

Introduced: 2/8/68
Referred: Commerce
& Judiciary

1 IN THE SENATE

BY THE RULES COMMITTEE
BY REQUEST OF THE GOVERNOR

2 SENATE BILL NO. 305

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act amending the Alaska Banking Code."

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

8 * Section 1. AS 06.05.015(3) is amended to read:

9 (3) charge off the whole or part of an asset which has not
10 been [AT THE TIME OF THE DEPARTMENT'S ACTION COULD NOT] lawfully [BE]
11 acquired;

12 * Sec. 2. AS 06.05.015 is amended by adding a new paragraph to read:

13 (10) charge off that portion of an asset classified as loss
14 in the FDIC Report of Examination or the State Report of Examination.

15 * Sec. 3. AS 06.05.045 is amended to read:

16 Sec. 06.05.045. BANK REPORTS TO THE DEPARTMENT. (a) Every
17 state bank shall make at least four reports each year to the
18 department on days designated by it, and on forms prescribed by it.
19 The report shall be verified [IN THE CASE OF CORPORATIONS] by an oath
20 of the president, vice president, or cashier and by at least three
21 [TWO] directors; [AND IN CASE OF A PARTNERSHIP OR INDIVIDUAL, BY ONE
22 OF THE PARTNERS OR OWNERS OF THE BANK, AND A CASHIER,] certifying and
23 subscribing under oath that they and each of them have personal know-
24 ledge of the facts stated in the report and that the facts are true.
25 The reports shall exhibit in detail and under appropriate heads the
26 resources and liabilities of the bank, and shall be transmitted or
27 mailed to the department within 10 days of the receipt of the request
28 from it.

29 (b) The department may require special reports from a bank

1 whenever in its judgment they are necessary in order to obtain a full
2 knowledge of its condition.

3 (c) Each state bank shall make at least one report of income
4 and dividends to the department each year. The report shall be
5 submitted to the department within 30 days following the end of the
6 calendar year covered in the report.

7 * Sec. 4. AS 06.05.200 is repealed and re-enacted to read:

8 Sec. 06.05.200. RESERVES AGAINST DEPOSITS. (a) Each commercial
9 bank which is not a member of the Federal Reserve System shall maintain
10 total reserves equal to the following percentages of the aggregate
11 amount of its deposits, exclusive of deposits of the United States,
12 the State of Alaska, borough and municipal governments and other
13 deposits of public monies which are secured as required by law

14 (1) 20% of its demand deposits; and

15 (2) 8% of its time deposits.

16 (b) Only vault cash and the amount due from good and solvent
17 banks located in the state, or within the United States may be used
18 in computing the reserves required under (a) of this section and the
19 computation shall be made on the basis of average daily net deposit
20 balances covering bi-weekly periods.

21 (c) A daily record of the required reserves shall be maintained
22 on a form prescribed by the department reflecting the current reserve
23 condition of the bank. The report shall be subject to the examination
24 of the department or other duly appointed examiners. The department
25 may from time to time require the bank to submit its report of
26 reserve condition for purposes of examination.

27 (d) If the reserves of a commercial bank fall below the amount
28 required to be maintained by this section, the bank may not make any
29 new loans or other investments nor pay any dividends until its

reserves have been restored to the amount required under this section.

* Sec. 5. AS 06.05.205(a) is amended to read:

(a) If [IT IS UNLAWFUL FOR] an officer or employee of a bank loans [TO LOAN] funds of the bank in an amount exceeding \$5,000 to a [ANY ONE] person he must so notify [WITHOUT OBTAINING THE APPROVAL FROM] the board of directors of the bank [, OR FROM A COMMITTEE OF THE BOARD CONSISTING OF NOT LESS THAN THREE MEMBERS OF THE BOARD].

* Sec. 6. AS 06.05.205(b) is amended to read:

(b) It is unlawful for an officer or employee of a [ANY] state bank to loan funds of the bank to a [ANY ONE] person in a sum exceeding 15 [35] per cent of its combined capital stock, [AND] surplus, and undivided profits. Unearned income may not be included in determining the amount a bank may loan under this subsection. In [IN] the case of a corporation the total of any sum loaned directly to the corporation, and of any sum loaned in such manner or to such person that the capital stock of the corporation is received by the bank as collateral security for such loan or loans, shall never exceed 15 [35] per cent of the combined capital, [AND] surplus and undivided profits of the bank. The discount of bills of exchange drawn in good faith against actual existing values, or loans upon gold, gold dust, bullion, cannery products, or other produce in transit, or upon warehouse receipts as collateral security, and the discount of commercial or business paper actually owned by a person negotiating the same, are not considered as money borrowed.

* Sec. 7. AS 06.05.205(d) is amended to read:

(d) A bank may not accept its capital stock as security for a loan unless it is necessary to prevent loss upon an indebtedness previously contracted in good faith.

