

Introduced: 5/11/70
Referred: Judiciary and
Commerce

1 IN THE HOUSE

BY THE JUDICIARY COMMITTEE

2 HOUSE BILL NO. 865

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to bank holding companies."

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

8 * Section 1. AS 06 is amended by adding a new chapter to read:

9 CHAPTER 40. ALASKA BANK HOLDING COMPANY ACT.

10 Sec. 06.40.010. ACQUISITION OF BANK INTERESTS. (a) It is unlaw-
11 ful, except with the prior approval of the commissioner, for

12 (1) any action to be taken that causes a company to become
13 a bank holding company;

14 (2) any action to be taken that causes a bank to become a sub-
15 sidiary of a bank holding company;

16 (3) a bank holding company to acquire direct or indirect
17 ownership or control of voting shares of a bank if, after the acquisi-
18 tion, the banking holding company will directly or indirectly own or
19 control more than five per cent of the voting shares of the bank;

20 (4) a bank holding company or a subsidiary of one, other
21 than a bank, to acquire all or substantially all of the assets of a
22 bank; or

23 (5) a bank holding company to merge or consolidate with any
24 other bank holding company.

25 (b) The prohibitions of (a) of this section do not apply to

26 (1) shares acquired by a bank, in good faith in a fiduciary
27 capacity, except where shares are held under a trust that constitutes
28 a company as defined in sec. 80(4) of this chapter and except as pro-
29 vided in sec. 80(8) and sec. 80(9);

1 (2) shares acquired in the regular course of securing or
2 collecting a debt previously contracted in good faith, but shares
3 acquired after the effective date of this Act in securing or collect-
4 ing a previously contracted debt shall be disposed of within two years
5 from the date on which they were acquired;

6 (3) additional shares acquired by a bank holding company
7 in a bank in which that bank holding company owned or controlled a
8 majority of the voting shares before that acquisition.

9 (c) The commissioner may not approve

10 (1) an acquisition or merger or consolidation under this
11 section which would result in a monopoly, or which would be in further-
12 ance of a combination or conspiracy to monopolize or to attempt to
13 monopolize or to attempt to monopolize the business of banking; or

14 (2) any other proposed acquisition or merger or consolida-
15 tion under this section the effect of which may be substantially to
16 lessen competition, or to tend to create a monopoly, or which in any
17 other manner would be in restraint of trade, unless the commissioner
18 finds that the anticompetitive effects of the proposed transactions
19 are clearly outweighed in the public interest by the probable effect
20 of the transaction in meeting the convenience and needs of the community
21 to be served.

22 (d) In every case, the commissioner shall take into consideration
23 the financial and managerial resources and future prospects of the
24 companies and the banks concerned, and the convenience and needs of the
25 community to be served.

28 (e) No application under this section may be approved unless
29 the resulting bank holding company or bank holding companies maintains
its principal office and conducts substantially all of its operations
in Alaska.

1 Sec. 06.40.020. ACQUISITION OF NONBANK INTERESTS. (a) Except
2 as otherwise provided in this chapter, no bank holding company may

3 (1) after the effective date of this Act acquire direct or
4 indirect ownership or control of voting shares of a company which is
5 not a bank; or

6 (2) after two years from the effective date of this Act or
7 the date it becomes a bank holding company, whichever is later, retain
8 direct or indirect ownership or control of voting shares of a company
9 which is not a bank or a bank holding company or engage in any business
10 other than that of banking or of managing or controlling banks or
11 of furnishing services to or performing services for a bank of which it
12 owns or controls 25 per cent or more of the voting shares; the com-
13 missioner may, upon application by a bank holding company, extend this
14 period from time to time as to that bank holding company for not more
15 than one year at a time, if, in his judgment, the extension would not
16 be detrimental to the public interest; extensions permitted under this
17 paragraph may not exceed three years in the aggregate.

18 (b) The prohibitions in this section do not apply to

19 (1) shares of a company engaged or to be engaged solely in
20 one or more of the following activities:

21 (A) holding or operating properties used wholly or sub-
22 stantially by a banking subsidiary of a bank holding company in the
23 operations of that banking subsidiary or acquired for the future
24 use of that banking subsidiary; or

25 (B) conducting a safe deposit business; or

26 (C) furnishing services to or performing services for
27 the bank holding company or its banking subsidiaries; or

28 (D) liquidating assets acquired from the bank holding
29 company or its banking subsidiaries or acquired from any other

1 source before the effective date of this Act, or the date on
2 which the company became a bank holding company, whichever is
3 later;

4 (2) shares acquired by a bank in satisfaction of a debt
5 previously contracted in good faith, but the bank shall dispose of
6 those shares within two years from the date on which they were
7 acquired, except that the commissioner may upon application by a bank
8 holding company extend the period of two years from time to time as to
9 that holding company for not more than one year at a time if, in his
10 judgment, the extension would not be detrimental to the public
11 interest, but extensions may not extend beyond a date five years
12 after the date on which the shares were acquired;

