power to require a territorial bank to:

12 (1) Maintain its accounts in accordance with
13 such regulations as he may prescribe, having regard to the size
14 of the organization.

15 (2) Observe methods and standards which he may
16 prescribe for determining the value of various types of assets.

17 (3) Charge off the whole or part of an asset
18 which at the time of the Commissioner's action could not law-
19 fully be acquired.

20 (4) Write down an asset to its market value.

21 (5) Record liens and other interests in property.

22 (6) Obtain a financial statement from a prospec-
23 tive borrower to the extent that the bank can do so.

24 (7) Obtain insurance against damage to real es-
25 tate taken as security.

26 (8) Search, or obtain insurance of, the title
27 to real estate taken as security.

28 (9) Maintain adequate insurance against such
29 other risks as the Commissioner may determine to be necessary

1 and appropriate for the protection of depositors and the public.

2 F. The Board and the Commissioner shall have the power to
3 subpoena witnesses, compel their attendance, require the pro-
4 duction of evidence, administer an oath and examine any person
5 under oath in connection with any subject relating to duty im-
6 posed upon or a power vested in the Board or in the Commissioner.
7 These powers shall be enforced by the District Court within 30
8 days after issuance of an order. An individual who claims pri-
9 vilege against self incrimination may nevertheless be compelled
10 to testify, but he shall not be prosecuted or subjected to a
11 penalty or forfeiture on account of anything concerning which he
12 has testified under such compulsion, except for perjury commit-
13 ted in his testimony. Removal from an office or employment with
14 a territorial bank is not the imposition of a penalty or for-
15 feiture.

16 G. The Board may, on petition of any interested person
17 and after hearing, issue a declaratory order with respect to
18 the applicability to any person, property or state of facts of
19 this Act or a rule issued by the Board. The order shall bind
20 the Board and all parties to the proceeding on the state of
21 facts alleged unless it is modified or reversed by a court.
22 A declaratory order may be reviewed and enforced in the same
23 manner as other orders of the Board, but the refusal to issue
24 a declaratory order shall not be reviewable.

25 H. No person shall be subjected to any civil or criminal
26 liability for any act or omission to act in good faith in re-
27 liance upon a subsisting order, regulation or definition of the
28 Board notwithstanding a subsequent decision by a court invali-
29 dating the order, regulation or definition.

1 I. Until and unless otherwise provided by law, the Board
2 and the Commissioner shall be authorized to employ all neces-
3 sary legal counsel to conduct all actions, suits or proceedings
4 under the provisions of this Act, and all civil actions, suits
5 and proceedings begun under this Act shall be begun and carried
6 on in behalf and in the name of the Territory of Alaska.

7 **SECTION 2.104 COURT REVIEW**

8 A. Any person aggrieved and directly affected by an order
9 of the Board may appeal to the United States District Court of
10 the judicial division in which he is a resident, within 30 days
11 after issuance of the order. The filing of a petition for re-
12 view shall not stay enforcement of an order, but the Court may
13 order a stay upon such terms as it deems proper.

14 B. The Court may affirm the order of the Board, may direct
15 the Board to take action unlawfully withheld, or may reverse or
16 modify the order of the Board if it:

17 (a) Was issued pursuant to an unconstitutional sta-
18 tutory provision.

19 (b) Was in excess of statutory authority.

20 (c) Was issued upon unlawful procedure.

21 (d) Is not supported by substantial evidence in the
22 record. Due weight shall be accorded the experience, technical
23 competence and specialized knowledge of the Board as well as the
24 discretionary authority conferred upon it.

25 **SECTION 2.105 EXAMINATIONS; REPORTS BY BANKS; PUBLICATION**

26 A. The Commissioner shall examine the condition of each
27 territorial bank at least once in each calendar year.

28 B. Whenever the Commissioner deems it necessary, he may
29 examine any corporation the majority of the stock of which is
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1 owned by a territorial bank or which is found by the Board to
2 be controlled by a territorial bank.

3 C. Only summary examinations and reports shall be required
4 in respect of fiduciary activities which are subject to court
5 accountings. A copy of the report of examination shall be sent to
6 the organization examined.

7 D. Any bank which is a member of the Federal Reserve System,
8 or the deposits of which are insured by the United States or an
9 agency thereof, may in the discretion of the Board be relieved of
10 examinations by the Commissioner.

11 E. The Commissioner shall require each territorial bank to
12 submit reports of its condition and operations as of such dates
13 and in such form as he requires, at least twice in each calendar
14 year.

15 F. The Commissioner shall require such reports to be pub-
16 lished in such form, in such manner and upon such dates, not
17 inconsistent with any applicable law, as he may direct.

18 **SECTION 2.106 EXAMINATION EXPENSES**

19 A. Each territorial bank shall pay to the Department the
20 cost of its own examination as determined by the Commissioner.

21 B. Assessments for examinations shall be paid to the De-
22 partment within 30 days from the date thereof.

23 C. Any bank thus assessed may appeal to the Board within
24 30 days from the date of assessment for a redetermination of
25 the assessment. After due notice and hearing, the Board may
26 confirm, revise or cancel any assessment levied by the Commis-
27 sioner.

28 D. If any territorial bank fails to make payment within
29 30 days after notice from the Commissioner of an assessment,

1 or from the Board of its determination of the assessment, the
2 Commissioner may issue an execution against the property of the
3 bank for an amount equal to 150 per cent of the delinquent as-
4 sessment. Such execution shall be enforced as an execution of
5 the court.

6 E. A payment made under this Section which was unlawfully
7 required may be recovered in an action against the Board if the
8 action is brought within 90 days after such payment is made.

9 **SECTION 2.107 COMMISSIONER'S ANNUAL REPORT**

10 A. The Commissioner shall report to the Governor annually,
11 within 60 days after the end of each fiscal year. His report
12 shall include:

13 (1) The text of all rules of the Department of gen-
14 eral application, adopted or altered since its last previous
15 report.

16 (2) Recommendations for legislation.

17 (3) A statement of the status and remaining assets
18 and liabilities of all banking organizations in the possession
19 of the Commissioner.

20 (4) A summary of all changes occurring since his
21 last previous report by reason of opening new territorial banks,
22 mergers and conversions, increases and decreases in capital and
23 the like.

24 (5) A statement of condition of each territorial
25 bank as of the date of the most recent report of condition re-
26 duced to the Commissioner.

27 B. Copies of the annual reports not previously so submit-
28 ted shall be submitted to the Legislature at the opening of each
29 regular session.

1 **SECTION 2.108 RECORDS OF THE DEPARTMENT**

2 A. Except to members of the Board, information from the
3 records of the Department shall be revealed only with the con-
4 sent of the Commissioner.

5 B. Reports of examinations made by the Department shall
6 be retained for 5 years.

7 C. A copy of any document on file with the Department
8 which is certified by the Commissioner as being a true copy may
9 be introduced in evidence as if it were the original. The Com-
10 missioner shall establish a schedule of fees for copies of docu-
11 ments.

12 **SECTION 2.109 BANKING INTERESTS OF BOARD OFFICERS AND EMPLOYEES**

13 No employee of the Department shall be an officer, director,
14 trustee, attorney, owner, shareholder or partner in any bank,
15 or, except as hereinafter provided, receive, directly or in-
16 directly, any payment or gratuity from any such organization, or
17 be indebted to any bank, or engage in the negotiation of loans
18 for others with any such bank. This provision shall not prohibit
19 being a depositor on the same terms as are available to the
20 public generally, or being indebted to a bank upon the same
21 security and upon the same terms which it is customary for the
22 bank to extend to the public generally. The Commissioner may
23 require banks to make regular or special reports upon their
24 transactions with employees of the Department.

25 **SECTION 2.110 LIMITATION OF PERSONAL LIABILITY**

26 No member of the Board, or officer, or employee of the
27 Department shall be liable in any civil action for damages for
28 any act done or omitted in good faith in performing the functions
29 of his office.

1 **SECTION 2.111 PRESERVATION OF BANK RECORDS: MICROFILM**

2 A. Every territorial bank shall retain its business re-
3 cords for such periods as are or may be prescribed by or in
4 accordance with the terms of this section.

5 B. Each territorial bank shall retain permanently the
6 minute books of meetings of its stockholders and directors, its
7 capital stock ledger and capital stock certificate ledger or
8 stubs, its general ledger, its daily statements of condition,
9 its general journal, its investment ledger, its copies of bank
10 examination reports, and all records which the Board shall, in
11 accordance with the terms of this Section require to be re-
12 tained permanently.

13 C. All other bank records shall be retained for such
14 periods as the Board shall in accordance with the terms of this
15 Section prescribe.

16 D. The Board shall from time to time issue regulations
17 classifying all records kept by territorial banks and prescrib-
18 ing the period for which records of each class shall be retained.
19 Such period may be permanent or for a lesser term of years.
20 Such regulations may from time to time be amended or repealed.
21 Prior to issuing any such regulations the Board shall consider:

22 (1) Actions at law and administrative proceedings
23 in which the production of bank records might be necessary or
24 desirable;

25 (2) Territorial and federal statutes of limitation
26 applicable to such actions or proceedings.

27 (3) The availability of information contained in
28 bank records from other sources.

29 (4) Such other matters as the Board shall deem per-

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tinant in order that the regulations will require banks to re-

tain their records for as short a period as is commensurate with the interests of bank customers and shareholders and of the people of this Territory in having bank records available.

H. Any territorial bank may dispose of any record which has been retained for the period prescribed by or in accordance with the terms of this Section for retention of records of its class, and shall thereafter be under no duty to produce such record in any action or proceeding.

I. Any territorial bank may cause any or all records at any time in its custody to be reproduced by the microphotographic process and any reproductions so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original in all courts in the Territory not subject to the Rules of Civil Procedure for the District Courts of the United States.

G. To the extent that they are not in contravention of any law of the United States, the provisions of this Section shall apply to all banks doing business in this Territory.

SECTION 2-112. STANDARDS IN REGULATIONS

The Board and the Commissioner in the exercise of the power to make rules and issue regulations pursuant to this Act, shall act in the interests of promoting and maintaining a sound banking system, the security of deposits and depositors and other customers, the preservation of the liquid position of banks and in the interest of preventing injurious credit expansions and contractions.

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ARTICLE III. BANKS

TITLE 1. BANKING PRACTICES

PART A. ACCOUNTS

SECTION 3.101 CERTIFICATION OF CHECKS

A. The check of a depositor shall not be certified unless the amount of such check actually stands to the credit of the drawer on the books of such bank.

B. Any such check so certified, however, shall be a good and valid obligation against the bank in the hands of the innocent holder.

C. Any officer or employee of any bank who shall willfully violate this provision shall be deemed guilty of a misdemeanor.

SECTION 3.102 ORDER OF PAYMENT OF ITEMS.

So long as the balance in any account subject to withdrawal by or upon the order of a depositor shall equal or exceed the amount of any item presented for payment, a bank may select from items which in the aggregate exceed the balance, the items to be paid in any order convenient to the bank.

SECTION 3.103 DEPOSIT OF MINOR OR PERSON UNDER DISABILITY.

Where any deposit is made in any bank in his or her own name by any minor, or any person under disability, such bank may pay such money on check or order of such person the same as in other cases, and such payments shall be valid payments in all respects.

SECTION 3.104 DEPOSITS IN TWO NAMES.

When a deposit has been made, or shall hereafter be made, in any bank in the names of two or more persons, payable to any of them, or payable to any of them or the survivor of them, such deposit, or any part thereof, or any interest or dividend

S.B. No. 75 as amended

1 thereon, may be paid to any one or more of said persons, whether
2 the others be living or not; and the receipt or acquittance of the
3 person or persons so paid shall be a valid and sufficient release
4 and discharge to the bank for any payment so made.

5 No bank so paying any such survivor shall thereby be liable
6 for any estate, inheritance or succession taxes due this Terri-
7 tory.

8 **SECTION 3.106 DEPOSITS IN TRUST; DEATH OF TRUSTEE**

9 Whenever any deposit shall be made in any bank by any person
10 in trust for another, and no other or further notice of the exis-
11 tence and terms of a legal and valid trust shall have been given
12 in writing to the bank, in the event of the death of the trustee,
13 the same, or any part thereof, together with the dividends or
14 interest thereon, may be paid to the person for whom said deposit
15 was made.

16 No bank by paying any such survivor shall thereby be liable
17 for any estate, inheritance or succession taxes due this Territory.

18 **SECTION 3.108 NONPAYMENT OF STALE CHECK**

19 Where a check or other instrument payable on demand at any
20 bank is presented for payment more than one year from its date,
21 such bank may, unless expressly instructed by the drawer or maker
22 to pay the same, refuse payment thereof and no liability shall
23 thereby be incurred to the drawer or maker for dishonoring the
24 instrument by non-payment.

25 **SECTION 3.107 TIME LIMIT ON STOP PAYMENT ORDERS**

26 A. No revocation, countermand or stop-payment order relating
27 to the payment of any check or draft against an account of a de-
28 positor in any bank shall remain in effect for more than ~~15~~ 30
29 months after the service thereof on the bank, unless the same be

1 renewed, which renewals shall be in writing and which renewals
2 shall be in effect for not more than 3 months from the date
3 of service thereof on the bank, but such renewals may be made from
4 time to time.

5 **SECTION 3.108 NONPAYMENT OF CHECK THROUGH ERROR. LIABILITY FOR**

6 No bank shall be liable to a depositor because of the non-
7 payment through mistake or error and without malice of a check
8 which should have been paid, unless the depositor shall allege and
9 prove actual damage by reason of such non-payment and in such
10 event the liability shall not exceed the amount of damage so
11 proved.

12 **SECTION 3.109 FINAL ADJUSTMENT OF STATEMENTS OF ACCOUNT**

13 A. When a statement of account has been rendered by a
14 bank to a depositor accompanied by vouchers, if any, which
15 are the basis for debit entries in such account, or the
16 depositor's passbook has been written up by the bank showing the
17 condition of the depositor's account and delivered to such
18 depositor with like accompaniment of vouchers, if any, such
19 account shall, after the period of 5 years from the date of
20 its rendition, in the event no objection thereto has been
21 theretofore made by the depositor, be deemed finally adjusted
22 and settled and its correctness conclusively presumed and
23 such depositor shall thereafter be barred from questioning
24 the correctness of such account for any cause.

25 B. Nothing herein shall be construed to relieve
26 the depositor from the duty now imposed by law of exercise-
27 ing due diligence in the examination of such account and
28 vouchers, if any, when rendered by the bank and of immediate
29 notification to the bank upon discovery of any error therein.

1 ner from the legal consequences of neglect of such duty;
2 nor to prevent the application of Sections 3.110 and 3.111
3 to cases governed thereby.

4 C. A statement of account may be rendered to a depositor
5 by mailing such statement with supporting vouchers, if any,
6 to his address as shown on the books of the bank.

7 SECTION 3.110 PAYMENT OF FORGED, ALTERED OR RAISED CHECK

8 A. No bank which has paid and charged to the account of a
9 depositor any money on a forged, altered or raised check issued
10 in the name of said depositor shall be liable to said depositor
11 for the amount paid thereon unless either (1) within 6 months
12 after notice to said depositor that the vouchers representing
13 payments charged to the account of said depositor for the period
14 during which such payment was made are ready for delivery, or
15 (2) in case no such notice has been given, within 6 months after
16 the return to said depositor of the voucher representing such
17 payments, the said depositor shall notify the bank that the
18 check so paid is forged, altered or raised.

19 B. If a depositor does not report a forgery, alteration or
20 raising of any check to the bank which paid and charged the same
21 to the depositor's account, either (1) within 6 months after
22 notice to said depositor that the vouchers representing payments
23 charged to the account of said depositor for the period during
24 which such payment was made are ready for delivery, or (2) in
25 case no such notice has been given, within 6 months after the
26 return to said depositor of the voucher representing such payment,
27 or (3) in any event, immediately on discovery, the bank shall not
28 be liable to him on any additional checks forged, altered or
29 raised by the same person and paid prior to the receipt of the

1 report from the depositor.

2 C. The notice referred to in the preceding sections may be
3 given by mail to said depositor at his last known address with
4 postage prepaid.

5 D. This Section shall not relieve a depositor from due
6 diligence in the examination of returned vouchers, in otherwise
7 discovering that an item has been forged, altered or raised, or
8 in the immediate notification of the bank upon his actual discov-
9 ery of the forgery or alteration in amount or otherwise.

10 SECTION 3.111 PAYMENT OF CHECK BEARING FORGED OR UNAUTHORIZED
11 ENDORSEMENT. LIABILITY FOR

12 A. No bank shall be liable to a depositor for the payment
13 by it of a check bearing a forged or unauthorized endorsement
14 unless, either (1) within 75 months after notice to said
15 depositor that the vouchers representing payments charged to the
16 account of said depositor for the period during which such
17 payment was made are ready for delivery, or (2) in case no such
18 notice has been given, within 5 months after the return to
19 said depositor of the voucher representing such payment, or
20 (3) in any event, immediately on discovery, said depositor shall
21 notify the bank that the endorsement is forged or unauthorized.

22 B. The notice referred to in the preceding section may be
23 given by mail to said depositor at his last known address with
24 postage prepaid.

25 C. This section shall not relieve a depositor from due
26 diligence in the examination of returned vouchers, in otherwise
27 discovering that an endorsement has been forged or is unauthorized,
28 or in the immediate notification of the bank upon his actual dis-
29 covery of the forgery or unauthorized endorsement.