* Sec. 8. AS 06.05.205 is amended by adding new subsections to read:

1 (e) Obligations of a person, copartnership, association or
2 corporation in the form of notes payable on demand shall be supported
3 by a current financial statement and the principal amounts of such
4 demand notes shall be reduced at least annually unless the notes are
5 fully secured at all times by marketable collateral or there exists
6 a specific and evident means of repayment.

7 (f) The provisions of (b) of this section do not apply to a loan
8 made before the effective date of this Act if the loan is reduced and
9 paid according to its terms without benefit of extension and no other
10 loan is made to the person until the amount of the proposed loan and
11 the amount of all loans outstanding to the person from the bank in
12 question do not exceed the limit specified in (b) of this section.

13 * Sec. 9. AS 06.05 is amended by adding a new section to read:

14 Sec. 06.05.207. REAL ESTATE LOANS. (a) A bank may, subject to
15 the requirements of this chapter, make or acquire a loan secured by a
16 lien on real estate if

17 (1) the amount of the loan does not exceed 66 2/3% of the
18 appraised value of the real estate offered as security and the term of
19 the loan does not exceed 5 years;

20 (2) the amount of the loan does not exceed 66 2/3% of the
21 appraised value of the real estate offered as security, the term of
22 the loan does not exceed 10 years, and the loan is secured by an
23 amortized mortgage, deed of trust, or other such instrument under the
24 terms of which the installment payments are sufficient to amortize 40%
25 or more of the principal of the loan within a period of 10 years or
26 less;

27 (3) the amount of the loan does not exceed 70% of the
28 appraised value of the real estate offered as security, the term of the
29 loan does not exceed 20 years, and the loan is secured by an amortized

1 mortgage, deed of trust, or other such instrument under the terms of
2 which the installment payments are sufficient to amortize the entire
3 principal of the loan within a period of 20 years or less;

4 (4) the amount of the loan does not exceed 80% of the
5 appraised value of the real estate offered as security, the term of
6 the loan does not exceed 25 years, and the loan is secured by an
7 amortized mortgage, deed of trust, or other such instruments under the
8 terms of which the installment payments are sufficient to amortize
9 the entire principal of the loan within the period ending on the date
10 of its maturity.

11 (b) The provisions of (a) of this section do not apply to real
12 estate loans which are insured under the provisions of the National
13 Housing Act, or to guaranteed or participating loans under the Small
14 Business Administration.

15 (c) Each real estate loan shall be secured by a first lien on
16 improved real estate. For the purpose of this section improved real
17 estate includes improved farm land which is useful for agricultural
18 purposes without further substantial improvements, improved business
19 and residential property where substantial and permanent improvements
20 have been constructed or developed or when the value has been enhanced
21 by other improvements in its immediate vicinity;

22 (d) As conditions precedent to making a real estate loan

23 (1) the value of the real estate shall be determined by an
24 employee of the bank or other persons who are familiar with real
25 estate values in the vicinity where the real estate is located, and a
26 written report of the appraisal preserved in the records of the bank;
27 and

28 (2) insurance against loss from fire on all buildings on
29 the real estate which are included in the appraised value shall be

1 acquired by the borrower or the bank and shall not be allowed to lapse.

2 (e) The provisions of (a) - (d) of this section do not apply
3 to a home improvement loan if the proceeds of the loan are used to
4 improve the collateral of the loan.

5 (f) The provisions of this Act do not apply to a loan made before
6 the effective date of this Act if the loan is reduced and paid according
7 to its terms provided such loan may be extended in compliance with
8 this section.

9 * Sec. 10. AS 06.05.210 is repealed and re-enacted to read:

10 Sec. 06.05.210. LOANS TO OFFICERS AND EMPLOYEES. (a) A bank
11 may not make a loan to a salaried officer or employee of the bank or
12 acquire an agreement for the payment of money on which he is liable
13 in an amount in excess of \$5,000 exclusive of interest and charges,
14 unless the loan is

15 (1) secured by deposits in a financial institution or cash
16 surrender value of life insurance in an amount equal to, or by market-
17 able securities with a value of, at least 20% more than the amount of
18 the loan or agreement for the payment of money;

19 (2) secured by a first mortgage on the home of the officer
20 or employee;

21 (3) insured by the Public Housing Authority or other
22 similar public agency; or

23 (4) not an amount in excess of \$10,000 and is for the pur-
24 pose of financing the education of the officer or employee's children.

25 (b) Each loan under (a) of this section shall be promptly
26 reported to the board of directors of the bank and their approval or
27 disapproval reported in the minutes of the board.

28 (c) An officer or employee of the state bank who violates this
29 section is guilty of a misdemeanor and upon conviction is punishable

1 by a fine of not more than \$5,000 or by imprisonment for not more
2 than one year, or both.

