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Referred: Commerce and  
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1 IN THE HOUSE

BY RANDOLPH

2 HOUSE BILL NO. 635

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SEVENTH 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  
15 subsidiary 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 bank 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  
29 provided in sec. 80(8) and (9) of this chapter;

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 collecting  
4 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  
25 the community to be served.

26 (e) No application under this section may be approved unless  
27 the resulting bank holding company or bank holding companies maintains  
28 its principal office and conducts substantially all of its operations  
29 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  
22 substantially by a banking subsidiary of a bank holding company  
23 in the operations of that banking subsidiary or acquired for the  
24 future 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 interest,  
11 but extensions may not extend beyond a date five years after the date  
12 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 (9) of this chapter;

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 functional-  
4 ly 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  
6 benefits 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. A 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

1 investigation or in question. Failure to obey the order of the court  
2 may be 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. If it appears to the  
16 commissioner that a person has engaged or is about to engage in an act  
17 or practice in violation of a provision of this chapter or regulation  
18 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  
9 violation of a provision of this chapter, or a regulation or order  
10 issued by the commissioner under this chapter is, upon conviction,  
11 punishable by a fine of not more than \$10,000, or by imprisonment for  
12 not more than one year, or by both. Every officer, director, agent  
13 and employee of a bank holding company or a subsidiary who wilfully  
14 makes false entries in a book, report, or statement of such bank  
15 holding company is, upon conviction, punishable by a fine of not more  
16 than \$10,000, or by imprisonment for not more than five years, or by  
17 both.

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

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

26 Sec. 06.40.080. DEFINITIONS. In this chapter

27 (1) "bank" means a financial institution in this state  
28 that accepts deposits that the depositors have a legal right to with-  
29 draw on demand;

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

19 (3) "commissioner" means the commissioner of commerce;

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

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

29 (A) a company 25 per cent or more of whose voting

1 shares is directly or indirectly owned or controlled by that  
2 bank holding company, or is held by it with power to vote; or

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

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

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

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

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

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