1 **SECTION 3.112 ADVERSE CLAIM TO BANK DEPOSIT**

2 Notice to any bank of an adverse claim to a deposit standing
3 on its books to the credit of any person shall not be effectual
4 to cause said bank to recognize said adverse claimant unless said
5 adverse claimant shall also either procure a restraining order,
6 injunction or other appropriate process against said bank from a
7 court of competent jurisdiction in a cause therein instituted by
8 him wherein the person to whose credit the deposit stands is
9 made a party and served with summons or shall execute to said
10 bank in form and with sureties acceptable to it, a bond, in-
11 demnifying said bank from any and all liability, loss, damage,
12 costs and expenses, for and on account of the payment of such
13 adverse claim or the dishonor of the check or other order of
14 the person to whose credit the deposit stands on the books of
15 said bank: Provided, that this law shall not apply in any in-
16 stance where the person to whose credit the deposit stands is a
17 fiduciary for such adverse claimant, and the facts constituting
18 such relationship as also the facts showing reasonable cause of
19 belief on the part of the said claimant that the said fiduciary
20 is about to misappropriate said deposit, are made to appear by
21 the affidavit of such claimant.

22 **SECTION 3.113 DEATH OR INCOMPETENCY OF DEPOSITOR**

23 A. A bank may continue to operate the account of a deceased
24 or incompetent depositor until it receives written notice of the
25 death or adjudication of incompetency.

26 B. Notwithstanding that a bank has received written notice
27 of the death of a depositor, it may, until ~~one~~ month after re-
28 ceipt of such notice, pay any item made, drawn or accepted by
29 the depositor, provided that such payment is otherwise proper.

S.B. No. 76 as amended

1 C. No bank shall be liable for damages, penalty or tax
2 by reason of any payment made pursuant to this Section.

3 **SECTION 3.114 POWERS OF ATTORNEY FROM DEPOSITORS**

4 A. A bank may continue to recognize the authority of an
5 attorney authorized in writing to operate, in whole or in part,
6 the account of a depositor, until it receives written notice of
7 the revocation of his authority.

8 B. Written notice of the death or adjudication of incompetency
9 of such depositor shall constitute written notice of revocation
10 of the authority of his attorney.

11 C. Notwithstanding that a bank has received written notice
12 of revocation of the authority of such attorney, it may, until
13 1 month after receipt of such notice, pay any item made, drawn,
14 accepted or endorsed by such attorney prior to such revocation,
15 provided that such item is otherwise properly payable.

16 D. No bank shall be liable for damages, penalty or tax by
17 reason of any payment made pursuant to this section.

18 **SECTION 3.115 TRANSMITTING MONEY: FOREIGN EXCHANGE**

19 A. A bank may accept money for transmission and may transmit
20 money.

21 B. A bank may buy and sell foreign exchange to the extent
22 necessary to meet the needs of customers.

23 **SECTION 3.116 OPTIONAL FIVE-DAY WEEK**

24 A. Any bank may remain closed on any day of the week
25 fixed at least 15 days in advance by the adoption of a
26 resolution to such effect by a majority vote of the board of
27 directors thereof, and notice thereof posted in the bank for
28 the same time. Any day on which such bank shall, pursuant to
29 such vote and notice, remain closed, shall, with respect to

1 such bank, be deemed a holiday, and no such bank shall be
2 required to permit access to its safe deposit vaults on such
3 day.

4 B. Where a contract by its terms requires the payment of
5 money or the performance of a condition on any such day by or
6 at such bank, such payment may be made or condition performed on
7 the next business day succeeding such day when such bank shall
8 so remain closed, with the same force and effect as if made or
9 performed in accordance with the terms of the contract.

10 C. For the purposes of this Section, the word "bank"
11 shall include trust companies and savings and loan associations
12 in addition to banks as defined in Section 3.102.

13 **SECTION 3.117 AUTHORIZING PAYMENT AND HONORING OF ITEMS**

14 A. Any bank in the Territory is hereby authorized to
15 honor and pay items signed by any person designated by the
16 named maker or drawer so to sign such item, and to charge the
17 account of the maker or drawer of all such items, when so signed,
18 without inquiring as to the circumstances of their issue, or the
19 disposition of their proceeds, whether such checks or orders be
20 payable to cash or to the order of or endorsed or negotiated by
21 any person signing them, or any person in his individual capacity
22 or not, and without regard to any notation or memorandum made upon
23 said item.

24 B. For the purposes of this Section, the word "person"
25 means an individual, corporation, partnership, joint venture,
26 trust estate, unincorporated association or body politic, a
27 municipality, the United States of America, the Territory of
28 Alaska, or any federal government, territorial or municipal
29 organization, agency, department, bureau, subdivision or agency
30 S.S. No. 76 as amended.

1 of the United States, the Territory of Alaska, a municipality
2 or either or any of them or the duly appointed or elected officer
3 or agent of either or any of them.

4 **SECTION 3.118 REPORT UPON INACTIVE DEPOSIT ACCOUNTS**

5 It shall be the duty of every bank in the Territory, upon
6 request, to report to the Commissioner the name of every person
7 not known to be living who appears by the records of a bank to
8 have a sum of money on deposit therein, together with the amount
9 of such deposit, provided this Section shall apply only to depo-
10 sits made 10 years or more prior to the making of such report
11 and which may not have been added to or reduced by withdrawal;
12 and it is hereby made the duty of the executive officer of such
13 bank, upon request, to furnish such report. The Commissioner
14 shall then proceed concerning such deposits, as provided in Sec-
15 tions 57-8-1 through 57-8-9, AOLA 1949.

16 **SECTION 3.119 REGULATION OF INTEREST PAID ON ACCOUNTS**

17 A. A territorial bank may maintain deposit accounts and pay
18 interest on balances therein at rates which need not be uniform.
19 B. The Board may by general regulations fix maximum rates
20 of interest to be paid and may prohibit the payment of interest
21 on demand accounts.

22 C. The Board, in the exercise of its powers under Section
23 7-1-5 (a) AOLA 1949, as amended by Chapter 50, SLA 1949, may, by
24 general regulations, determine the conditions under which accounts
25 may be carried, and the rates of interest which banks shall pay
26 upon, deposits of funds of the Territory of Alaska, making such
27 allowance as the Board deems proper for the services rendered
28 by banks in the transaction of business for the Territory of Alaska.

29 **SECTION 3.120 TRANSACTIONS OUTSIDE OF REGULAR BANKING HOURS**

30 B.B. No. 76 as amended

1
2
3 OR ON HOLIDAYS

4 Nothing in any law of this Territory shall in any manner
5 whatsoever affect the validity of, or render void or voidable,
6 the payment, certification, or acceptance of a check or other
7 negotiable instrument or any other transaction by a bank or trust
8 company in this Territory, because done or performed on a holiday
9 or outside of regular banking hours; provided (further) that
10 nothing herein shall be construed to compel any bank or trust
11 company in this Territory, which by law or custom is entitled to
12 close at twelve o'clock noon on any Saturday, or for the whole or
13 any part of any legal holiday, to keep open for the transaction
14 of business, or to perform any of the acts or transactions afore-
15 said, on any Saturday after such hour, or on any legal holiday,
16 except at its own option.

17 SECTION 3.121 DEPOSIT OF MINOR: SCHOOL OR INSTITUTIONAL DEPOSITS

18 A. A bank may operate a deposit account in the name of a
19 minor or in the name of two or more persons, one or more of whom
20 are minors, with the same effect upon its liability as if such
21 minors were of full age.

22 B. Subject to such regulations as the Board may prescribe
23 for the protection of depositors, a bank may contract with the
24 proper authorities of any elementary or secondary school, or of
25 any institution caring for minors, for the participation by the
26 bank in any school or institutional thrift or savings plan, and
27 it may accept deposits at such a school or institution, either
28 by its own collector or by any representative of the school or
29 institution who becomes the agent of the bank for such purpose.

30 SECTION 3.122 RIGHTS ON IMPROPER PAYMENT OF ITEM BY BANK

31 A. To prevent unjust enrichment, a bank which has paid an
32 S.B. No. 76 as amended

1 item which it may not charge to a depositor's account may in an
2 action:

3 (1) against the drawer, maker or acceptor, recover any
4 part of the payment which would have been due from him had pay-
5 ment been refused; and

6 (2) against a prior holder receiving the payment, re-
7 cover any part thereof due the drawer, maker or acceptor or any
8 other prior party in respect of the transaction in which the item
9 was issued or sold.

10 H. The bank has no right to charge a depositor's account
11 in respect of such cause of action. The bank may maintain either
12 or both such actions, but may have only one satisfaction, and any
13 right to consequential or punitive damages remains with the de-
14 positor or holder.

15 G. A bank may in any case waive a right to charge a de-
16 positor's account and proceed in accordance with this Section.

17 D. A defense of charge of position in reliance upon receipt
18 of payment is not effective against the bank unless it would be
19 effective in a suit between the original parties.

20 SECTION 3.123 PAYMENT FROM ACCOUNT WHEN NO EXECUTOR OR ADMINIS-

21 TRATOR HAS QUALIFIED

22 A. Where the executor or administrator of a deceased deposi-
23 tor has qualified and given notice of his qualifications to the
24 bank, it may in its discretion and at any time after 90 days from
25 the death of the depositor pay out of all accounts maintained
26 with it by him in his individual capacity all sums which do not
27 exceed \$1,000.00 in the aggregate (1) to the executor named in
28 any will known to the bank; or (2) in the absence of knowledge of
29 a purported will naming a surviving executor to (a) the surviving

1 spouse, (b) to the next of kin, or (c) to a creditor for expenses
2 of the last illness or funeral, in the above order of priority
3 in the case of conflicting claims.

4 B. A bank may in its discretion at any time after 9
5 months from the death of a depositor, whose residence address
6 according to the books of the bank is outside this Territory,
7 pay the balance of his accounts, not exceeding \$5,000.00 in the
8 aggregate to an executor or administrator who has qualified in
9 another state, unless the bank has received written notice of the
10 appointment of an executor or administrator in this Territory.

11 C. No bank shall be liable for damages or penalties,
12 except as to taxes due to the Territory of Alaska.

PART B. SAFE DEPOSIT AND SAFEKEEPING

SECTION 3.130 DEFINITIONS FOR PART B

As used in this Part

"Lessee" means a person contracting with a lessor for the use of a safe deposit box.

"Lessor" means a bank, trust company, or subsidiary renting safe deposit facilities, and includes a safe deposit company organized and operating under the jurisdiction of the Department solely for the purpose of leasing safe deposit facilities.

"Safe deposit box" means a safe deposit box, vault, or other safe deposit receptacle maintained by a lessor and the rules relating thereto apply to property or documents kept in safekeeping in the bank's vault.

SECTION 3.131 AUTHORITY TO ENGAGE IN LEASING SAFE DEPOSIT

FACILITIES; SUBSIDIARY COMPANY

A. Subject to such regulations as the Board may prescribe, a territorial bank, trust company or safe deposit company may maintain and lease safe deposit boxes and may accept property or documents for safekeeping if, except in the case of night depositories, it issues a receipt therefor.

B. A territorial bank or trust company may own stock in safe deposit companies not exceeding in aggregate cost 15 per cent of its capital and surplus, but at least 90 per cent of the stock in each such safe deposit company must be owned by banks or trust companies.

SECTION 3.132 ACCESS BY FIDUCIARIES

Where a safe deposit box is made available by a lessor to one or more persons acting as fiduciaries, the lessor may, except as otherwise expressly provided in the lease or the writings

S.N. No. 76 as amended

1 pursuant to which such fiduciaries are acting, allow access
2 thereto as follows:

3 (1) By any one or more of the persons acting as ex-
4 cutors or administrators.

5 (2) By any one or more of the persons otherwise acting
6 as fiduciaries when authorized in writing signed by all other
7 persons so acting.

8 (3) By any agent authorized in writing signed by all
9 of the persons acting as fiduciaries.

10 **SECTION 3.133 EFFECT OF LESSEE'S DEATH OR INCOMPETENCE**

11 Where a lessor without knowledge of the death or of an ad-
12 judication of legal incompetence of the lessee, deals with his
13 agent pursuant to a written power of attorney signed by such
14 lessee, the transaction binds the lessee's estate and the lessee.

15 **SECTION 3.134 LEASE TO MINOR**

16 A bank may lease a safe deposit box to and in connection
17 therewith deal with a minor with the same effect as if leasing
18 to and dealing with a person of full legal capacity.

19 **SECTION 3.135 SEARCH PROCEDURE ON DEATH**

20 A lessor shall permit the person named in a court order for
21 the purpose, or if no order has been served upon the lessor, the
22 spouse, a parent, an adult descendant or a person named as an
23 executor in a copy of a purported will produced by him, to open
24 and examine the contents of a safe deposit box leased by a de-
25 cedent, or any documents delivered by a decedent for safekeeping,
26 in the presence of an officer of the lessor; and the lessor, if
27 so requested by such person, must deliver:

28 (1) Any writing purporting to be a will of the decedent
29 to the court having jurisdiction of the decedent's estate accord-

1 ing to his residence declared in such writing; and

2 (2) Any writing purporting to be a deed to a burial
3 plot or to give burial instructions to the person making the
4 request for a search; and

5 (3) Any document purporting to be an insurance policy
6 on the life of the decedent to the beneficiary named therein;
7 but no other contents shall be removed, pursuant to this Section,
8 until an executor or administrator qualifies and makes claim to
9 the contents.

10 SECTION 3.136 ADVERSE CLAIMS TO CONTENTS OF SAFE DEPOSIT BOX

11 A. An adverse claim to the contents of a safe deposit box,
12 or to property held in safekeeping, is not sufficient to require
13 the lessor to deny access to its lessee unless:

14 (1) The lessor is directed to do so by a court order
15 issued in an action in which the lessee is served with process
16 and named as a party by a name which identifies him with the
17 name in which the safe deposit box is leased or the property
18 held; or

19 (2) The safe deposit box is leased or the property is
20 held in the name of a lessee with the addition of words indicat-
21 ing that the contents or property are held in a fiduciary capac-
22 ity, and the adverse claim is supported by a written statement
23 of facts disclosing that it is made by or on behalf of a bene-
24 ficiary and that there is reason to know that the fiduciary will
25 misappropriate the trust property.

26 B. A claim is also an adverse claim where one of several
27 lessees claims, contrary to the terms of the lease, an exclusive
28 right of access, or where one or more persons claim a right of
29 access as agents or officers of a lessee to the exclusion of

1 others as agents or officers, or where it is claimed that a
2 lessee is the same person as one using another name.

3 **SECTION 3.137 SPECIAL REMEDIES FOR NONPAYMENT OF RENT**

4 A. If the rental due on a safe deposit box has not been
5 paid for 1 year, the lessor may send a notice by registered
6 mail to the last known address of the lessee stating that the
7 safe deposit box will be opened and its contents stored at the
8 expense of the lessee unless payment of the rental is made with-
9 in 30 days. If the rental is not paid within 30 days from the
10 mailing of the notice, the box may be opened in the presence of
11 an officer of the lessor and of a notary public who is not a
12 director, officer, employee or stockholder of the lessor. The
13 contents shall be sealed in a package by the notary public who
14 shall write on the outside the name of the lessee and the date
15 of the opening. The notary public shall execute a certificate
16 reciting the name of the lessee, the date of the opening of the
17 box and a list of its contents. The certificate shall be in-
18 cluded in the package and a copy of the certificate shall be sent
19 by registered mail to the last known address of the lessee. The
20 package shall then be placed in the general vaults of the lessor
21 at a rental not exceeding the rental previously charged for the
22 box.

23 B. Any documents or writings of a private nature, and having
24 little or no apparent value need not be offered for sale, but
25 shall be retained, unless claimed by the owner, for the period
26 specified for unclaimed deposits, after which they may be de-
27 stroyed.

28 C. If the contents of the safe deposit box have not been
29 claimed within 2 years of the mailing of the certificate, the

1 lessor may send a further notice to the last known address of
2 the lessee stating that, unless the accumulated charges are paid
3 within 30 days, the contents of the box will be sold at public
4 auction at a specified time and place, or, in the case of se-
5 curities listed on a stock exchange, will be sold upon the ex-
6 change on or after a specified date and that unsalable items
7 will be destroyed. The time, place and manner of sale shall
8 also be posted conspicuously on the premises of the lessor and
9 advertised once in a newspaper of general circulation in the com-
10 munity. If the articles are not claimed, they may then be sold
11 in accordance with the notice.

12 The balance of the proceeds, after deducting accumulated
13 charges, including the expense of advertising and conducting the
14 sale, shall be deposited to the credit of the lessee in any
15 account maintained by him; or if none, shall be deemed a deposit
16 account with the bank or trust company operating the safe de-
17 posit facility, or in the case of a subsidiary safe deposit com-
18 pany, a bank or trust company owning stock therein, and shall be
19 identified on the books of the bank as arising from the sale of
20 contents of a safe deposit box. When any such deposit is sur-
21 rendered as unclaimed deposits, the lessor shall also send to
22 the Commissioner a copy of the certificate and an itemized state-
23 ment of the amount received and the deductions. Any items re-
24 maining unsold may be destroyed.

PART C. TRUST BUSINESS

SECTION 3.140 QUALIFICATION AND FIDUCIARY POWERS:

DEPOSITE OF SECURITIES

A. It shall be a criminal offense against this Act for a territorial bank to act as fiduciary unless it is authorized by its charter to exercise trust powers and has qualified by depositing with the Commissioner evidences of indebtedness acceptable to him which:

(1) Are payable to bearer or recorded in the Commissioner's name.

(2) Constitute readily marketable legal investments for funds held by a bank as a fiduciary; and

(3) Have a value equal in amount to 10 percent of the capital and surplus of the bank.

B. A territorial bank shall have the right to receive the income on evidences of the indebtedness deposited with the Commissioner as long as the bank conducts its business in the ordinary course.

C. A territorial bank which fails to maintain its deposit in conformity with this Section shall, upon order of the Commissioner, resign its fiduciary positions.

D. Upon liquidation, abandonment of trust powers or resignation from all fiduciary positions, the deposit shall be made available for the ratable satisfaction of claims involving fiduciary accounts. Any surplus remaining after the satisfaction of all such claims shall be returned to the bank.

E. The charters of all banks now authorized to do business in this Territory shall be conclusively presumed to authorize such banks to exercise trust powers, unless the stockholders at a

1 regular meeting or special meeting duly called for that purpose
2 relinquish such powers by majority vote.