3 * Sec. 11. AS 06.05.305(a) is amended to read:

4 (a) It is unlawful for any corporation [, FOREIGN OR DOMESTIC,
5 OR ANY PARTNERSHIP OR INDIVIDUAL] to commence and operate [TRANSACT]
6 a banking business in the state unless [, IN THE CASE OF A CORPORATION]
7 the corporation has a paid-up capital of at least \$100,000 and a paid-
8 up surplus equal to 20 per cent of paid-up capital [\$50,000 IN LAWFUL
9 MONEY OF THE UNITED STATES, OR IN THE CASE OF A PARTNERSHIP OR
10 INDIVIDUAL, UNLESS THE PARTNERSHIP OR INDIVIDUAL HAS INVESTED IN THE
11 BANKING BUSINESS THE SUM OF \$50,000 LAWFUL MONEY OF THE UNITED STATES].

12 * Sec. 12. AS 06.05 is amended by adding a new section to subchapter 1
13 to read:

14 Sec. 06.05.327. CHANGE IN OUTSTANDING VOTING STOCK. If a change
15 occurs or is about to occur in the outstanding voting stock of a state
16 bank which will result in a change in the control of the bank or if any
17 sales or transfers by or to a person, corporation or other legal entity
18 of the aggregate of 10 per cent or more of the voting stock of a
19 state bank is about to be consummated, the president or other chief
20 executive officer of the bank immediately upon obtaining knowledge of
21 the change in the control of the bank or the contemplated or con-
22 sumed sale or transfer of stock, shall report these facts to the
23 department.

24 * Sec. 13. AS 06.05.345(a)(5) is amended to read:

25 (5) the number of directors of whom there must be at least
26 five but no more than 25 [, WHICH SHALL BE THREE OR MORE].

27 * Sec. 14. AS 06.05.435 is amended to read:

28 Sec. 06.05.435. DIRECTORS. (a) General powers of directors.

29 The affairs of every bank incorporated under this chapter shall be

1 managed by not less than five [THREE] directors, or more than 25,
2 who shall be elected by the stockholders and hold office for one year
3 and until their successors are elected and have qualified. A majority
4 of the board of directors shall be bona fide residents of the state
5 and a majority constitutes a quorum for the transaction of business.

6 (b) Election of directors. In the first instance the directors
7 shall be elected at a meeting held before the bank is authorized to do
8 business by the department and thereafter at the annual meeting of
9 the stockholders held [ON THE SECOND TUESDAY IN JULY IN] each year.
10 If no election is held at that time, it may be held at an adjourned
11 meeting or at a subsequent meeting called for that purpose, notice of
12 which shall be given as provided in the bylaws.

13 (c) Qualifications of directors. Each director of a bank shall
14 own in his own right free of any encumbrance [BE A BONA FIDE STOCK-
15 HOLDER AND THE OWNER OF SHARES OF THE] capital stock of the bank in
16 an amount equal to at least [PAR VALUE OF] \$1,000 in par value. [IF
17 THE CAPITAL STOCK OF THE BANK IS \$15,000, IT SHALL NOT BE REQUIRED
18 THAT A DIRECTOR HOLD MORE THAN \$500 WORTH OF STOCK AT PAR.]

19 (d) Director's oath. Each director shall take an oath that he
20 will faithfully and honestly perform the duties of his office and will
21 not violate or permit to be violated any provisions of this chapter.
22 The oath shall be filed annually in the office of the department.

23 (e) Vacancies. A vacancy in the board of directors shall be
24 filled by the board, and the directors so appointed hold office until
25 the next election or until their successors are elected and have
26 qualified.

27 * Sec. 15. AS 06.05 is amended by adding a new section to read:

28 Sec. 06.05.437. OFFICERS. (a) The officers of a bank shall be
29 elected by the board of directors. No officer may be elected for a

1 period longer than one year. An officer may be removed by the board
2 of directors at any time but removal shall not prejudice any rights
3 that he may have to damages for breach of contract of employment.

4 (b) A bank shall report within 30 days to the department any
5 changes among executive officers and directors, including in its
6 report a statement of the business and professional affiliations of
7 new executive officers and directors.

8 * Sec. 16. AS 06.05 is amended by adding a new section to read:

9 Sec. 06.05.438. DIRECTORS, MEETINGS AND DUTIES. (a) The board
10 of directors of each bank shall hold a meeting at least once each
11 month for at least 10 months in each calendar year to generally
12 investigate the affairs of the bank.

13 (b) The board of directors shall elect a secretary who shall
14 keep a correct record of the minutes of each board meeting. The
15 minutes shall state the date of each meeting, the names of the
16 directors present and the votes taken. The record of the meeting of
17 the board of directors shall be subscribed to by the presiding
18 officer and the secretary. The minutes shall be read and approved
19 at the next succeeding meeting and the minutes of that meeting shall
20 show such fact. It is the duty of the bank examiner to examine the
21 minutes of the board at the time he examines the bank and to include
22 in his report of examination any failure of the bank to comply with
23 this section.