13 (3) shares acquired by a bank holding company from any of
14 its subsidiaries which has been requested to dispose of the shares by
15 a federal or state authority having statutory power to examine the
16 subsidiary, but the bank holding company shall dispose of those shares
17 within two years from the date on which they were acquired;

18 (4) shares held or acquired by a bank in good faith in a
19 fiduciary capacity, except where those shares are held under a trust
20 that constitutes a company as defined in sec. 80(4) of this chapter
21 and except as provided in sec. 80(8) and sec. 80(9);

22 (5) shares which are of the kinds and amounts eligible for
23 investment by national banking associations under federal law;

24 (6) shares of a company which do not include more than five
25 per cent of the outstanding voting shares of that company;

26 (7) shares of an investment company which is not a bank
27 holding company and which is not engaged in any business other than
28 investing in securities, which securities do not include more than
29 five per cent of the outstanding voting shares of any company;

1 (8) shares retained or acquired with the approval of the
2 commissioner in a company performing any activity that the commissioner
3 has determined, after notice and opportunity for hearing, is functionally
4 related to banking in such a way that its performance by a subsidiary
5 of a bank holding company can reasonably be expected to produce benefits
6 to the public that outweigh possible adverse effects;

7 (9) shares lawfully acquired and owned before the effective
8 date of this Act by a bank which is a bank holding company, or by any
9 of its wholly owned subsidiaries.

10 Sec. 06.40.030. / LIABILITY OF BANK HOLDING COMPANIES. A bank
11 holding company is primarily liable for the payment of the debts of its
12 subsidiaries which are banks.

13 Sec. 06.40.040. ADMINISTRATION. (a) Within 180 days after the
14 effective date of this Act, or within 180 days after becoming a bank
15 holding company, whichever is later, each bank holding company shall
16 register with the commissioner on forms prescribed by the commissioner,
17 which shall include such information with respect to the financial
18 condition and operations, management, and intercompany relationships
19 of the bank holding company and its subsidiaries, and related matters,
20 as the commissioner considers necessary or appropriate to carry out
21 the purposes of this chapter. The commissioner may, in his discretion,
22 extend the time within which a bank holding company shall register and
23 file the requisite information.

24 (b) The commissioner may promulgate regulations and issue orders
25 necessary to carry out the purposes of this chapter.

26 (c) The commissioner may require reports to keep him informed as
27 to whether the provisions of this chapter and the regulations and
28 orders issued under it have been complied with; and the commissioner
29 may make examinations of each bank holding company and each subsidiary

1 of one, the cost of which shall be assessed against, and paid by, the
2 holding company. The commissioner shall use available reports of
3 examinations by and filings to federal and state supervisory authori-
4 ties for the purpose of this chapter.

5 (d) All administrative proceedings under this chapter shall be
6 conducted in accordance with AS 44.62.330 - 44.62.630. Any party
7 aggrieved by an order of the commissioner under this chapter may
8 obtain judicial review in accordance with AS 44.62.560 - 44.62.570.

9 Sec. 06.40.050. INVESTIGATIONS AND SUBPOENAS. (a) The commis-
10 sioner in his discretion may make investigations inside or outside this
11 state as he considers necessary to determine whether a person has
12 violated or is about to violate a provision of this chapter or a
13 regulation or order under this chapter, or to aid in the enforcement
14 of this chapter or in the prescribing of regulations and forms under
15 this chapter, and may require or permit a person to file a statement in
16 writing as to all the facts and circumstances concerning the matter
17 to be investigated.

18 (b) For the purpose of an investigation or proceeding under this
19 chapter, the commissioner or an officer designated by him may administer
20 oaths and affirmations, subpoena witnesses, compel their attendance,
21 take evidence, and require the production of books, papers, correspon-
22 dence, memoranda, agreements, or other documents or records which the
23 commissioner considers relevant or material to the inquiry.

24 (c) In case of contumacy by or refusal to obey a subpoena issued
25 to a person, the superior court, upon application by the commissioner
26 and after reasonable notice to the person and a hearing if requested,
27 may issue an order requiring the person to appear before the commis-
28 sioner, or the officer designated by him, to produce documentary
29 evidence if so ordered or to give evidence on the matter under investi-

1 gation or in question. Failure to obey the order of the court may be
2 punished by the court as a contempt of court.

3 (d) No person is excused from attending and testifying or
4 from producing a document or record before the commissioner, or in
5 obedience to the subpoena of the commissioner or officer designated by
6 him, or in a proceeding instituted by the commissioner on the ground
7 that the testimony or evidence required of him may tend to incriminate
8 him or subject him to a penalty or forfeiture. However, no individual
9 may be prosecuted or subjected to a penalty or forfeiture for or on
10 account of a transaction, matter, or thing concerning which he is
11 compelled, after claiming his privilege against self-incrimination,
12 to testify or produce evidence, documentary or otherwise, except that
13 the individual testifying is not exempt from prosecution and punishment
14 for perjury or contempt committed in testifying.