3 F. The provisions of this Section shall not prohibit the
4 exercise of trust powers by banks in connection with any trans-
5 actions commenced prior to the effective date of this Act, which
6 transactions may be completed in accordance with the requirements
7 existing prior to the enactment of this Section.

8 G. The provisions of this Section shall not apply to trans-
9 actions in which banks act as escrow agents or collecting agents.

10 **SECTION 3.141 FIDUCIARY BOND OR OATH EXCUSED**

11 No oath or bond shall be required of a bank to qualify upon
12 appointment as a fiduciary, unless the instrument creating a
13 fiduciary position expressly provides otherwise.

14 **SECTION 3.142 SEGREGATION AND RECORDING OF FIDUCIARY ASSETS:**
15 **SECURING DEPOSITS OF FIDUCIARY CASH; NOMINEE**
16 **FOR INVESTMENT SECURITIES**

17 A. A territorial bank holding any asset as a fiduciary
18 shall:

19 (1) Segregate all such assets from any other assets
20 of the bank and from the assets of other trusts, except as may
21 be expressly provided otherwise by law or by the writing creating
22 the trust.

23 (2) Record such assets in a separate set of books
24 maintained for fiduciary activities.

25 B. Cash held by a territorial bank as fiduciary may be
26 deposited to the credit of the bank as such fiduciary either with
27 a bank with deposit insurance or with itself, but if such funds
28 are deposited with itself the bank shall pledge as security
29 United States bonds or other securities, approved by the

1 Commissioner for the purpose, in the amount of the deposit in
2 excess of the amount covered by deposit insurance. Deposits may
3 represent the assets of more than one fiduciary estate if a record
4 is maintained of the proper allocation.

5 C. Any territorial bank, when acting in this Territory as
6 a fiduciary or a co-fiduciary with others, or as an agent for
7 other fiduciaries, may with the consent of its co-fiduciary or
8 co-fiduciaries, if any (who are hereby authorized to give such
9 consent), or the fiduciaries for whom it is acting, cause any
10 investment held in any such capacity, to be registered and held
11 in the name of a nominee or nominees of such bank. Such bank
12 shall be liable for the acts of any such nominee with respect
13 to any investment so registered. The records of such bank shall
14 at all times show the trust for which any such investment is
15 held and the securities shall be in the possession and control
16 of such bank and be kept separate and apart from the assets of
17 such bank.

18 **SECTION 3.143. INVESTMENT POWERS SAME AS INDIVIDUAL FIDUCIARY**

19 A territorial bank acting as fiduciary shall have the same
20 investment powers as an individual fiduciary under like circum-
21 stances.

22 **SECTION 3.144. AOT APPLICABLE TO TRUST COMPANIES DOING BANKING**

23 The provisions of this Act shall be applicable to all trust
24 companies engaged in the business of banking in this Territory.

25 **SECTION 3.145. SUPERVISION OF TRUST COMPANIES BY BOARD**

26 A. The Board shall have supervision of every trust company
27 organized under the provisions of this Act and the provisions of
28 Sections 34-3-1 through 34-3-6, and Sections 34-3-8 through
29 34-3-13, ACLA 1949, whether engaged in the business of banking

1 or in the general trust company business, or both.

2 E. The Board may implement by regulation any provision of
3 such sections and may define any term not defined in such
4 sections.

5 **SECTION 3.146 DISSOLUTION PROCEDURE FOR TRUST COMPANIES**

6 Any trust company may be dissolved in the same manner and
7 under the same procedure as prescribed by this Act.
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PART D. RESERVES, LOANS, INVESTMENTS
AND MISCELLANEOUS

SECTION 3.160 RESERVES AGAINST DEPOSITS, REQUIRED

A. A territorial bank shall maintain such reserves against deposits as may be required by the Board, or, if the territorial bank is a member of the Federal Reserve System, by the Federal Reserve Act or by the Board of Governors of the Federal Reserve System.

B. The reserve fund shall consist of legal tender on hand on the premises of the territorial bank and money due on demand from a Federal Reserve Bank or other bank approved as a reserve depository by the Commissioner, in such amount as the Board prescribes, but shall not be less than 7 per cent nor more than 25 per cent of deposits, payment of which is obligatory within 30 days of demand and not less than 3 per cent nor more than 7 per cent of other deposits; Provided: that no reserve shall be required of deposits secured by assets of the bank, pledged as required or permitted by laws of the United States or a state or territory or any body politic thereof; and provided, further, that in determining the amount of reserves to be maintained, the Board may vary the requirements to recognize the amounts or ratios of investment securities owned by banks, of types eligible to secure deposits of the United States, having maturities of 5 years or less.

C. A territorial bank shall not deposit funds in any other bank in excess of the sum of the capital and surplus of the bank in which the deposit is made.

D. It shall be a criminal offense against this Act for a territorial bank to continue an average deficiency in its reserve

1 covering any ~~15~~ successive banking days, for more than ~~15~~
2 additional banking day without notifying the Commissioner.

3 **SECTION 3.161 LOANS IN AMOUNTS NOT TO EXCEED \$3,500.00**

4 In addition to the general corporate powers granted by this
5 Act, and in addition to any powers specifically granted to a bank
6 or a bank and trust company elsewhere in this Act, a bank or a
7 bank and trust company shall have the power subject to the
8 limitations and restrictions imposed by this Act, to make loans
9 authorized under Chapter 48, SLA 1951.

10 **SECTION 3.162 LOANS UNDER TITLE I OF THE NATIONAL HOUSING ACT**

11 Any person may loan under Title I of the National Housing
12 Act. In so doing such person may charge at a rate not exceeding
13 Five Dollars (\$5.00) per One Hundred Dollars (\$100.00) per annum
14 upon the original face amount of the instrument or instruments
15 evidencing the loan for the entire period of the loan and which
16 such charge may be collected in advance.

17 **SECTION 3.163 LENDING ON BANK SHARES PROHIBITED OR RESTRICTED**

18 A bank shall not make any loan on the security of its
19 own stock or of its obligations subordinate to deposits. A loan
20 made on the security of the stock or obligations subordinate
21 to deposits of another banking institution must be for a stipu-
22 lated period not longer than 3 years and require full amortiza-
23 tion by approximately equal or diminishing payments, including
24 both principal and interest, at regular intervals of not more
25 than 3 months.

26 **SECTION 3.164 LIMIT OF LIABILITY OF ANY ONE BORROWER**

27 A. A territorial bank shall not extend credit directly by
28 means of discount of notes, issuance of letters of credit, accept-
29 ance of drafts or otherwise, or purchase any bond, note, bill of

1 exchange or similar evidence of indebtedness, when by reason of
2 such extension of credit or purchase the totals of such obli-
3 gations of the same obligor so acquired which are held by the
4 territorial bank will exceed 20 per cent of capital and surplus.

5 B. The limitation shall not apply to loans and investments
6 when the obligations are:

7 (1) Obligations of the United States, of a state or
8 territory, or of a Federal Reserve Bank.

9 (2) Obligations arising out of the daily transaction
10 of the business of any clearing house association.

11 (3) Obligations in the form of bills of exchange drawn
12 in good faith against actually existing values.

13 (4) Obligations arising out of the discount of commer-
14 cial or business paper actually owned by the person, partner-
15 ship, association, or corporation negotiating the same.

16 (5) Obligations drawn in good faith against actually
17 existing values and secured by goods or commodities in process
18 of shipment, or upon gold, gold dust, or bullion.

19 (6) Obligations in the form of banker's acceptances of
20 other banks of the kind described in Section 13 of the Federal
21 Reserve Act.

22 (7) Obligations representing loans to any national
23 banking association or to any banking institution organized under
24 the laws of any state or territory, or to any receiver, conserva-
25 tor, or superintendent of banks, or to any other agent, in charge
26 of the business and property of any such association or banking
27 institution, when such loans are approved by the Board.

28 (8) Obligations to the extent that such obligations
29 are secured or covered by guaranties, or by commitments or agree-

1 ments to take over or to purchase, made by any Federal Reserve
2 bank or by the United States or any department, bureau, board,
3 commission, or establishment of the United States, including any
4 corporation wholly owned directly or indirectly by the United
5 States: Provided, that such guaranties, agreements, or commit-
6 ments are unconditional and must be performed by payment of cash
7 or its equivalent within 60 days after demand. The Board is
8 hereby authorized to define the terms herein used if and when it
9 may deem it necessary.

10 (2) Obligations of a local public agency (as defined)
11 in Section 110 (h) of the Housing Act of 1949(or of a public
12 housing agency (as defined in the United States Housing Act of
13 1937, as amended) which have a maturity of not more than 18
14 months shall not be subject under this Section to any limitation,
15 if such obligations are secured by an agreement between the
16 obligor agency and the Housing and Home Finance Administrator or
17 the Public Housing Administration in which the agency agrees to
18 borrow from the Administrator or Administration, and the Adminis-
19 trator or Administration agrees to lend to the agency, prior to
20 the maturity of such obligations, monies in an amount which
21 (together with any other monies irrevocably committed to the
22 payment of interest on such obligations) will suffice to pay the
23 principal of such obligations with interest to maturity, which
24 monies under the terms of said agreement are required to be used
25 for that purpose.

26 C. The limitation to loans set forth in subsection A hereof
27 shall be modified as follows:

28 (1) Obligations as indorser or guarantor of notes,
29 other than commercial or business paper excepted under subsection

1 B (4) hereof, having a maturity of not more than 6 months, and
2 owned by the person, corporation, association, or copartnership
3 indorsing and negotiating the same, shall be subject under this
4 Section to a limitation of 22½ per cent of capital and surplus
5 in addition to such 20 per cent of capital and surplus.

6 (2) Obligations of any person, copartnership, associa-
7 tion or corporation, in the form of notes or drafts secured by
8 shipping documents, warehouse receipts or other such documents
9 transferring or securing title covering readily marketable non-
10 perishable staples when such property is fully covered by insur-
11 ance, if it is customary to insure such staples, shall be subject
12 under this Section to a limitation of 22½ per cent of capital and
13 surplus in addition to such 20 per cent of capital and surplus
14 when the market value of such staples securing such obligation is
15 not at any time less than 115 per cent of the face amount of such
16 obligation, and to an additional increase of limitation of 7½ per
17 cent of capital and surplus in addition to such 42½ per cent of
18 capital and surplus when the market value of such staples securing
19 such additional obligation is not at any time less than 120 per
20 cent of the face amount of such additional obligation, and to a
21 further additional increase of limitation of 7½ per cent of
22 capital and surplus in addition to such 50 per cent of capital
23 and surplus when the market value of such staples securing such
24 additional obligation is not at any time less than 125 per cent
25 of the face amount of such additional obligation, and to a further
26 additional increase of limitation of 7½ per cent of capital and
27 surplus in addition to such 57½ per cent of capital and surplus
28 when the market value of such staples securing such additional
29 obligation is not at any time less than 130 per cent of the face

1 amount of such additional obligation, and to a further additional
2 increase of limitation of $7\frac{1}{2}$ per cent of capital and surplus in
3 addition to such 65 per cent of capital and surplus when the
4 market value of such staples securing such additional obligation
5 is not at any time less than 135 per cent of the face amount of
6 such additional obligation, and to a further additional increase
7 of limitation of $7\frac{1}{2}$ per cent of capital and surplus in addition
8 to such $72\frac{1}{2}$ per cent of capital and surplus when the market value
9 of such staples securing such additional obligation is not at any
10 time less than 140 per cent of the face amount of such additional
11 obligation, but this exception shall not apply to obligations of
12 any one person, copartnership, association or corporation arising
13 from the same transactions and/or secured upon the identical
14 staples for more than 10 months.

15 (3) Obligations of any person, copartnership, associa-
16 tion, or corporation in the form of notes or drafts secured by
17 shipping documents or instruments transferring or securing title
18 covering livestock or giving a lien on livestock when the market
19 value of the livestock securing the obligation is not at any time
20 less than 115 per cent of the face amount of the notes covered
21 by such documents shall be subject under this Section to a limita-
22 tion of $22\frac{1}{2}$ per cent of capital and surplus in addition to 20 per
23 cent of such capital and surplus.

24 (4) Obligations of any person, copartnership, associa-
25 tion, or corporation in the form of notes secured by not less
26 than a like amount of bonds or notes of the United States issued
27 since April 24, 1917, or certificates of indebtedness of the
28 United States, Treasury bills of the United States, or obligations
29 fully guaranteed both as to principal and interest by the United

1 States, shall (except to the extent permitted by rules and regula-
2 tions prescribed by the Board) be subject under this Section to
3 a limitation of 22½ per cent of capital and surplus in addition
4 to such 20 per cent of capital and surplus.

5 (5) Obligations upon loans approved by the Board to
6 a bank located within this Territory or to a receiver or con-
7 servator thereof or to the Commissioner when he has taken posses-
8 sion thereof, but the limitation on these obligations shall be 25
9 per cent of capital and surplus.

10 D. In calculating for the purposes of this Section the
11 obligations of a single obligor or the obligations of a specified
12 class there shall be included:

13 (1) The direct liability of the maker or acceptor of
14 paper discounted or purchased and the liability of the indorser,
15 drawer or guarantor who obtains a loan or discounts or sells
16 paper under his guaranty.

17 (2) In the case of obligations of a partnership or
18 association, the obligations of each general partner and of each
19 member of the association.

20 (3) In the case of obligations of a general partner
21 or a member of an association, the obligations of the partnership
22 or association.

23 (4) In the case of obligations of a corporation, the
24 obligations of any subsidiaries in which it owns, directly or in-
25 directly, a majority of the outstanding voting stock.

26 (5) In the case of obligations of a corporation, the
27 amount of a loan made to any other person to the extent that the
28 proceeds of such loan directly or indirectly are to be

29 (a) loaned to the corporation;

1 (b) used for the acquisition from the corporation of
2 any securities issued by the corporation, other than securities
3 acquired by an underwriter for public offering; or

4 (c) transferred to the corporation without fair and
5 adequate consideration.

6 The discharge of an equivalent amount of debt previously
7 incurred in good faith for value shall be deemed fair and adequate
8 consideration.

9 E. Transactions executed prior to the date hereof, if
10 otherwise lawful, may be completed, the provisions of this
11 Section notwithstanding.

12 **SECTION 3.165 INVESTMENTS AUTHORIZED**

13 A. In addition to other investments expressly authorized
14 by this Act, a territorial bank may purchase (or discount):

15 (1) Obligations which satisfy the requirements of this
16 Act for loans and are acquired in full.

17 (2) Obligations of the United States, a state of the
18 United States or the Dominion of Canada.

19 (3) Obligations of the International Bank for Recon-
20 struction and Redevelopment.

21 (4) Obligations of a territory of the United States,
22 a province of the Dominion of Canada, a subdivision or instrumen-
23 tality of a state or territory of the United States, an authority
24 organized under state or territorial law, an interstate compact
25 or by substantially identical legislation adopted by two or more
26 states.

27 (5) Obligations of a corporation chartered by the
28 United States or a state or territory thereof, doing business in
29 the United States, which are approved by the Board for investment.

1 (C) Investment securities under such limitations and
2 restriction as the Commissioner may by regulation prescribe. In
3 no event shall the total amount of the investment securities of any
4 any one obligor or maker, held by a bank for its own account,
5 exceed at any time 10 per cent of its capital and surplus.
6 As used in this section the term "investment securities" shall
7 mean marketable obligations evidencing indebtedness of any person,
8 copartnership, association, or corporation in the form of bonds,
9 notes and/or debentures commonly known as investment securities
10 under such further definition of the term "investment securities"
11 as may by regulation be prescribed by the Commissioner. Except
12 as otherwise provided by this Act, nothing herein contained
13 shall authorize the purchase by a bank for its own account of any
14 shares of stock of any corporation.

15 B. A territorial bank may invest an amount not exceeding
16 10 per cent of its capital and surplus in the stock of a cor-
17 poration owned entirely by banks and exclusively engaged in a
18 trust company business and maintaining its offices on the premises
19 used by the bank, or another bank also owning part of its capital
20 stock, or adjacent to the premises of any bank owning part of its
21 stock, and an amount not exceeding 25 per cent of its capital and
22 surplus in the stock and obligations of a corporation owning the
23 premises occupied by the bank for the transaction of its business,
24 in lieu of an investment in land and building, set forth in sub-
25 section 3.108 A (1).

26 C. A territorial bank's investment in the stock of a safe
27 deposit company is governed by Section 3.131.

28 D. A territorial bank may purchase or sell without recourse
29 any security upon the order of a customer and for his account.

1 E. This Section shall apply to all investments purchased or
2 discounted by banks in the Territory of Alaska after the effective
3 date of this Act; but nothing herein contained shall be appli-
4 cable to investments now held by banks in the Territory of Alaska,
5 which investments, if otherwise lawful, may continue to be held,
6 the provisions of this Section to the contrary notwithstanding.

7 **SECTION 3.155 ACCEPTANCES**

8 A. A commercial bank may accept:

9 (1) A draft which has not more than 6 months sight to
10 run, exclusive of days of grace, and is drawn to finance the pur-
11 chase of goods with maturity in accordance with the original terms
12 of purchase, or is secured by shipping documents transferring or
13 securing title to goods or by receipt of a licensed or bonded
14 warehouse or elevator transferring or securing title to readily
15 marketable, non-perishable staples.

16 (2) A draft which has no more than 3 months sight
17 to run, exclusive of days of grace, and is drawn by a bank outside
18 the continental limits of the United States for the purpose of
19 furnishing dollar exchange for trade.

20 B. A commercial bank may issue a letter of credit, but
21 unless the authority conferred to draw upon the bank or its cor-
22 respondents is limited to such drafts as a bank is authorized by
23 this Section to accept, the amount of the credit outstanding at
24 any one time shall be deemed to be a loan to the person for whose
25 account the credit was issued.