24 (c) The board of directors shall designate at least one
25 officer of the bank to prepare and submit to the board at each board
26 meeting a report of the loans, overdrafts, and investments made by
27 the bank in the preceding month or since the last report. The board
28 of directors shall examine and pass upon the report and make it a
29 part of the record of the meeting by recording the report in full in

1 the minutes.

2 (d) It shall be the duty of the board of directors to appoint
3 annually an examining committee of no less than three directors of
4 which no more than one may be an active officer of the bank. It shall
5 be the duty of this committee to examine or cause to be examined the
6 condition of the bank. A copy of the report shall be submitted to
7 the department within 60 days after completion of the examination.

8 * Sec. 17. AS 06.05.440 is amended to read:

9 Sec. 06.05.440. AUTHORITY TO DECLARE DIVIDENDS. The directors
10 of any bank transacting business in the state may declare a dividend
11 out of the net profits after complying with secs. 441, 442, 443, and
12 445 of this chapter [OF THE BANK AFTER PROVIDING FOR ALL LOSSES, BAD
13 DEBTS, EXPENSES, INTEREST AND TAXES ACCRUED OR DUE. BEFORE ANY
14 DIVIDEND IS DECLARED, NOT LESS THAN ONE-FIFTH OF THE NET PROFITS FOR
15 THE PERIOD COVERED BY THE DIVIDEND SHALL BE CARRIED TO A SURPLUS
16 UNTIL THE SURPLUS AMOUNTS TO 25 PER CENT OF THE CAPITAL STOCK OF
17 THE BANK AND IN CASE OF BANKS HAVING A CAPITAL STOCK OF LESS THAN
18 \$40,000 UNTIL THE SURPLUS AMOUNTS TO \$10,000].

19 * Sec. 18. AS 06.05 is amended by adding a new section to read:

20 Sec. 06.05.441. CONDITIONS PRECEDENT TO DIVIDEND DECLARATION
21 AND PAYMENT. (a) Before any bank dividend is declared, or the net
22 profits for the period covered by the dividend disposed of, not less
23 than one-fifth of such net profits shall be carried to the bank sur-
24 plus fund until the surplus fund amounts to 100 per cent of the paid-
25 in capital of the bank.

26 (b) The department may require a bank to suspend the payment
27 of any dividends until all requirements made by the department have
28 been complied with

29 * Sec. 19. AS 06.05 is amended by adding a new section to read:

1 Sec. 06.05.442. RESTORATION OF SURPLUS PRIOR TO PAYMENT OF
2 DIVIDENDS. Any loss sustained by a bank in excess of its undivided
3 profits and reserve shall be charged to its surplus account. Its
4 surplus account shall thereafter be reimbursed from earnings and no
5 dividends may be declared or paid by the bank in excess of one-half
6 of its net earnings until the surplus account is restored to at least
7 the amount from which the surplus was originally reduced or an amount
8 equal to 100 per cent of paid-in capital.

9 * Sec. 20. AS 06.05 is amended by adding a new section to read:

10 Sec. 06.05.443. LIMITATION ON DIVIDENDS. No bank may declare
11 or pay any dividend to an amount greater than its net undivided profits
12 then on hand after deducting

13 (1) all losses;

14 (2) all debts, unless the debts are well secured, on which
15 interest for a period of six months is due and unpaid and debts upon
16 which final judgment has been recovered but has been for more than
17 one year unsatisfied and on which interest for a period of one year
18 is unpaid unless the debts are well secured and in process of
19 collection;

20 (3) all assets or depreciation which the director of banks
21 or a duly appointed examiner may have required to be charged off;

22 (4) all expenses, interest and taxes accrued and due from
23 the bank.

24 * Sec. 21. AS 06.05.445 is amended to read:

25 Sec. 06.05.445. DETERMINING NET PROFITS. In determining net
26 profits for the purpose of declaring a dividend, a bank may not
27 include in its calculations [NEITHER]

28 (1) interest accrued but not collected if the [NOR ANY]
29 debt [OR DEMAND] upon which the interest is due is more than 90 days

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delinquent, [AND UNCOLLECTED FOR A PERIOD OF SIX MONTHS SHALL BE CONSIDERED UNLESS THE INTEREST, DEBT OR DEMAND IS WELL SECURED AND IN PROCESS OF COLLECTION, BUT ALL SUCH DEBTS OR DEMANDS SHALL BE CLASSIFIED AS BAD DEBTS]

(2) the interest collected but not earned, or

(3) the appreciation of any asset above its actual cost to the bank or its par value.