15 Sec. 06.40.060. ORDERS AND INJUNCTIONS. Whenever it appears to
16 the commissioner that a person has engaged or is about to engage in an
17 act or practice in violation of a provision of this chapter or regula-
18 tion or order under this chapter, he may

19 (1) if he considers it in the public interest or for the
20 protection of investors, issue an order directing the person to stop
21 the act or practice; however, reasonable notice of and an opportunity
22 for a hearing shall first be given, except that the commissioner may
23 issue a temporary order pending the hearing which remains in effect
24 until 10 days after the hearing is held and which becomes final if the
25 person to whom notice is addressed does not request a hearing within
26 15 days after the receipt of notice; or

27 (2) bring an action in the superior court to enjoin the
28 acts or practices and to enforce compliance with this chapter or regu-
29 lation or order under this chapter, and upon a proper showing, the

1 appropriate remedy shall be granted and a receiver or conservator may
2 be appointed for the defendant or the defendant's assets; the court
3 may not require the commissioner to post a bond.

4 Sec. 06.40.070. PENALTIES. (a) A company which wilfully
5 violates a provision of this chapter, or a regulation or order issued
6 by the commissioner under this chapter, is, upon conviction, punishable
7 by a fine of not more than \$1,000 for each day during which the
8 violation continues. An individual who wilfully participates in a viola-
9 tion of a provision of this chapter, or a regulation or order issued by
10 the commissioner under this chapter, is, upon conviction punishable by
11 a fine of not more than \$10,000 or imprisonment for not more than one
12 year, or both. Every officer, director, agent and employee of a bank
13 holding company or a subsidiary who wilfully makes false entries in a
14 book, report, or statement of such bank holding company is, upon con-
15 viction, punishable by a fine of not more than \$10,000 or imprisonment
16 for not more than five years, or both.

17 (b) The commissioner may refer the evidence which is available
18 concerning violation of this chapter or a regulation or order under
19 this chapter to the attorney general who may, with or without a
20 reference, institute appropriate criminal proceedings under this
21 chapter.

22 (c) Nothing in this chapter limits the power of the state to
23 punish a person for conduct which constitutes a crime by statute or
24 at common law.

25 Sec. 06.40.080. DEFINITIONS. In this chapter

26 (1) "bank" means any financial institution in this state
27 that accepts deposits that the depositors have a legal right to
28 withdraw on demand;

29 (2) "bank holding company" means a company that directly

1 or indirectly owns, controls, or holds with power to vote 25 per cent
2 or more of the voting shares of a bank or of a company that is or
3 becomes a bank holding company by virtue of this chapter or that
4 controls in any manner the election of a majority of the directors of
5 a bank; and, for the purposes of this chapter, a successor to a company
6 is considered a bank holding company from the date on which its prede-
7 cessor company became a bank holding company; no bank and no company
8 owning or controlling voting shares of a bank is a bank holding company
9 by virtue of its ownership or control of shares in a fiduciary capacity
10 except as provided in sec. 80(8) and sec. 80(9) of this chapter; no
11 company is a bank holding company by virtue of its ownership or control
12 of shares acquired by it in connection with its underwriting of
13 securities if those shares are held only as long as necessary to permit
14 their sale on a reasonable basis; and no company formed for the sole
15 purpose of participating in a proxy solicitation is a bank holding com-
16 pany by virtue of its control of voting rights of shares acquired in
17 the course of that solicitation;

18 (3) "commissioner" means the commissioner of commerce.

19 (4) "company" means any corporation, general or limited
20 partnership, joint adventure, business trust or any other trust
21 unless by its terms it must terminate within 25 years or not later
22 than 21 years and 10 months after the death of individuals living on
23 the effective date of the trust, but does not include a corporation
24 the majority of the shares of which are owned by the United States
25 or by the State of Alaska;

26 (5) "subsidiary", with respect to a specified bank holding
27 company, means

28 (A) a company 25 per cent or more of whose voting
29 shares is directly or indirectly owned or controlled by that

1 bank holding company, or is held by it with power to vote; or

2 (B) a company the election of a majority of whose
3 directors is controlled in any manner by that bank holding
4 company;

5 (6) "successor" includes a company which acquires directly
6 or indirectly from a bank holding company shares of a bank, when and
7 if the relationship between that company and the bank holding company
8 is such that the transaction effects no substantial change in the
9 control of the bank beneficial ownership of the shares of the bank;

10 (7) shares owned or controlled by any subsidiary of a bank
11 holding company are considered to be indirectly owned or controlled
12 by the bank holding company;

13 (8) shares held or controlled directly or indirectly by
14 trustees for the benefit of a company the shareholders or members of a
15 company or the employees (whether exclusively or not) of a company,
16 are considered to be controlled by the company;

17 (9) shares transferred after the effective date of this
18 Act by a bank holding company (or by a company which, but for the trans-
19 fer, would be a bank holding company) directly or indirectly to a
20 transferee that is indebted to the transferor, or has one or more
21 officers, directors, trustees, or beneficiaries in common with or
22 subject to control by the transferor, are considered to be indirectly
23 owned or controlled by the transferor unless the commissioner, after
24 opportunity for hearing, determines that the transferor is not in fact
25 capable of controlling the transferee.

26 * Sec. 2. AS 06.05.235 and 06.05.540(9) are repealed.
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