26 **SECTION 3.157 ACQUISITION OF PROPERTY TO SATISFY OR PROTECT**
27 **PREVIOUS LOAN; DISPOSAL; CHARGE OFF**

28 A territorial bank may take property of any kind, including
29 shares of its own stock, to satisfy or protect a loan previously

1 made in good faith and in the ordinary course of business. Pro-
2 perty acquired in satisfaction of a loan shall be held subject to
3 the following limitations:

4 (1) Stock shall be sold within 6 months or such addi-
5 tional period not exceeding 1 year as the Commissioner may
6 allow.

7 (2) Real estate may be used in the banking business,
8 subject to the conditions prescribed by this Act for property
9 purchased for such use, or may be rented. Real estate may be
10 improved to facilitate its sale. Unless used in the banking
11 business, it shall be sold within 5 years or such longer period
12 as the Commissioner may allow.

13 (3) Other property, the acquisition of which is not
14 otherwise authorized by this Act, shall be sold within 6 months
15 or such longer period as the Commissioner may allow.

16 (4) The property shall be entered on the books at cost
17 or fair market value, whichever is less, and property which the
18 bank is not otherwise authorized to acquire shall be charged
19 off at a rate of not less than 10 per cent per annum for real
20 estate and 20 per cent per annum for other property or at such
21 lower rate, not less than 5 per cent and 10 per cent annually,
22 respectively, as the Commissioner may allow.

23 **SECTION 3.168 ACQUISITION OF BANKING PREMISES AND EQUIPMENT:**
24 **LIMITATION OF INVESTMENT**

25 A. A territorial bank may acquire real estate and equipment
26 and improve real estate to be used in the transaction of its
27 business and may rent any space so acquired in a building in
28 excess of actual need. Unless a larger investment is authorized
29 by the Commissioner, no bank shall invest more than the following:

1 (1) In land and building, 60 per cent of capital and
2 surplus.

3 (2) In leasehold improvements, in lieu of land and
4 building, 25 per cent of capital and surplus.

5 (3) In safe deposit equipment, 10 per cent of capital
6 and surplus, in addition to the above.

7 (4) In equipment alone, other than safe deposit
8 equipment, such amount as may be needed for the ordinary and
9 necessary equipment, furniture and fixtures of the bank.

10 B. The rates of depreciation and amortization of property
11 so acquired may be prescribed by the Commissioner.

12 **SECTION 5.169 SALE OF ASSETS IN ORDINARY COURSE**

13 A bank may sell any asset in the ordinary course of business,
14 or, with the approval of the Board, in any other circumstance,
15 but the sale of all or substantially all of the assets of a bank
16 or of a department thereof is governed by Section 5.309.

17 **SECTION 5.170 BORROWING BY BANK, LIMITED**

18 A territorial bank may borrow money and issue evidence of
19 indebtedness for a loan for temporary purposes in an amount not
20 exceeding its capital and surplus or in such larger amount or for
21 such other purposes as the Commissioner approves. Debentures
22 issued by a bank may not be retired without the approval of the
23 Commissioner and they shall so provide in express terms.

24 **SECTION 5.171 PLEDGE OF BANK ASSETS**

25 A. A bank may pledge its assets to:

26 (1) Enable it to act as agent for the sale of obli-
27 gations of the United States.

28 (2) Secure borrowed funds.

29 (3) Secure deposits when the depositor is required or

1 permitted to obtain such security by the laws of the United
2 States, the terms of any interstate compact or by the laws of
3 any state or territory, or any body politic thereof.

4 **SECTION 3.172 INDORSEMENT AND SIGNATURE GUARANTY BY BANK**

5
6 A. A territorial bank may assume secondary liability as an
7 indorser of a negotiable or non-negotiable instrument which it
8 owns or has received for collection or that of the guarantor of
9 the genuineness of a signature.

10 B. A guaranty of the signature means only that (1) the
11 signature is not forged; (2) the signer is the holder or has the
12 authority to sign in the name of the holder; and (3) the signer
13 has legal capacity to sign. A guaranty of the signature does
14 not otherwise guaranty his rightfulness of the particular trans-
15 fer. A bank may disclaim all or any part of the foregoing obli-
16 gation in its guaranty.

17 **SECTION 3.173 BANK PURCHASE OF ITS OWN SHARES PROHIBITED**

18 A bank shall not purchase its own stock or any of its
19 obligations subordinate to deposits, without the prior consent of
20 the Commissioner.
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PART E. BANK COLLECTIONS

SECTION 3.174 DEFINITIONS FOR PART E

For the purposes of this Part:

"Bank" shall include any person, firm or corporation engaged in the business of receiving and paying deposits of money within this Territory. A branch or office of any such bank shall be deemed a bank for the purpose of this Act.

"Item" means any check, note or other instrument providing for the payment of money.

SECTION 3.175 BANK IS AGENT FOR COLLECTION OF ITEM

Except as otherwise provided by agreement and except as to subsequent holders of a negotiable instrument payable to bearer or endorsed specially or in blank, where an item is deposited, or received for collection, the bank of deposit shall be agent of the depositor for its collection and each subsequent collecting bank shall be sub-agent of the depositor but shall be authorized to follow the instructions of its immediate forwarding bank and any credit given by any such agent or sub-agent bank therefor shall be revocable until such time as the proceeds are received in actual money or an unconditional credit given on the books of another bank, which such agent has requested or accepted. Where any such bank allows any revocable credit for an item to be withdrawn, such agency relation shall nevertheless continue except the bank shall have all the rights of an owner thereof against prior and subsequent parties to the extent of the amount withdrawn.

SECTION 3.176 DEMAND ITEMS PAYABLE BY, AT OR THROUGH SAME BANK. DISHONOR ON FOLLOWING DAY

A. In any case in which a bank receives, other than for
S.B. No. 76 as amended -62-

1 immediate payment over the counter, a demand item payable by, at
2 or through such bank and gives credit therefor before midnight
3 of the day of receipt, the bank may have until midnight of its
4 next business day after receipt within which to dishonor or
5 refuse payment of such item. Any credit so given, together with
6 all related entries on the books of the receiving bank, may be
7 revoked by returning the item, or if the item be held for protest
8 or at the time is lost or is not in the possession of the bank,
9 by giving written notice of dishonor, non-payment or revocation;
10 provided, that such item or notice is dispatched in the mails or
11 by other expeditious means not later than midnight of the bank's
12 next business day after the item was received. For the purpose
13 of determining when notice of dishonor must be given or protest
14 made under the law relative to negotiable instruments, an item
15 duly presented, credit for which is revoked as authorized by this
16 Section, shall be deemed dishonored on the day the item or notice
17 is dispatched. A bank, revoking credit pursuant to the authority
18 of this Section, is entitled to refund of, or credit for, the
19 amount of the item.

20 B. For the purposes of this Section:

21 (1) An item received by a bank on a day other than
22 its business day, or received on a business day after its
23 regular business hours or during afternoon or evening periods
24 when it has reopened or remained open for limited functions, shall
25 be deemed to have been received at the opening of its next busi-
26 ness day.

27 (2) The term "credit" includes payment, remittance,
28 advice of credit or authorization to charge and, in cases where
29 the item is received for deposit as well as for payment, also

1 includes the making of appropriate entries to the receiving
2 bank's general ledger without regard to whether the item is
3 posted to individual customers' ledgers.

4 (3) Each branch or office of a bank shall be deemed
5 a separate bank.

6 C. The effect of this section may be varied by agreement.

7 **SECTION 3.177 ITEMS LOST IN TRANSIT: NOT RESPONSIBLE**

8 Where an agent bank forwards an item for collection, it
9 shall not be responsible for its loss or destruction in transit
10 or, when in the possession of others, for its inability to re-
11 possess itself thereof, provided there has been no lack of
12 ordinary care on its part.

13 **SECTION 3.178 LEGAL EFFECT OF INDORSEMENTS**

14 An indorsement of an item by the payee or other depositor
15 "for deposit" shall be deemed a restrictive indorsement and
16 indicate that the indorsee bank is an agent for collection and
17 not owner of the item.

18 An indorsement "pay any bank or banker" or having equivalent
19 words shall be deemed a restrictive indorsement and shall
20 indicate the creation of an agency relation in any subsequent
21 bank to whom the paper is forwarded unless coupled with words
22 indicating the creation of a trustee relationship; and such in-
23 dorsement or other restrictive indorsement whether creating an
24 agency or trustee relationship shall constitute a guaranty by
25 the indorser to all subsequent holders and to the drawee or payor
26 of the genuineness of and the authority to make prior indorsements
27 and also to save the drawee or payer harmless in the event any
28 prior indorsement appearing thereon is defective or irregular
29 in any respect unless such indorsement is coupled with appropriate

1 words disclaiming such liability as guarantor.

2 Where a deposited item is payable to bearer or indorsed by
3 the depositor in blank or by special indorsement, the fact that
4 such item is so payable or indorsed shall not change the relation
5 of agent of the bank of deposit to the depositor, but subsequent
6 holders shall have the right to rely on the presumption that the
7 bank of deposit is the owner of the item. The indorsement of an
8 item by the bank of deposit or by any subsequent holder in blank
9 or by special indorsement or its delivery when payable to bearer,
10 shall carry the presumption that the indorsee or transferee is
11 owner provided there is nothing upon the face of the paper or in
12 any prior indorsement to indicate an agency or trustee relation
13 of any prior party. But where an item is deposited or is re-
14 ceived for collection indorsed specially or in blank, the bank
15 may convert such an indorsement into a restrictive indorsement
16 by writing over the signature of the indorser the words "for
17 deposit" or "for collection", or other restrictive words to
18 negative the presumption that such bank of deposit or indorsee
19 bank is owner; and in the case of an item deposited or received
20 for collection payable to bearer, may negative such presumption
21 by indorsing thereon the words "Received for deposit" or "re-
22 ceived for collection" or words of like import.

23 **SECTION 3.179 DUTY AND RESPONSIBILITY OF BANK COLLECTIVE AGENTS**

24 It shall be the duty of the initial or any subsequent agent
25 collecting bank to exercise ordinary care in the collection of
26 an item and when such duty is performed such agent bank shall
27 not be responsible if for any cause payment is not received in
28 money or an unconditional credit given on the books of another
29 bank, which such agent bank has requested or accepted. An initial
S.B. No. 78 as amended -65-

1 or subsequent agent collecting bank shall be liable for its own
2 lack of exercise of ordinary care but shall not be liable for
3 the neglect, misconduct, mistakes or defaults of any other agent
4 bank or of the drawee or payor bank.

5 **SECTION 3.180 RULES OF ORDINARY CARE IN FORWARDING**
6 **AND PRESENTMENT**

7 A. Where an item is received on deposit or by a subsequent
8 agent bank for collection, payable in another town or city, it
9 shall be deemed the exercise of ordinary care to forward such
10 item by mail, not later than the business day next following its
11 receipt either

12 (1) Direct to the drawee or payor in the event such
13 drawee or payor is a bank.

14 (2) To another bank collecting agent according to the
15 usual banking custom, either located in the town or city where the
16 item is payable or in another town or city.

17 B. Where an item is received on deposit or by a subsequent
18 agent bank for collection, payable by or at another bank in the
19 same town or city in which such agent bank is located, it shall
20 be deemed the exercise of ordinary care to present the item for
21 payment at any time not later than the next business day follow-
22 ing the day on which the item is received either

23 (1) At the counter of the drawee or payor by agent
24 or messenger.

25 (2) Through the local clearing house under the regu-
26 lar established procedure, or according to the usual banking
27 custom where the collecting or payor bank is located in an out-
28 lying district.

29 C. The designation of the above methods shall not exclude
S.B. No. 76 as amended - 66 -

any other method of forwarding or presentment which under existing rules of law would constitute ordinary care.

SECTION 3.181 ITEMS RECEIVED THROUGH THE MAIL: WHEN PAID

Where the item is received by mail by a solvent drawee or payer bank, it shall be deemed paid when the amount is finally charged to the account of the maker or drawer.

SECTION 3.182 MEDIUM OF PAYMENT: UNCONDITIONAL CREDIT DETERMINES RESPONSIBILITY

Where ordinary care is exercised, any agent collecting bank may receive in payment of an item without becoming responsible as debtor therefor, whether presented by mail, through the clearing house or over the counter of the drawee or payor, in lieu of money, either

(1) The check or draft of the drawee or payor upon another bank.

(2) The check or draft of any other bank upon any bank other than the drawee or payor of the item.

(3) Such method of settlement as may be customary in a local clearing house or between clearing banks or otherwise; provided, that whenever such agent collecting bank shall request or accept in payment an unconditional credit which has been given to it on the books of the drawee or payor or on the books of any other bank, such agent collecting bank shall become debtor for such item and shall be responsible therefor as if the proceeds were actually received by it in money.

SECTION 3.183 MEDIUM OF REMITTANCE: UNCONDITIONAL CREDIT DETERMINES RESPONSIBILITY

Where ordinary care is exercised, any agent collecting bank may receive from any subsequent bank in the chain of collection

S.B. No. 78 as amended -67-

1 in remittance for an item which has been paid, in lieu of money,
2 the check or draft of the remitting bank upon any bank other
3 than itself or the drawee or payer of the item or such other
4 method of settlement as may be customary; provided, that whenever
5 such agent-collecting bank shall request or accept an additional
6 tional credit which has been given to it on the books of the
7 remitting bank or on the books of any other bank, such agent
8 collecting bank shall become debtor for such item and shall be
9 responsible therefor as if the proceeds were actually received
10 by it in money.

11 SECTION 3.184 EXCEPTION TO THAT AS DISCHARGED. ITEM

12 PRESENTED BY MAIL.

13 Where an item is duly presented by mail to the drawee or
14 payer, whether or not the same has been charged to the account
15 of the maker or drawer thereof or returned to such maker or
16 drawer, the agent collecting bank so presenting may, at its
17 election, exercised with reasonable diligence, treat such item
18 as dishonored by non-payment and recourse may be had upon prior
19 parties thereto in any of the following cases:

20 (1) Where the check or draft of the drawee or payer
21 bank upon another bank received in payment therefor shall not
22 be paid in due course.

23 (2) Where the drawee or payer bank shall without re-
24 quest or authority tender as payment its own check or draft upon
25 itself or other instrument upon which it is primarily liable.

26 (3) Where the drawee or payer bank shall give an un-
27 requested or unauthorized credit therefor on its books or the
28 books of another bank.

29 (4) Where the drawee or payer shall retain such item
30 B. B. No. 76 as amended -68-

1 without remitting therefor on the day of receipt or on the day
2 of maturity if payable otherwise than on demand and received by
3 it prior to or on such day of maturity.

4 Provided, however, that in any case where the drawee or
5 payer bank shall return any such item unpaid not later than the
6 day of receipt or of maturity as aforesaid in the exercise of
7 its right to make payment only at its own counter, such item
8 cannot be treated as dishonored by non-payment and the delay
9 caused thereby shall not relieve prior parties from liability.

10 Provided further, that no agent collecting bank shall be
11 liable to the owner of an item where, in the exercise of ordinary
12 care in the interest of such owner, it makes or does not make the
13 election above provided or take such steps as it may deem ne-
14 cessary in cases (2), (3) and (4) above.

15 SECTION 3.185 NOTICE OF DISHONOR OF ITEMS PRESENTED BY MAIL

16 In case of the dishonor of an item duly presented by mail
17 as provided for in Section 3.184, notice of dishonor of
18 such item to prior parties shall be sufficient if given
19 with reasonable diligence after such dishonor; and further, in
20 the event of failure to obtain the return of any such item notice
21 of dishonor may be given upon a copy or written particulars
22 thereof, and delay in giving notice of dishonor caused by an
23 attempt with reasonable diligence to obtain return of such item
24 shall be excused.

25 SECTION 3.186 INSOLVENCY AND PREFERENCES AFFECTING COLLECTION
26 ITEMS

27 A. When the drawee or payer, or any other agent collecting
28 bank shall fail or be closed for business by law or by action
29 of the board of directors or by other proper legal action, after
N.B. No. 76 as amended - 69-

1 an item shall be mailed or otherwise entrusted to it for collec-
2 tion or payment but before the actual collection or payment
3 thereof, it shall be the duty of the receiver or other official
4 in charge of its assets to return such item, if same is in his
5 possession, to the forwarding or presenting bank with reasonable
6 diligence.

7
8 B. Except in cases where an item or items is treated as
9 dishonored by non-payment as provided in Section 3.184, where a
10 drawee or payor bank has presented to it for payment an item or
11 items drawn upon or payable by or at such bank and at the time
12 has on deposit to the credit of the maker or drawer an amount
13 equal to such item or items and such drawee or payor shall fail
14 or close for business as above, after having charged such item
15 or items to the account of the maker or drawer thereof or other-
16 wise discharged his liability thereon but without such item or
17 items having been paid or settled for by the drawee or payor
18 either in money or by an unconditional credit given on its books
19 or on the books of any other bank, which has been requested or
20 accepted so as to constitute such drawee or payor or other bank
21 debtor therefor, the assets of such drawee or payor shall be
22 impressed with a trust in favor of the owner or owners of such
23 item or items for the amount thereof, or for the balance payable
24 upon a number of items which have been exchanged, and such owner
25 or owners shall be entitled to a preferred claim upon such assets,
26 irrespective of whether the fund representing such item or items
27 can be traced and identified as part of such assets or has been
28 intermingled with or converted into other assets of such failed
29 bank.

30 C. Where an agent collecting bank other than the drawee or
31 B. N. No. 75 as amended - 20 -

1 payer shall fail or be closed for business as above, after having
2 received in any form the proceeds of an item or items entrusted
3 to it for collection, but without such item or items having been
4 paid or remitted for by it either in money or by an unconditional
5 credit given on its books or on the books of any other bank which
6 has been requested or accepted so as to constitute such failed
7 collecting or other bank debtor therefor, the assets of such
8 agent collecting bank which has failed or been closed for business
9 as above shall be impressed with a trust in favor of the
10 owner or owners of such item or items for the amount of such
11 proceeds and such owner or owners shall be entitled to a preferred
12 claim upon such assets, irrespective of whether the fund repre-
13 senting such item or items can be traced and identified as part
14 of such assets or has been intermingled with or converted into
15 other assets of such failed bank.

16 **SECTION 3.167 COMPETENCY OF BANK AND CORPORATION NOTARIES**

17 A. It shall be lawful for any notary public or any other
18 officer authorized to administer an oath or take an acknowledgment
19 or proof of an instrument or make protest who is a stockholder,
20 director, officer or employee of a bank or other corporation to
21 take the acknowledgment of any party to any written instrument
22 executed to or by such corporation or to take proof of the
23 execution of such instrument, or to administer an oath to any
24 other stockholder, director, officer, employee or agent of such
25 corporation, or to protest for non-acceptance or non-payment
26 bills of exchange, drafts, checks, notes and other negotiable
27 instruments which may be owned or held for collection by such
28 corporation: Provided, it shall be unlawful for any notary public
29 to take the acknowledgment of an instrument executed by or to a

1 bank or other corporation of which he is a stockholder, director,
2 officer, or employee, where such notary is a party to such
3 instrument, either individually or as a representative of such
4 corporation, or to protest any negotiable instrument owned or
5 held for collection by such corporation, where such notary is
6 individually a party to such instrument.

7 B. Any written instrument heretofore acknowledged, any oaths
8 heretofore administered, and any protests for the nonacceptance
9 or nonpayment of bills of exchange, drafts, checks, notes and
10 other negotiable instruments which may be owned or held for
11 collection by a bank or other corporation heretofore executed,
12 shall be regarded as valid if executed in accordance with the
13 provisions of this Section.

14 **SECTION 3.188 THIS PART NOT RETROACTIVE**

15 The provisions of this Part E shall not apply to transactions
16 taking place prior to the time when this Act takes effect, unless
17 expressly so stated.

18 **SECTION 3.189 CASES NOT PROVIDED FOR IN THIS PART**

19 In any case not provided for in this Part E, the rules of
20 law and equity, including the law merchant and those rules of
21 law and equity relating to trusts, agency, negotiable instruments
22 and banking, shall continue to apply.

23 **SECTION 3.190 UNIFORMITY OF INTERPRETATION**

24 This Part E shall be so interpreted and construed as to
25 effectuate its general purpose to make uniform the law of those
26 states which enact it.

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TITLE 2. ORGANIZATION AND CORPORATE
FUNCTIONS OF BANKS

SECTION 3.201 GENERAL CORPORATE POWERS; AUTHORIZED TRUST POWERS

A. A territorial bank may be organized to exercise the powers provided in this Act, and such general corporate powers as are appropriate to its purpose.

B. A territorial bank shall, without specific mention thereof in its charter, have all the powers conferred by this Act and the following additional general corporate powers:

(1) To continue perpetually as a corporation, subject to the power of the Legislature under the Organic Act of this Territory.

(2) To sue and be sued, complain and defend, in its corporate name.

(3) To have a corporate seal, which may be altered at pleasure, and to use the same by causing it or a facsimile thereof to be impressed or affixed, or in any manner reproduced.

(4) To make, alter, amend, and repeal by-laws, not inconsistent with its charter or with law, for the administration and regulation of the affairs of the corporation.

(5) To elect or appoint and remove officers and agents of the bank and to define their duties and fix their compensation.

(6) To adopt and operate reasonable bonus and pension plans for officers and employees.

(7) To make contributions to or for the use or benefit of (a) the United States, any state, territory, or political subdivision thereof, or the District of Columbia or any possession of the United States for exclusively public purposes, or (b) a corporation, trust or community chest fund, or foundation

1 created or organized in the United States or of any state or
2 territory or of the District of Columbia, or of any possession
3 of the United States and organized and operated exclusively for
4 religious, charitable, scientific, veteran rehabilitation serv-
5 ice, literary or educational purposes, or for the prevention
6 of cruelty to children or animals, no part of the net earnings
7 of which inures to the benefit of any private shareholder or
8 individual, and no substantial part of the activities of which
9 is carrying on propaganda or otherwise attempting to influence
10 legislation; to the extent authorized, approved or ratified by
11 action of the board of directors of the corporation, except as
12 otherwise specifically provided or limited by its articles of
13 incorporation, or its by-laws or by resolution duly adopted by
14 its stockholders.

15 C. In addition to its other powers, a territorial bank
16 which is authorized by its charter to exercise trust powers
17 shall, upon proper qualification under this Act have the power
18 to act as a fiduciary in any capacity, including but without
19 limitation as registrar or transfer agent, as fiscal agent or
20 attorney in fact and the power to receive, manage and apply sink-
21 ing funds.

22 **SECTION 3.202 LIMITATION OF BRANCH BANKING**

23 No bank heretofore or hereafter organized, shall open,
24 commence or establish any branch bank, office or agency which is
25 located more than one hundred (100) miles from its principal
26 office.

27 **SECTION 3.203 CAPITAL STRUCTURE; MINIMUM CAPITAL; ASSESSMENT**
28 **PROCEDURE**

29 A. A territorial bank shall have such capital structure as
30 S. B. No. 76 as amended - 74-

1 the Board shall deem adequate but not less than the following:

2 (1) Capital consisting of common stock as follows:

3 LOCATED IN A COMMUNITY 4 HAVING POPULATION OF	MINIMUM CAPITAL FOR BANK NOT HAVING TRUST 5 POWERS	MINIMUM CAPITAL FOR BANK HAVING TRUST 6 POWERS
7 LESS THAN 10,000	\$ 50,000.00	\$ 55,000.00
8 10,000 OR MORE	100,000.00	110,000.00

9 (2) Paid-in surplus amounting to not less than 20 per
10 cent of its capital.

11 B. Provided, however, that any bank which is engaged in
12 business prior to the passage of this Act shall not be deemed in
13 violation of this Act provided that it shall have acquired a
14 paid-in capital of not less than \$50,000.00 on or before March 26,
15 1954.

16 C. The issuance of preferred stock shall be authorized by
17 the Board only when it appears that necessary capital cannot be
18 obtained by the issuance of common stock. Preferred stock shall
19 have preferences, powers and rights as the Board may approve.
20 It shall not be retired without the approval of the Board and the
21 requirement of such approval shall be stated in the stock certi-
22 ficates, but the Board may give advance approval to sinking funds
23 payable exclusively out of earnings available for dividends.

24 D. The Commissioner may direct a territorial bank to levy
25 an assessment in a designated amount upon the Holders of record
26 of common stock to remedy an impairment of capital. Upon receipt
27 of an order to levy an assessment, the directors shall cause to
28 be sent to all holders of common stock a notice of the amount
29 of the assessment and a copy of this subsection. If an assess-
30 ment is not paid within 30 days after the notice is received by
31 said directors, the territorial bank shall offer the shares of

1 the defaulting stockholders for sale at public auction at a price
2 which shall not be less than the amount of the assessment and
3 the cost of the sale. Any excess shall be paid to the prior
4 owners. The method of collection provided herein shall be the
5 sole method of collecting assessments.

6 **SECTION 3.204 DOUBLE STOCKHOLDER LIABILITY; EXCEPTION IF DEPOSITS**
7 **ARE INSURED**

8 The stockholders of every territorial bank shall be individu-
9 ally liable, equally and ratably, and not one for another, for the
10 benefit of the creditors of such bank to the amount of their
11 stock at the par value thereof, in addition to the stock held by
12 them. Such liability may be enforced by action at law, or suit
13 in equity by any such bank in process of liquidation, or by any
14 receiver or persons succeeding to the legal rights of such bank.
15 Such liabilities shall continue for six months after any transfer
16 of stock, as to the affairs of the bank at the time and prior to
17 date of transfer; but when and if the deposits of the bank are
18 insured by the United States or any agency thereof, the stock-
19 holders of such bank shall not be liable.

20 **SECTION 3.205 INCORPORATORS**

21 A territorial bank may be organized by 5 or more individual
22 incorporators. A majority of the incorporators shall be resi-
23 dents of the Territory. Each incorporator shall subscribe and
24 pay in full in cash for stock having a par value not less than
25 1 per cent of the minimum capital and paid-in surplus require-
26 ments.

27 **SECTION 3.206 NOTICE OF INTENTION**

28 A. (1) The incorporators shall file with the Commissioner
29 a notice of their intention to organize a territorial bank,

1 signed by each of them. The notice shall state:

2 (a) The name, residence and occupation of each incorpo-
3 rator, and the amounts of stock subscribed, and paid for, by each.

4 (b) The name and address of an individual within the
5 Territory to whom notice to all the incorporators may be sent.

6 (c) The total capital, the number of shares of each
7 class, and the par value of the shares of each class of the pre-
8 posed territorial bank.

9 (d) The community in which the proposed territorial
10 bank is to be located.

11 (8) An existing bank shall file with the Board a notice of
12 its intention to institute a branch bank, or to move the location
13 of its principal office or of any branch thereof. The notice
14 shall state:

15 (a) The address or the community in which the proposed
16 branch is to be located, or the address to which the principal
17 office or of any branch is proposed to be moved.

18 (b) Such other information as the Commissioner may
19 require.

20 2. The Commissioner may order the incorporators not to
21 accept any stock subscriptions, or to cease accepting subscrip-
22 tions, if he shall determine that the notice does not comply with
23 the provisions of this section, that the incorporators are pre-
24 ceeding unlawfully or are not acting in good faith. It shall be a
25 criminal offense against this Act to accept any stock subscription
26 until 30 days after filing a notice of intention or in violation
27 of an order of the Commissioner; and any such subscription shall
28 be enforceable only by the Commissioner and only to the extent
29 he determines it to be necessary to protect depositors or the

1 public.

2 **SECTION 3.207 ORGANIZATION EXPENSES**

3 A. Each subscriber at the time he subscribes to the stock
4 of a proposed territorial bank shall pay in cash a sum at least
5 equal to 5 per cent of the par value of such stock into a fund
6 to be used to defray the expenses of organization. No organi-
7 zation expense shall be paid out of any other funds of the bank.
8 Upon the grant of a charter any unexpended balance shall be
9 transferred to surplus. If no application for a charter has
10 been made within 6 months of the filing of a notice of intention,
11 or any additional period allowed by the Commissioner, or if the
12 application has been finally denied, any unexpended balance shall
13 be distributed among the contributors in proportion to their re-
14 spective payments. The Commissioner may require an account of
15 disbursements from the fund and may order the incorporators to
16 restore any sum which has been expended for other than proper
17 organization expenses.

18 B. No payment shall be made from the organization expense
19 fund for securing subscriptions to stock.

20 **SECTION 3.208 APPLICATION FOR CHARTER**

21 A. After the capital stock has been fully subscribed, the
22 incorporators may apply to the Commissioner for a charter. The
23 incorporators shall submit:

24 (1) A proposed charter in triplicate in such form as
25 the Commissioner shall prescribe, containing the following
26 information:

27 (a) The name of the territorial bank.

28 (b) The community in which it is to be located.

29 (c) The amount of capital, the number of shares

1 of each class, the relative preferences, powers
2 and rights of each class, the par value
3 of the shares of each class and the amount of the
4 paid-in surplus.

5 (d) A statement whether voting for directors shall
6 or shall not be cumulative and the extent of the
7 preemptive rights of stockholders.

8 (e) Such other proper provisions to govern the
9 business and affairs of the territorial bank
10 as may be desired by the incorporators.

11 (2) An application in such form and containing such
12 information as the Board requires, including the following:

13 (a) The name, residence and occupation of each
14 subscriber and the number of shares for
15 which he has subscribed.

16 (b) The past and present connection with any
17 bank other than as a customer on terms generally
18 available to the public, of each
19 director and each subscriber to more than
20 5 per cent of the capital stock.

21 (c) The address at which it is proposed that the
22 territorial bank do business or, if such
23 address is not known, the area within the
24 community in which it is proposed that the
25 business be located.

26 B. The incorporators shall mail such notice of the applica-
27 tion as the Commissioner may prescribe to such persons and organi-
28 zations as he may designate. The Commissioner may also require
29 publication of the notice.

1 **SECTION 3.209 DETERMINATION ON APPLICATION FOR CHARTER**

2 A. The Commissioner shall grant a charter by endorsing and
3 approval upon all copies of the application therefor, if the
4 Board shall determine that:

- 5 (1) The addition of the proposed facilities in the
6 community is not detrimental to a sound banking
7 system.
8 (2) The incorporators have proceeded in a lawful manner.
9 (3) The name is not deceptively similar to that of
10 another bank or otherwise misleading.
11 (4) The persons who will serve as directors and officers,
12 insofar as such persons are known, are qualified by
13 character and experience.
14 (5) The capital is not less than the required minimum.

15 B. The Commissioner shall file a copy of the charter in the
16 office of the Clerk of the District Court for the judicial divi-
17 sion in which such bank is located; one shall be filed with the
18 Auditor of the Territory; one shall be retained in the Department's
19 files; and one copy shall be returned to the individual named to
20 receive notices to the incorporators.

21 **SECTION 3.210 SUBSCRIPTION CALLS**

22 After a charter has been granted, the directors may call for
23 the payment of the subscriptions in full within 30 days from the
24 date of the notice. No share shall be issued until the par value
25 and the pro rata portion of the paid-in surplus specified in the
26 charter have been paid in full in cash.

27 **SECTION 3.211 FIRST MEETINGS OF STOCKHOLDERS AND DIRECTORS:**

28 **ADOPTION OF BY-LAWS**

29 A. After the capital and surplus have been fully paid, a

1 meeting of the stockholders shall be called by the incorporators
2 on 10 days' notice to elect directors and adopt by-laws, and
3 direct the call, on 5 days' notice, of the first meeting of
4 directors for the election of officers.

5 B. By-laws shall be adopted and may be amended by a vote
6 of the holders of a majority of the outstanding voting shares
7 voted at a meeting of the stockholders, but the by-laws may pre-
8 vide for amendment by the board of directors of any provisions
9 other than those relating to the duties, term of office, remunera-
10 tion, reimbursement or indemnification of a director.

11 **SECTION 3.212 REIMBURSEMENT OF OFFICER, DIRECTOR OR EMPLOYEE**
12 **FOR EXPENSES IN DEFENDING SUITE**

13 The by-laws of a territorial bank may provide that it shall
14 indemnify every officer, director or employee, his heirs, execu-
15 tors and administrators, against judgments resulting from and the
16 expenses reasonably incurred by him in connection with any action
17 to which he may be made a party by reason of his being an officer,
18 director or employee of the territorial bank, including any action
19 based upon any alleged act or omission on his part as an officer,
20 director or employee of the territorial bank, except in relation
21 to matters as to which he shall be finally adjudged in such
22 action to be liable for his negligence or his misconduct, and
23 except that, in the event of a settlement, indemnification shall
24 be provided only in connection with such matters covered by the
25 settlement as to which the territorial bank is advised by coun-
26 sel that in the opinion of counsel the person to be indemnified
27 was not liable for such negligence or misconduct. The foregoing
28 right of indemnification shall not be exclusive of other rights
29 to which such officers, directors or employees may be entitled.

1 **SECTION 3.213 CERTIFICATE OF AUTHORITY REQUIRED**

2 A. It shall be a criminal offense against this Act for a
3 bank to perform any act other than to perfect its organization,
4 obtain and equip a place of business and otherwise prepare to do
5 business before receiving a certificate of authority to operate,
6 as to each location of the principal office and to each branch
7 office.

8 B. Application for a certificate of authority for the oper-
9 ation of the initial office of a bank shall be made to the
10 Commissioner and shall contain:

11 (1) A statement that the capital and surplus have been
12 paid in.

13 (2) The name, address and business and professional
14 affiliations of each director and executive officer,

15 (3) The name and address of each stockholder and the
16 number of shares held by him.

17 (4) The address at which the bank will operate.

18 (5) A statement that all of the by-laws adopted have
19 been attached as an exhibit to the application.

20 (6) A statement that the bank has obtained insurance
21 of its deposits, or can obtain insurance of its deposits, by the
22 United States, or an agency thereof.

23 (7) Such other information as the Commissioner may re-
24 quire to enable him to determine whether a certificate of authority
25 should be issued.

26 C. Application for a certificate of authority for the
27 operation of any branch bank, or for the change of location of
28 the principal office of or any branch of any bank shall be made
29 to the Commissioner and shall contain:

1 (1) The address at which the bank or branch thereof
2 will operate.

3 (2) Such other information as the Commissioner may
4 require to enable him to determine whether a certificate of
5 authority should be issued.

6 D. The Commissioner shall issue a certificate of authority
7 for the operation of the initial office of a bank if:

8 (1) The capital and surplus have been fully paid in cash.

9 (2) Appropriate by-laws have been adopted.

10 (3) Any conditions imposed by the Board in granting
11 the charter have been fulfilled.

12 (4) The requirements of this Act have been satisfied.

13 E. The Commissioner shall issue a certificate of authority
14 for the operation of a branch bank, or for the operation of the
15 principal office of a bank, or of a branch bank, in a changed
16 location, if:

17 (1) The Board shall determine that the addition of
18 the proposed facilities in the community is not detrimental to
19 a sound banking system.

20 (2) The bank has proceeded in a lawful manner.

21 (3) The name is not deceptively similar to that of
22 another bank in the proposed community or otherwise misleading.

23 (4) The sum of the capital and surplus is not less
24 than is required by subsection 3.205 A plus \$25,000.00 capital
25 for each branch which is in operation and each branch which is the
26 subject of the application.

27 (5) Any conditions imposed by the Board in granting
28 the certificate have been fulfilled.

29 (6) The requirements of this Act have been satisfied.

1 F. If no application for a certificate of authority is
2 filed within 6 months following the grant of a charter or any
3 additional period allowed by the Commissioner or if a certificate
4 of authority has been finally denied, the charter shall be for-
5 feited, and the bank shall be liquidated in accordance with the
6 orders of the Commissioner. If an improper expenditure has been
7 made, the Commissioner may order the persons who were incorpora-
8 tors or directors at the time to restore the sum by equal contri-
9 butions.

10 G. The Commissioner shall not hereafter issue to any person
11 either domestic or foreign, a certificate of authority empowering
12 him to engage in the business of branch banking or to open,
13 commence or establish any, or transact business as, branch banks,
14 offices or agencies other than those branch banks, offices and
15 agencies which are now authorized in this Territory, or which
16 are within 100 miles of the person's principal office.

17 H. If the rights conferred by a certificate of authority
18 have not been exercised within 6 months from the date of its
19 issuance, they shall lapse and be void, unless the Commissioner
20 shall by affirmative action, in response to a written application
21 for an extension of time timely filed, extend them for a further
22 period of time not to exceed 1 year from the date of the first
23 issuance of the certificate.

24 **SECTION 5.214 AMENDMENT OF CHARTER; CHANGE OF LOCATION**

25 A. A territorial bank may apply to the Commissioner to
26 amend its charter or to change its location.

27 B. An application for an amendment of the charter changing
28 the authorized capital or the number and par value of the shares
29 or to acquire or abandon trust powers or to change its location

1 must be authorized by the vote of two-thirds of the outstanding
2 voting stock voted at a meeting of the stockholders. Any other
3 application may be authorized by the vote of a majority of the
4 outstanding voting stock voted at a meeting of the stockholders.

5 C. Notice of the application shall be sent to such persons
6 and organizations as the Commissioner may require.

7 D. The Commissioner shall approve an application:

8 (1) To change the name of the corporation if the pro-
9 posed name is not deceptive or misleading.

10 (2) To change the number and par value of the shares
11 without altering the total capital unless such change will in-
12 equitably affect the interest of any stockholders and the bank
13 does not have sufficient surplus and undivided profits to pay
14 dissenting shareholders the fair value of their shares deter-
15 mined in accordance with Section 5.510 and have remaining the
16 required minimum paid-in surplus.

17 (3) To increase the total capital by increasing the
18 amount of common stock, but an amendment increasing the total
19 capital shall not become effective until the Commissioner finds that
20 the new capital has been fully paid in, in cash. In other cases,
21 the Commissioner shall present the application to the Board.

22 E. In making its determination the Board shall consider
23 whether the public convenience and advantage will be served by
24 granting the application and shall be guided by the standards
25 prescribed for the approval of an application for a charter,
26 insofar as they are reasonably applicable.

27 SECTION 5.215 MEETINGS OF STOCKHOLDERS; VOTING; PROXIES.

28 VOTING RIGHTS; REPRESENTATIVE RIGHT; TRANSFER OF STOCK

29 A. Regular meetings of stockholders shall be held annually

1 and at such additional times as the by-laws direct at such place
2 as may be designated by the by-laws. A special meeting may be
3 called at any time by the Commissioner, one-third of the direc-
4 tors, or the holder or holders of 5 per cent of the outstanding
5 voting shares. Notice shall be mailed at least 10 days before a
6 meeting to every person who was a stockholder of record 20 days
7 before the date of the meeting or at such longer period as may be
8 provided in the by-laws. No business shall be transacted at a
9 special meeting which is not specified in the notice thereof or
10 necessary or proper in connection with or incidental to the busi-
11 ness specified. The holders of a majority of the outstanding
12 voting shares or their authorized representatives shall consti-
13 tute a quorum. In the absence of a quorum a meeting may be ad-
14 journed from time to time without notice to the stockholders.

15 F. Except on the election of directors each share of common
16 stock shall have ~~one~~ vote which may be cast by the owner of re-
17 cord on the record date, or by his authorized representative,
18 whether or not the owner of record has the beneficial interest
19 therein. The bank may not vote shares which it holds in any
20 capacity other than as fiduciary.

21 G. A stockholder authorized to vote may by his proxy exe-
22 cuted in writing appoint a representative to cast his vote. The
23 Board may promulgate rules governing proxies and the sollicita-
24 tion thereof.

25 H. No shares deposited under a voting trust agreement shall
26 be voted by the trustee unless the agreement has been approved
27 by the Board. Approval shall be withheld, or, if previously
28 granted, revoked whenever it appears that the existence of the
29 trust would tend to reduce competition among lending institu-

1 tions or to affect adversely the character or competence of the
2 management of the bank's policies or operating procedures.

3 K. Unless otherwise provided in the charter, whenever addi-
4 tional stock of a class is offered for sale, stockholders of
5 record of the same class on the date of the offer shall have the
6 right to subscribe to such proportion of the shares as the stock
7 held by them bears to the total of the outstanding stock. This
8 right shall be transferable but shall terminate if not exercised
9 within 30 days of the offer. If the right is not exercised, the
10 stock shall not be offered for sale to others at a lower price
11 without the stockholders again being accorded a preemptive right
12 to subscribe.

13 F. Shares of stock shall be transferable in accordance
14 with the by-laws but no transfer shall be effective with respect
15 to the bank until it has been entered upon the transfer books,
16 as required by subsection 3.280 C of the Act. The stock book
17 shall be available for examination by a stockholder of the corp-
18 oration at the principal place of business during hours.

19 SECTION 3.216 DIRECTORS AND OFFICERS

20 A. The affairs of a territorial bank shall be managed by a
21 board of directors which shall exercise its powers and be re-
22 sponsible for the discharge of its duties. The number of
23 directors, not less than 5 nor more than 25, shall be fixed by
24 the by-laws and the number so fixed shall be the board,
25 regardless of vacancies; Provided that any bank now authorized
26 to do business in the Territory shall not be required to increase
27 the number of its directors, if otherwise lawful. At least three-
28 fourths of the directors shall be citizens of the United States
29 and two-thirds shall be residents of this Territory. Each

1 director shall have full record and beneficial ownership free of
2 lien, encumbrance or repurchase agreement of common stock of the
3 bank of the par value of at least \$1,000.00. Any director who be-
4 comes disqualified shall forthwith resign his office but upon re-
5 moval of such disqualification he shall be eligible for election.
6 A director who is disqualified may be removed by the board of
7 directors or by the Commissioner. No action taken by a director
8 prior to resignation or removal shall be subject to attack on the
9 ground of his disqualification.

10 B. Directors shall receive such reasonable compensation as
11 the by-laws may prescribe and shall serve until their successors
12 are elected and qualify.

13 C. Directors shall be elected by the stockholders at the
14 first meeting and thereafter at the annual meeting or at a
15 special meeting called for the purpose. If the charter provides
16 for cumulative voting the votes of each share may be cast for
17 one person or divided among 2 or more, as the stockholder may
18 choose. The person or persons (to the number of directors to be
19 elected) having the largest number of votes shall be elected.

20 D. The term of office of directors shall be 1 year or,
21 if the by-laws so provide, 3 years, in which case one-third of
22 the directors, or as nearly one-third as possible shall be elected
23 for each year following the first election of directors. Vacan-
24 cies at any one time to the number of one-third of the board
25 may be filled by vote of the board of directors until the next
26 meeting of the stockholders. The Commissioner may designate a
27 director to fill a vacancy which has continued for longer than
28 3 months and a director so designated shall serve until a succes-
29 sor is elected and has qualified.

1 E. A director may be removed by the stockholders at a
2 meeting. Where cumulative voting for directors is provided in
3 the charter no director shall be removed unless the votes cast
4 against a motion for his removal are less than the total number
5 of shares outstanding divided by the number of authorized di-
6 rectors, but all of the directors shall be removed if a majority
7 of the outstanding shares approves a motion for the removal of
8 all.

9 F. The officers designated by the by-laws shall be elected
10 by the board of directors. A member of the board of directors
11 shall be elected president. No officer shall be elected or a
12 contract executed for his employment for a period longer than
13 one year. An officer may be removed by the board of directors
14 at any time but removal shall not prejudice any rights that he
15 may have to damages for breach of contract of employment.

16 G. A bank shall report promptly to the Commissioner any
17 changes among executive officers and directors, including in its
18 report a statement of the business and professional affiliations
19 of new executive officers and directors.

20 **SECTION 3.217 DIRECTORS: MEETINGS AND DUTIES**

21 A. The board of directors shall meet at least once every
22 second month. The Commissioner, a director or an executive
23 officer may call a special meeting. A majority of the board of
24 directors shall constitute a quorum. The board shall keep minutes
25 of each meeting, including a record of attendance and of all votes
26 cast by each director.

27 B. The board of directors or an executive committee of not
28 less than one-third of the board shall review at least monthly
29 the following transactions occurring since the last review:

(1) Each loan, advance, discount, overdraft and purchase or sale of a security which exceeds in amount one-tenth of 1 per cent of the capital and surplus of the corporation, or \$5,000.00, whichever is larger.

(2) Every increase in loans, advances, discounts and overdrafts which exceed this amount or with the increase will exceed it and every purchase or sale of a security which, together with other such transactions in the securities during the preceding 2 months, involves such amount.

D. A territorial bank authorized to exercise trust powers shall not accept or voluntarily relinquish a fiduciary account without the approval or ratification of the board of directors or of a committee of officers or directors designated by the board to perform this function, but the board of directors or the committee may prescribe general rules governing acceptance or relinquishment of fiduciary accounts, and action taken by an officer in accordance with those rules is sufficient approval. Any committee so designated shall keep minutes of its meetings and report at each monthly meeting of the board of directors all action taken since the previous meeting of the board. The board of directors shall designate one or more committees of not less than 3 qualified officers or directors to supervise the investment of fiduciary funds. No such investment shall be made, retained or disposed of without the approval of a committee. At least once in every calendar year at intervals of not more than 15 months the committee shall review all the assets of each fiduciary account and shall determine their current value, safety and suitability and whether the investments should be modified or retained. The committee shall keep minutes of its meetings

and shall report at each meeting of the board of directors its conclusions on all questions considered and all action taken since the previous meeting of the board.

SECTION 3.218 FIDELITY BONDS AND OTHER INSURANCE REQUIRED.

A. The directors of a territorial bank shall direct and require good and sufficient fidelity bonds on all active officers and employees, whether or not they draw salary or compensation, which bonds shall provide for indemnity to such bank on account of any losses sustained by it as the result of any dishonest, fraudulent or criminal act or omission committed or omitted by them acting independently or in collusion or combination with any person or persons. Such bonds may be individual, renounce or blanket form, and the premiums therefor may be paid by the bank.

B. The said directors shall also direct and require suitable insurance protection to the bank against burglary, robbery, theft and other similar insurable hazards to which the bank may be exposed in the operations of its business on the premises or elsewhere.

C. The directors shall be responsible for prescribing at least once in each year the amount or penal sum of such bonds or policies and the sureties or underwriters thereon, after giving due and careful consideration to all known elements and factors constituting such risk or hazard. Such action shall be recorded in the minutes of the board of directors and thereafter be reported to the Commissioner and be subject to his approval.

SECTION 3.219 AUTHORITY TO DECLARE DIVIDENDS, CONDITIONAL.

The board of directors of a territorial bank may declare dividends from undivided profits if:

1 (1) The undivided profits account has been maintained
2 in accordance with the provisions of this Act.

3 (2) The reserve against deposits required by this Act
4 is not and will not thereby be impaired.

5 **SECTION 3.820 ACCOUNTING REQUIREMENTS: UNDIVIDED PROFITS ACCOUNT:**
6 **ADDITION TO SURPLUS FUND REQUIRED**

7 A. No credit shall be entered in the undivided profits
8 account founded upon an unrealized appreciation in the value of
9 any type of asset. Before any net profits are credited to the
10 undivided profits account, proper deduction shall be made for
11 all expenditures, accrued expenses, accrued taxes, losses, bad
12 debts and any write-offs or other deductions required by the
13 Board.

14 B. At any accounting period a debit balance in the un-
15 divided profits account shall be closed out to the surplus account
16 but no other transfer shall be made from the surplus account to
17 any but the capital account if the surplus after the transfer
18 would be smaller than the capital. Prior to determining that
19 undivided profits are available for the declaration of dividends
20 the following transfers shall be made:

21 (1) A debit balance in the net profit account shall be
22 closed out to the undivided profits account.

23 (2) There shall be transferred from the undivided pro-
24 fits account to the surplus account (a) the amount required to
25 raise the surplus to 20 per cent of the capital; and (b) the
26 amount, not exceeding 25 per cent of undivided profits, required
27 to raise the surplus to 100 per cent of the capital.

28 C. A book shall be provided by every bank in which shall
29 be entered the name and residence of the stockholders thereof,

1 the number of shares held by each, the time when such persons
2 became stockholders, and, also, all transfers of stock, stating
3 the time when made, the number of shares, and by whom transferred.
4 In all actions, suits and proceedings, said book shall be prima
5 facie evidence of the facts therein stated. A list of the
6 stockholders shall be kept posted in the bank office of each
7 bank, the deposits of which are not insured, showing the number
8 of shares held by each stockholder of record.

9 **SECTION 3.221 DEPOSIT INSURANCE AND MEMBERSHIP IN FEDERAL**
10 **RESERVE SYSTEM AUTHORIZED**

11 A territorial bank is authorized to do any act necessary to
12 obtain insurance of its deposits by the United States or any
13 agency thereof and to acquire and hold membership in the Federal
14 Reserve System.

15 **SECTION 3.222 DEPOSIT INSURANCE REQUIRED OF NEW BANKS; BOARD**
16 **ACTION IF INSURANCE DISCONTINUED**

17 No bank incorporated under this Act shall commence business
18 until it shall have completed arrangements for its deposits to be
19 insured by the United States or an agency thereof, provided, that
20 banks which qualified to do business prior to the passage of this
21 Act shall not be required to insure their deposits; and provided,
22 further, that any territorial bank which at any time has insured
23 its deposits may not relinquish such insurance without notice to
24 the Commissioner, 90 days in advance, of the discontinuance of such
25 insurance. Discontinuance of deposit insurance, or the receipt
26 of notice by the insurer that deposit insurance will be discontinued,
27 without immediate notice thereof to the Commissioner and his con-
28 sent to such discontinuance shall constitute cause for him to take
29 possession of such bank in the manner provided in Section 3.402

1 of this Act.

2 SECTION 3.223 WAIVER: CORPORATE ACTION BY UNANIMOUSLY SIGNED

3 WRITING

4 When a notice is required to be given to stockholders or
5 directors under this Act, or the charter or by-laws of any terri-
6 torial bank, a waiver thereof in writing, signed by the person
7 or persons entitled to said notice, whether before or after the
8 time stated therein, shall be deemed equivalent thereto. When-
9 ever the vote of stockholders or directors at a meeting thereof
10 is required or permitted to be taken in connection with any cor-
11 porate action, by any Section of this Act, the meeting and vote
12 of stockholders or directors may be dispensed with, if all of
13 the stockholders or directors who would have been entitled to
14 vote upon the action if such meeting were held, shall consent in
15 writing to such corporate action being taken. In the event that
16 the action which is consented to is such as would have required
17 the filing of a certificate under any of the other sections of
18 this Act, if such action had been voted upon by the stockholders
19 or directors at a meeting thereof, the certificate filed under
20 such other section shall state that written consent has been
21 given hereunder, in lieu of stating that the stockholders have
22 voted upon the corporate action in question, if such last men-
23 tioned statement is required thereby.

24 SECTION 3.224 CORPORATE OWNERSHIP OF SHARES IN BANKS PROHIBITED

25 It shall be unlawful for any corporation, foreign or domestic,
26 to purchase or own in any manner whatsoever the capital stock, or
27 any of it, of any bank which is subject to the regulation of the
28 board, provided, that when it shall become a bona fide necessity
29 to avoid loss, for a creditor corporation to accept shares of

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stock in any such regulated bank in payment of indebtedness owing
to such creditor corporation, such shares of stock may be so
accepted, but in all such cases the shares of the regulated bank
shall be disposed of in accordance with regulations of the Board.

1 Title 3. MERGER, CONSOLIDATION, CONVERSION AND
2 SALE OF ASSETS

3 Section 3.301. ADDITIONAL DEFINITIONS.

4 As used in this title, unless the context otherwise requires

5 (1) "Converting bank" means a bank converting from a
6 territorial to a national bank, or the reverse.

7 (2) "Merger" includes consolidation.

8 (3) "Merging bank" means a party to a merger.

9 (4) "Resulting bank" means the bank resulting from a
10 merger or conversion.

11 (5) "Dissenting stockholder" means a stockholder
12 dissenting and voting his dissent as provided in this title.

13 (6) "Receiving bank" means the territorial or national
14 bank into which one or more territorial banks or one or more
15 national banks, merge.

16 Section 3.302. RESULTING NATIONAL BANK.

17 A. Nothing in the law of this Territory shall restrict the
18 right of a territorial bank to merge with or convert into a
19 resulting national bank. The action to be taken by such merging
20 or converting territorial bank and its rights and liabilities
21 and those of its stockholders shall be the same as those prescrib-
22 ed for national banks at the time of the action by the law of
23 the United States and not by the law of this Territory, except
24 that a vote of the holders of two-thirds of each class of voting
25 stock of a territorial bank, at a meeting called in conformity
26 with the provisions of Section 3.305, shall be required for the
27 merger or conversion, and that on conversion by a territorial
28 into a national bank the rights of dissenting stockholders shall
29 be those specified in Section 3.310.

1 B. Upon the completion of the merger or conversion, the
2 franchise of any merging or converting territorial bank shall
3 automatically terminate.

4 **Section 3.303. RESULTING TERRITORIAL BANK.**

5 Upon approval by the Board, banks may be merged to result
6 in a territorial bank, or a national bank may convert into a
7 territorial bank as hereafter prescribed, except that the action
8 by a national bank shall be taken in the manner prescribed by
9 and shall be subject to limitations and requirements imposed by
10 the law of the United States which shall also govern the rights
11 of its dissenting stockholders.

12 **Section 3.304. MERGER PROCEDURE: RESULTING TERRITORIAL BANK.**

13 A. The board of directors of each merging territorial bank
14 shall, by a majority of the entire board, approve a merger
15 agreement which shall contain:

16 (1) A statement or recital that the agreement is
17 subject to approval by the Board and the Commissioner and by the
18 stockholders of each merging bank.

19 (2) The name of each merging bank and location of
20 each office.

21 (3) With respect to the resulting bank: (a) the name
22 and location of the principal and the other offices; (b) the
23 name and residence of each director to serve until the next annual
24 meeting of the stockholders; (c) the name and residence of each
25 officer; (d) the amount of capital, the number of shares and the
26 par value of each share; (e) the amount, terms, and preferences
27 if preferred stock is to be issued; and (f) the amendments to its
28 charter and by-laws.

29 (4) Provisions governing: (a) the manner of convert-

1 ing the shares of the merging banks into shares of the resulting
2 territorial bank; and (b) the manner of disposing of the shares
3 of the resulting territorial bank not taken by the dissenting
4 stockholders of each merging bank.

5 (5) Such other provisions as the Commissioner may re-
6 quire to enable the Board to discharge its duties with respect to
7 the merger.

8
9 B. After approval by the board of directors of each merging
10 territorial bank, the merger agreement shall be submitted to the
11 Department for approval, together with certified copies of the
12 authorizing resolutions of each board of directors showing approv-
13 al by a majority of the entire board of each merging territorial
14 bank and evidence of proper action by the board of directors of
15 any merging national bank.

16
17 C. After receipt by the Department of the papers specified
18 in subsection A, the Board and the Commissioner shall approve or
19 disapprove the merger agreement. The Board and the Department
20 shall approve the agreement if it finds that:

21 (1) The resulting territorial bank meets the require-
22 ments as to the formation of a new territorial bank.

23 (2) The agreement provides an adequate capital struc-
24 ture including surplus in relation to the deposit liabilities of
25 the resulting territorial bank and its other activities which
26 are to continue or are to be undertaken.

27 (3) The agreement is fair.

28 (4) The merger is not contrary to the public interest.

29
30 D. If the Board and the Commissioner disapprove an agree-
31 ment, the objections shall be stated in writing and the merging
32 banks shall be given an opportunity to amend the merger agree-

ment to obviate such objections.

Section 3.306. MERGER: APPROVAL BY STOCKHOLDERS OF TERRITORIAL BANK

A. To be effective, a merger which is to result in a territorial bank must be approved by the stockholders of each merging territorial bank by a vote of two-thirds of the outstanding voting stock of each class at a meeting called to consider such action, which vote shall constitute the adoption of the charter and by-laws of the resulting territorial bank, including the amendments in the merger agreement.

B. Notice of the meeting of stockholders of each territorial bank shall be given by publication in a newspaper of general circulation in the place where its principal office is located at least once a week for 4 successive weeks, and by mail at least 20 days before the date of the meeting, to each stockholder of record of each merging bank at his address on the books of his bank; no notice by publication need be given if written waivers are received from the holders of two-thirds of the outstanding shares of each class of stock. The notice shall be accompanied by a copy of Section 3.310 and shall state that the section sets forth the exclusive rights and remedies of dissenting stockholders.

Section 3.306. EFFECTIVE DATE OF MERGER: FILING OF APPROVED AGREEMENT: CERTIFICATE OF MERGER AS EVIDENCE

A. A merger or sale which is to result in a territorial bank shall, unless a later date is specified in the agreement, become effective upon the filing with the Commissioner of the executed agreement together with copies of the resolutions of the stockholders of each merging purchasing and selling bank approving it and a list of the owners of the shares voted against the
S.B. No. 76 as amended

1 merger or purchase, certified by the bank's president or a vice-
2 president and a secretary or cashier. The charters of the merging
3 banks, other than the resulting bank, shall thereupon automati-
4 cally terminate.

5 B. The Commissioner shall promptly issue to the resulting
6 bank a certificate of merger specifying the name of each merging
7 bank and the name of the resulting territorial bank. Such certi-
8 ficate shall be conclusive evidence of the merger and of the
9 correctness of all proceedings therefor in all courts and places,
10 and may be recorded in any office for the recording of deeds to
11 evidence the new name in which the property of any interest there-
12 in of the merging banks is held.

13 Section 3.307. CONVERSION OF NATIONAL INTO TERRITORIAL BANK.

14 A. A national bank located in this Territory which follows
15 the procedure prescribed by the laws of the United States to
16 convert into a state bank, shall be granted a charter by the
17 Commissioner unless he finds that the bank does not meet the
18 standards as to location of offices, capital structure, and
19 business experience and character of officers and directors for
20 the incorporation of a territorial bank.

21 B. The national bank may apply for such charter by filing
22 with the Department a certificate signed by its president and
23 cashier and by a majority of the entire board of directors, set-
24 ting forth the corporate action taken in compliance with the
25 provisions of the laws of the United States governing the con-
26 version of the national to a territorial bank, and the articles
27 of incorporation, approved by the stockholders, for the govern-
28 ment of the bank as a territorial bank.

29 Section 3.308. CONTINUATION OF CORPORATE ENTITY: USE OF OLD NAME

30 S.B. No. 76 as amended

1 A. A resulting territorial or national bank shall be the
2 same business and corporate entity as each merging bank or as
3 the converting bank with all the property, rights, powers, and
4 duties of each merging bank or the converting bank, except as
5 affected by the law of this Territory in the case of a resulting
6 territorial bank or the laws of the United States in the case of
7 a resulting national bank, and by the charter and by-laws of the
8 resulting bank.

9 B. A resulting bank shall have the right to use the name
10 of any merging bank or of the converting bank whenever it can do
11 any act under such name more conveniently.

12 C. Any reference to a merging or converting bank in any
13 writing, whether executed or taking effect before or after the
14 merger or conversion, shall be deemed a reference to the result-
15 ing bank if not inconsistent with the other provisions of such
16 writing, except when the resulting bank is not authorized to or
17 has not qualified to exercise the powers conferred or required
18 by the writing.

19 **Section 3.509. SALE OF ALL ASSETS OF BANK OR DEPARTMENT**

20 A. Any territorial bank or trust company may sell to any
21 other bank or trust company: (a) all or substantially all of
22 the selling bank assets and business; or (b) all or substantially
23 all of the assets and business of any department of the selling
24 bank.

25 B. Any territorial bank or trust company may, upon assuming
26 the liabilities relating thereto, purchase (a) all or substantial-
27 ly all of the assets and business of another bank or trust com-
28 pany; or (b) all or substantially all of the assets and business
29 of any department of another bank or trust company.

1 G. The agreement of purchase and sale shall be authorized,
2 approved by the Board, approved by the vote of a majority of the
3 stockholders of the purchasing and selling banks at meetings
4 called for the purpose in like manner as meetings to approve
5 mergers are called, and filed with the Commissioner accompanied
6 by evidence of such stockholders' approval in like manner as
7 agreements of merger are filed. After such approval is given by
8 the stockholders a notice of such sale shall be published once a
9 week for 3 successive weeks in a newspaper of large general circu-
10 lation in the community in which the selling bank has its princi-
11 pal office, and proof of such publication shall be filed with the
12 Commissioner.

13 D. Notwithstanding any term of the agreement, or of his
14 contract of deposit, any depositor whose business is thus sold
15 has the right to withdraw his deposit in full on demand after
16 such sale unless by dealing with the purchasing bank with know-
17 ledge of the purchase he ratifies the transfer.

18 E. The agreement of sale may provide for the transfer to
19 the purchasing bank of all fiduciary positions held by the selling
20 bank subject to the right of the court, on petition of any
21 interested party, to appoint another or succeeding fiduciary to
22 the positions so transferred. Until the court appoints another or
23 succeeding fiduciary the purchasing bank shall, if qualified to
24 do so, exercise any fiduciary function vested in the selling bank.

25 F. No right against or obligation of the selling bank in
26 respect of the assets or business sold shall be released or im-
27 paired by the sale until 1 year from the last date of publica-
28 tion of the notice pursuant to subsection C of this Section, but
29 after the expiration of such year, no action can be brought

1 against the selling bank on account of any deposit, obligations,
2 trust, or asset transferred to or liability assumed by the pur-
3 chasing bank.

4 Section 3.310. DISSENTING STOCKHOLDERS

5 A. A dissenting stockholder of a territorial bank to be
6 merged shall be entitled to receive the value in cash of only
7 those shares which were voted against a merger to result in a
8 territorial bank, against the conversion of a territorial bank
9 into a national bank or against a sale of all or substantially
10 all of the territorial bank's assets, and only if written demand
11 thereupon is made to the resulting receiving territorial or
12 national bank at any time within 30 days after the effective
13 date of the merger or conversion, accompanied by the surrender
14 of the stock certificates. The value of such shares shall be
15 determined, as of the date of the stockholders' meeting approving
16 the merger or conversion, by 3 appraisers, 1 to be selected by
17 the vote of the owners of two-thirds of the dissenting shares
18 of the bank to be merged, at a meeting called by the Commissioner
19 on 10 days notice, 1 by the board of directors of the resulting
20 receiving territorial or national bank, and the third by the 2
21 as chosen. The valuation agreed upon by any 2 appraisers shall
22 govern. If any necessary appraiser is not appointed within 60
23 days after the effective date of the merger or conversion, the
24 Commissioner shall make the necessary appointment, or if the
25 appraisal is not completed within 90 days after the merger or
26 conversion becomes effective, the Commissioner shall cause an
27 appraisal to be made.

28 B. The merger agreement may fix an amount which the merging
29 banks consider to be the fair market value of the shares of a

1 merging or the converting bank at the time of the stockholders
2 meeting approving the merger or conversion, which the resulting
3 receiving bank will pay dissenting stockholders of the bank to
4 be merged, entitled to payment in cash. The amount due under
5 such accepted offer or under the appraisal shall constitute a
6 debt of the resulting receiving territorial or national bank.

7 G. The expenses of appraisal shall be paid by the resulting
8 receiving territorial bank except where the value fixed by the
9 appraisers does not exceed the value fixed by the merger agree-
10 ment, in which case one-half of the expenses shall be paid by
11 the resulting receiving bank and one-half by the dissenting
12 stockholders of the territorial bank to be merged, who requested
13 the appraisal, in proportion to their respective holdings.

14 **Section 3.311. NON-CONFORMING ASSETS ON BUSINESS.**

15 If a merging, converting or selling bank has assets which do
16 not conform to the requirements of territorial law for the re-
17 sulting or purchasing territorial bank or carries on business
18 activities which are not authorized or permitted for the result-
19 ing or purchasing territorial bank, the Department may permit a
20 reasonable time to conform with the law of this Territory, and,
21 in the case of a resulting or purchasing territorial bank that is
22 not to exercise trust powers, shall require that prompt applica-
23 tion be made to a court of competent jurisdiction for the appoint-
24 ment of successor trustees.

25 **Section 3.312. BOOK VALUE OF ASSETS: WRITE UP PROHIBITED**

26 Without approval by the Department no asset shall be carried
27 on the books of the resulting or purchasing territorial bank at
28 a valuation higher than that on the books of the merging or con-
29 verting bank at the time of its last examination by a territorial

1 bank examiner, or national bank examiner, or Federal Reserve
2 Bank examiner or an examiner of the United States or any agency
3 thereof which insures bank deposits.
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TITLE 4. LIQUIDATION, DISSOLUTION,
AND REORGANIZATION

Section 3.401. VOLUNTARY LIQUIDATION AND DISSOLUTION.

A. With the approval of the Board, a territorial bank may liquidate and dissolve. The Board shall grant such approval if it appears that:

(1) The proposal to liquidate and dissolve has been approved by a vote of two-thirds of the outstanding voting stock at a meeting called for the purpose of considering such action.

(2) The territorial bank is solvent and has sufficient liquid assets to pay off depositors and creditors immediately.

B. (1) Upon approval by the Board, the bank shall forthwith cease to do business, shall have only the powers necessary to effect an orderly liquidation and shall proceed to pay its depositors and creditors and to wind up its affairs.

(2) Within 30 days of the approval, a notice of liquidation shall be sent by mail to each depositor, creditor, person interested in funds held as a fiduciary, lessee of a safe deposit box or bailor of property. The notice shall be posted conspicuously on the premises of the bank and shall be given such publication as the Commissioner may require. The bank shall send with the notice a statement of the amount on the books to be the claim of the depositor or creditor. The notice shall demand that property held by the bank as bailor or in a safe deposit box be withdrawn by the person entitled thereto and that claims of depositors and creditors, if the amount claimed differs from that stated in the notice to be due, be filed with the bank before a specified date not earlier than 60 days thereafter in accordance with the procedure prescribed in the notice.

1 (3) As soon after approval as may be practicable the
2 territorial bank shall resign all fiduciary positions and take
3 such action as may be necessary to settle its fiduciary accounts.

4 (4) Safe deposit boxes the contents of which have not
5 been removed within 30 days after demand shall be opened and the
6 contents dealt with in the manner provided for boxes upon which
7 the payment of rental is in default and the sealed packages con-
8 taining the contents and the certificates together with any other
9 unclaimed property held by the bank as bailee and certified in-
10 ventories thereof shall be transferred to the Commissioner, who
11 shall retain it for 1 year unless sooner claimed by the person
12 entitled to it. After 1 year the Commissioner shall sell or
13 otherwise appropriately dispose of the property. The proceeds of
14 any sale shall be transferred to the Territorial Treasurer as
15 abandoned funds.

16 (5) The approval of an application for liquidation
17 shall not impair any right of a depositor or creditor to payment
18 in full and all lawful claims of creditors and depositors shall
19 promptly be paid. The unearned portion of the rental of a safe
20 deposit box shall be returned to the lessee.

21 (6) Any assets remaining after the discharge of all
22 obligations shall be distributed to the stockholders in accordance
23 with their respective interests. No such distribution shall be
24 made before (a) all claims of depositors and creditors have been
25 paid or, in the case of any disputed claim, the bank has trans-
26 mitted to the Commissioner a sum adequate to meet any liability
27 that may be judicially determined and (b) any funds payable to a
28 depositor or creditor and unclaimed have been transmitted to the
29 Commissioner. Any unclaimed distribution to a stockholder or

1 depositor shall be held until 90 days after the final distri-
2 bution and then held by the Commissioner for 5 years and, unless
3 sooner claimed by the person entitled thereto, shall be trans-
4 ferred to the Territorial Treasurer as abandoned funds.

5 C. If the Commissioner finds that the assets will be
6 insufficient for the full discharge of all obligations or that
7 completion of the liquidation has been unduly delayed, it may
8 take possession and complete the liquidation in the manner pro-
9 vided in this Act for involuntary liquidations.

10 D. The Commissioner may require reports of the progress
11 of liquidation and whenever he is satisfied that the liquidation
12 has been properly completed he shall cancel the charter and enter
13 an order of dissolution.

14 **Section 3.402. COMMISSIONER IN POSSESSION OF BANK**

15 A. The Commissioner may take possession of a territorial
16 bank if, after a hearing, he shall find

17 (1) Its capital is impaired or it is otherwise in an
18 unsound condition.

19 (2) Its business is being conducted in an unlawful or
20 unsound manner.

21 (3) It is unable to continue normal operations.

22 (4) Its examination has been obstructed or impeded.

23 B. (1) The Commissioner shall take possession by posting
24 upon the premises a notice reciting that he is assuming possession
25 pursuant to this Act and the time, not earlier than the posting
26 of the notice, when its possession shall be deemed to commence.
27 A copy of the notice shall be filed in the United States District
28 Court of the judicial division in which the institution is located.
29 The Commissioner shall notify the Federal Reserve Bank of the
30 S.D. No. 76 as amended - 108 -

1 district of taking possession of any territorial bank which is a
2 member of the Federal Reserve System.

3 (2) When the Commissioner has taken possession of a
4 territorial bank he shall be vested with the full and exclusive
5 power of management and control, including the power to continue
6 or to discontinue the business, to stop or to limit the payment
7 of its obligations, to employ any necessary assistants, to
8 execute any instrument in the name of the bank, to commence,
9 defend and conduct in its name any action or proceeding in which
10 it may be a party, to terminate his possession by restoring the
11 bank to its board of directors and to reorganize or liquidate
12 the bank in accordance with this Act. As soon as practicable
13 after taking possession the Commissioner shall make an inventory
14 of the assets and file a copy thereof with the court in which
15 the notice of possession was filed.

16 (3) When the Commissioner has taken possession there
17 shall be a postponement until 6 months after the commencement of
18 such possession of the date upon which any period of limitation
19 fixed by statute or agreement would otherwise expire on a claim
20 or right of action of the bank, or upon which an appeal must be
21 taken or a pleading or other document must be filed by the bank
22 in any pending action or proceeding.

23 U. (1) If, in the opinion of the Commissioner, an emergency
24 exists which will result in serious losses to the depositors, he
25 may take possession of a territorial bank without a prior hearing.
26 Within 10 days after the Commissioner has taken possession any
27 interested party may file an application with the Board for an
28 order vacating such possession. The Board shall grant the
29 application if it finds that the action of the Commissioner was
30 S.B. No. 75 as amended - 109 -

1 unauthorized under this Act.

2 (2) If the Commissioner shall determine to liquidate
3 the territorial bank, he shall give such notice of his determin-
4 ation to the directors, stockholders, depositors and creditors
5 as the Board may prescribe. Any objection to the liquidation
6 shall be filed with the Board within 10 days after such notice.
7 Unless within 10 days thereafter the Board issues an order staying
8 the liquidation, the Commissioner shall proceed to liquidate the
9 institution.

10 (3) If the Commissioner determines to reorganize the
11 territorial bank or the Board, after staying its liquidation,
12 orders such reorganization, the Commissioner, after recording a
13 hearing to all interested parties, shall enter an order proposing
14 a reorganization plan. A copy of the plan shall be sent to each
15 depositor and creditor who will not receive payment of his claim
16 in full under the plan, together with notice that unless within
17 15 days the plan is disapproved in writing by persons holding
18 one-third or more of the aggregate amount of such claims, the
19 Commissioner will proceed to effect the reorganization. A
20 department, agency or political subdivision of this Territory
21 holding a claim which will not be paid in full is authorized to
22 participate as any other creditor.

23 D. No judgment, lien or attachment shall be executed upon
24 any asset of the territorial bank while it is in the possession
25 of the Commissioner. Upon the election of the Commissioner in
26 connection with a liquidation or reorganization:

27 (1) Any lien or attachment, other than an attorney's
28 or mechanic's lien, obtained upon any asset of the territorial
29 bank during the Commissioner's possession or within 4 months

1 prior to commencement thereof shall be vacated except liens created
2 by the Commissioner while in possession.

3 (2) Any transfer of an asset of the territorial bank
4 made after or in contemplation of its insolvency with intent to
5 effect a preference shall be voided.

6 E. With the approval of the Board, the Commissioner may
7 borrow money in the name of the territorial bank and may pledge
8 its assets as security for the loan.

9 F. All necessary and reasonable expenses of the Commissioner's
10 possession of a territorial bank and of its reorganization or
11 liquidation shall be defrayed from the assets thereof.

12 Section 3.403. REQUIREMENTS OF REORGANIZATION PLAN.

13 A. A plan of reorganization shall not be prescribed under
14 this Act unless:

15 (1) The plan is feasible and fair to all classes of
16 depositors, creditors and stockholders.

17 (2) The face amount of the interest accorded to any
18 class of depositors, creditors or stockholders under the plan
19 does not exceed the value of the assets upon liquidation less
20 the full amount of the claims of all prior classes, subject,
21 however to any fair adjustment for new capital that any class
22 will pay in under the plan.

23 (3) The plan provides for the issuance of common stock
24 in an amount that will provide an adequate ratio to deposits.

25 (4) Any exchange of new common stock for obligations
26 or stock of the bank will be effected in inverse order to the
27 priorities in liquidation of the classes that will retain an
28 interest in the bank and upon terms that fairly adjust any change
29 in the relative interests of the respective classes that will be

1 produced by the exchange.

2 (5) The plan assures the removal of any director,
3 officer or employee responsible for any unsound or unlawful
4 action or the existence of an unsound condition.

5 (6) Any merger or consolidation provided by the plan
6 conforms to the requirements of this Act.

7 B. Whenever in the course of reorganization supervening
8 conditions render the plan unfair or its execution impractical,
9 the Commissioner may modify the plan or liquidate the insti-
10 tution. Any such action shall be taken by order upon appropriate
11 notice.

12 **Section 3.404. LIQUIDATION BY COMMISSIONER.**

13 A. In liquidating a territorial bank the Commissioner may
14 exercise any power thereof but he shall not, without the approval
15 of the court in which notice of possession has been filed:

16 (1) Sell any asset of the organization having a value
17 in excess of \$1,000.00.

18 (2) Compromise or release any claim if the amount of
19 the claim exceeds \$1,000.00, exclusive of interest.

20 (3) Make any payment on any claim, other than a claim
21 upon an obligation incurred by the Commissioner, before preparing
22 and filing a schedule of his determinations in accordance with
23 this Act.

24 B. Within 6 months of the commencement of liquidation, the
25 Commissioner may by his election terminate any executory contract
26 for services or advertising to which the territorial bank is a
27 party or any obligation of the bank as a lessee. A lessor who
28 receives 60 days notice of the Commissioner's election to ter-
29minate the lease shall have no claim for rent other than rent

1 accrued to the date of termination nor for damages for such
2 termination.

3 C. As soon after the commencement of liquidation as is
4 practicable, the Commissioner shall take the necessary steps to
5 terminate all fiduciary positions held by the territorial bank
6 and take such action as may be necessary to surrender all prop-
7 erty held by the bank as a fiduciary and to settle its fiduciary
8 accounts.

9 D. The right of any agency of the United States insuring
10 deposits to be subrogated to the rights of depositors upon pay-
11 ment of their claim shall not be less extensive than the law of
12 the United States requires as a condition of the authority to
13 issue such insurance or make such payment.

14 E. As soon after the commencement of liquidation as is
15 practicable the Commissioner shall send notice of the liqui-
16 dation to each known depositor, creditor and lessee of a safe
17 deposit box or bailor of property held by the bank at the address
18 shown on the books of the institution. The notice shall also
19 be published in a newspaper of general circulation in the
20 community once a week for 3 successive weeks. The Commissioner
21 shall send with the notice a statement of the amount shown on
22 the books of the institution to be the claim of the depositor
23 or creditor. The notice shall demand that property held by
24 the bank as bailee or in a safe deposit box be withdrawn by the
25 person entitled thereto and that claims of depositors and
26 creditors, if the amount claimed differs from that stated in the
27 notice to be due, be filed with the Commissioner before a
28 specified date not earlier than 60 days thereafter in accordance
29 with the procedure prescribed in the notice.

1 R. Safe deposit boxes the contents of which have not been
2 removed before the date specified shall be opened by the Com-
3 missioner in the manner provided for boxes upon which the payment
4 of rental is in default and the sealed packages containing the
5 contents and the certificates together with any unclaimed
6 property held by the bank as bailee and certified inventories
7 thereof shall be held by the Commissioner for 1 year unless
8 sooner claimed by the person entitled thereto. After 1 year
9 the Commissioner may sell or otherwise appropriately dispose of
10 the property. The proceeds of a sale shall be transferred to
11 the Territorial Treasurer as abandoned funds.

12 d. Within 6 months after the last day specified in the
13 notice for the filing of claims or such longer period as may be
14 allowed by the court in which notice of possession has been filed,
15 the Commissioner shall:

16 (1) Reject any claim if it doubts the validity thereof.
17 (2) Determine the amount, if any, owing to each known
18 creditor or depositor and the priority class of his claim under
19 this Act.

20 (3) Prepare a schedule of his determinations for filing
21 in the court in which notice of possession was filed.

22 (4) Notify each person whose claim has not been allowed
23 in full and publish once a week for 5 successive weeks a notice
24 of the time when and the place where the schedule of determina-
25 tions will be available for inspection and the date, not sooner
26 than 30 days thereafter, when the Commissioner will file his
27 schedule in court.

28 H. Within 30 days after the filing of the Commissioner's
29 schedule, any creditor, depositor or stockholder may file an
30 R.R. No. 76 as amended
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1 objection to any determination made. Any objections so filed
2 shall be heard and determined by the court, upon such notice
3 to the Commissioner and interested claimants as the court may
4 prescribe. If the objection is sustained the court shall direct
5 an appropriate modification of the schedule. After filing his
6 schedule the Commissioner may, from time to time, make partial
7 distribution to the holders of claims which are undisputed or
8 have been allowed by the court, if a proper reserve is estab-
9 lished for the payment of disputed claims. As soon as is
10 practicable after the determination of all objections the
11 Commissioner shall make final distribution.

12 I. (1) The following claims shall have priority:

13 (a) Obligations incurred by the Commissioner,
14 exclusive of his salary;

15 (b) Wages and salaries of officers and employees
16 earned during the 3-month period preceding the Commissioner's
17 possession in an amount not exceeding \$2,250.00, for any one
18 person;

19 (c) Fees and assessments due to the Board;

20 (d) Deposits to the extent of \$25.00 for each
21 depositor.

22 (2) After the payment of all other claims with inter-
23 est at the maximum rate permitted by the Board on time deposits,
24 the Commissioner shall pay claims otherwise proper which were
25 not filed within the time prescribed.

26 If the sum available for any class is insufficient to pro-
27 vide payment in full, such sum shall be distributed to the
28 claimants in the class pro rata.

29 J. Any assets remaining after all claims have been paid

30 B.B. No. 76 as amended

1 shall be distributed to the stockholders in accordance with their
2 respective interests.

3 K. Unclaimed funds remaining after completion of the liquid-
4 ation shall also be retained for 5 years by the Commissioner
5 unless sooner claimed by the owner. At the expiration of such
6 period the remaining sum shall be transferred to the Territorial
7 Treasurer as abandoned funds.

8 L. When the assets have been distributed in accordance with
9 this Act, the Commissioner shall file an account with the court.
10 Upon approval thereof, the Commissioner shall be relieved of
11 liability in connection with the liquidation and the charter
12 shall be cancelled.
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TITLE 5. PROHIBITED PRACTICES; SANCTIONS

SECTION 3.501 UNAUTHORIZED CONDUCT OF BANKING BUSINESS

It shall be unlawful for any unauthorized person to engage in the business of receiving deposits, discounting evidences of indebtedness or receiving money for transmission, to represent that he is, or is acting for, a bank, or to use an artificial or corporate name which purports to be or suggests that it is the name of a bank.

SECTION 3.502 UNAUTHORIZED ASSUMPTION OF LIABILITY BY BANK

Except as expressly permitted in this Act, a territorial bank shall not assume liability as an insurer or as a guarantor or indorser of any security instrument or obligation in which or with respect to which it has no property interest.

SECTION 3.503 RECEIPT OF DEPOSITS WHILE INSOLVENT. PROHIBITED

It shall be unlawful for a bank to receive any deposit while insolvent or for an officer, director or employee who knows or, in the proper performance of his duty, should know of such insolvency to receive or authorize the receipt of such deposit.

SECTION 3.504 UNAUTHORIZED DEALING IN SECURITIES

It shall be unlawful for a bank or an officer, director, employee or affiliate of a bank to engage in the business of issuing, floating, underwriting, distributing or promoting the sale of stocks, bonds or other securities, except securities issued or guaranteed as to principal and interest by the United States or any agency thereof or by a state or territory of the United States, or a subdivision or instrumentality, or public authority organized under the laws of, such state or territory, or pursuant to an interstate compact between two or more states, or to be an officer, trustee, director, employee, stockholder

S.B. No. 75 as amended

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1 or partner of any person engaged principally in any such business.

2 **SECTION 5.505 UNLAWFUL SERVICE AS OFFICER OR DIRECTOR**

3 It shall be unlawful for any person to serve as an officer
4 or director of a bank who:

5 (1) Is an officer, director or employee of a directly
6 competitive bank.

7 (2) Has been convicted of an offense constituting in
8 the jurisdiction in which the judgment was rendered a violation
9 of the banking laws, a felony or a breach of trust.

10 (3) Is indebted to the bank for more than 30 days upon
11 a judgment that has become final.

12 (4) Has any interest adverse to the bank unless such
13 interest is promptly and fully disclosed in writing to its board
14 of directors.

15 **SECTION 5.506 UNLAWFUL GRATUITY OR COMPENSATION: TRANSACTIONS**
16 **OF PERSONS CONNECTED WITH TERRITORIAL BANK**

17 A. It shall be unlawful for an affiliate of a bank or for
18 an officer, director or employee of a bank or affiliate of a bank:

19 (1) To solicit, accept or agree to accept, directly or
20 indirectly, from any person other than the institution any gratuity,
21 compensation or other personal benefit for any action taken by the
22 institution or for endeavoring to procure any such action.

23 (2) To have any interest, directly or indirectly, in the
24 proceeds of a loan or of a purchase or sale made by the bank, un-
25 less such loan, purchase or sale is expressly authorized by this
26 act or by rule of the Board and is approved in advance by vote
27 of two-thirds of all the directors of the bank, any interested
28 director or trustee taking no part in such vote.

29 (3) To have any interest, direct or indirect, in the
B.B. No. 75 as amended.

1 purchase at less than its face value of any evidence of indebted-
2 ness issued by the institution.

3 (4) To discount or make any loan, directly or indirect-
4 ly, upon any note or other evidence of indebtedness known to have
5 been offered to the institution for discount or as security for
6 a loan and to have been refused by it.

7 E. In this and Section 3.504 the term "affiliate" shall
8 include:
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10 (1) Any person who holds a majority of the stock of a
11 bank or has been determined by the Board to hold a controlling
12 interest therein, any other corporation in which such person owns
13 a majority of the stock and any partnership in which he has an
14 interest.

15 (2) Any corporation in which the institution or an
16 officer, director or employee thereof holds a majority of the
17 stock and any partnership in which such person has an interest.

18 (3) Any corporation of which a majority of the
19 directors are officers, directors or employees of the institution
20 or of which officers, directors, trustees or employees constitute
21 a majority of the directors of the institution.

22 **SECTION 3.507 UNLAWFUL CONCEALMENT OF TRANSACTIONS**

23 It shall be unlawful for an officer, director, employee,
24 attorney or agent of a bank to conceal or endeavor to conceal
25 any transaction of the bank from any officer, director or em-
26 ployee of the bank or any official or employee of the Board or
27 Commissioner to whom it should properly be disclosed.

28 **SECTION 3.508 IMPROPER MAINTENANCE OF ACCOUNTS, FALSE OR**
29 **DESCRIPTIVE ENTRIES AND STATEMENTS, OBSTRUCTION**
OF EXAMINATION

30 N.B. No. 76 as amended -117-

1 It shall be unlawful for an officer, director, employee or
2 agent of a bank:

3 A. To maintain or authorize the maintenance of any account
4 of the bank in a manner which, to his knowledge, does not conform
5 to the requirements prescribed by this Act or by the Commissioner
6 or the Board.

7 B. With intent to deceive, to make any false or misleading
8 statement or entry or omit any statement or entry that should be
9 made in any book, account, report or statement of the institution.

10 C. To obstruct or endeavor to obstruct a lawful examination
11 of the institution by an officer or employee of the Department.

12 **SECTION 3.509 UNLAWFUL PAYMENT OF PENALTIES AND JUDGMENTS**

13 **AGAINST OTHERS, INCLUDING DIRECTORS AND OFFICERS**

14 It shall be unlawful for a territorial bank to pay a fine or
15 penalty imposed by law upon any other person or any judgment
16 against such person or to reimburse directly or indirectly any
17 person by whom such fine, penalty or judgment has been paid,
18 except in settlement of its own liability or in connection with
19 the acquisition of property against which such judgment is a
20 lien, or as provided in Section 3.212.

21 **SECTION 3.510 UNLAWFUL USE OF WORDS "SAFE DEPOSIT"**

22 It is a criminal offense against this Act were any person
23 to use the words "safe deposit", "safety deposit" or other words
24 deceptively similar thereto, in connection with the rental of
25 storage space, or in the title or name under which business was
26 done, except

27 (1) a person subject to the jurisdiction of the
28 Banking Department of this Territory; or

29 (2) a manufacturer or dealer in safe deposit facilities

30 S.B. No. 76 as amended

or equipment; or

(3) an association, the membership of which is composed of officers or institutions subject to the jurisdiction of the Board or the Banking Department of any state or territory.

SECTION 3.511 UNLAWFUL FAILURE TO MAKE OR PUBLISH REPORTS
REQUIRED BY BOARD

Every bank which fails to make, transmit or publish any report required under subsection 2.105 F, shall be subject to a penalty of \$25.00 per day for each day's delay in publication after the date of publication directed by the Commissioner.

SECTION 3.612 DIRECTOR'S LIABILITY FOR EXCESSIVE LOANS

Any loan made in violation of the provisions of Part D of Title I, Article III of this Act, shall make the officers and directors of such bank authorizing or permitting the same to be jointly and severally liable to the bank for such loan, which liability shall be in addition to other liabilities to the bank created by this Act.

SECTION 3.513 UNAUTHORIZED LOANS TO OFFICERS AND EMPLOYEES

It shall be unlawful for any director, officer or employee of any territorial bank to make loans to himself out of the funds of such bank by note, overdraft or otherwise, without first having obtained permission from the board of directors of such bank.

SECTION 3.514 SLANDER AND LIBEL OF BANK

Any person who shall wilfully and maliciously make, circulate or transmit to another or other, any statement, rumor or suggestion, written, printed or by word of mouth, which is directly or by implication derogatory to the financial condition or affects the solvency or financial standing of any bank or trust company doing business in the Territory of Alaska, or who shall counsel,

1 aid, procure or induce another to start, transmit or circulate
2 any such statement or rumor, shall be guilty of a felony, and
3 upon conviction thereof shall be punished by a fine of not more
4 than \$5,000.00 or by imprisonment for a term of not more than
5 five years, or both.

6 SECTION 3.515 CRIMINAL SANCTIONS. VIOLATIONS OF RULES AND ORDERS

7 A. Any person responsible for an act or omission expressly
8 declared to be a criminal offense by this Act shall be guilty:

9 (1) Of a misdemeanor punishable by imprisonment for a
10 term not exceeding 1 year or a fine not exceeding \$10,000.00 or
11 both.

12 (2) If the act or omission was intended to defraud, of
13 a felony punishable by imprisonment not exceeding 5 years or a
14 fine not exceeding \$20,000.00, or both.

15 B. An officer, director, employee, agent or attorney of a
16 bank shall be responsible for an act or omission of the institu-
17 tion declared to be a criminal offense against this Act whenever,
18 knowing that such act or omission is unlawful, he participates
19 in authorizing, executing, ratifying or concealing such act, or
20 in authorizing or ratifying such omission or, having a duty to
21 take the required action, omits to do so.

22 A director shall be deemed to participate in any action of
23 which he has knowledge taken or omitted to be taken by the board
24 of which he is a member unless he dissents therefrom in writing
25 and promptly notifies the Commissioner of his dissent.

26 C. It shall be a criminal offense against this Act to
27 violate any lawful order of the Board or Commissioner, served
28 upon it, or to knowingly violate any lawful rule, regulation or
29 order of the Board.

1 D. Unless otherwise provided in this Act, it shall be no
2 defense to a criminal prosecution hereunder that the defendant
3 did not know the facts establishing the criminal character of
4 the act or omission charged if he could and should have known
5 such facts in the proper performance of his duty.

6 **SECTION 3.616 INJUNCTION**

7 Whenever a violation of this Act by a bank or an officer,
8 director or employee thereof is threatened or impending and will
9 cause substantial injury to the institution or to the depositors,
10 creditors or stockholders thereof, the United States District
11 Court of the judicial division in which the bank is situated shall,
12 upon the suit of the Commissioner, issue an injunction restraining
13 such violation.

14 **Title 6.**

15 **SECTION 3.601 EMERGENCY DECLARED**

16 An emergency is hereby declared to exist and this Act shall
17 be in full force and effect from and after the date of its passage
18 and approval.
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Passed by the Senate, _____, 1953

President of the Senate

ATTEST:

Secretary of the Senate

Passed by the House, _____, 1953

Speaker of the House

ATTEST:

Chief Clerk of the House