Offered: 2/9/71
Referred: Commerce

IN THE SENATE

BY THE COMMERCE COMMITTEE
BY REQUEST

SENATE BILL NO. 100

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

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

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

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

CHAPTER 40. ALASKA BANK HOLDING COMPANY ACT.

Sec. 06.40.010. ACQUISITION OF BANK INTERESTS. (a) It is unlawful, except with the prior approval of the commissioner, for

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

(2) any action to be taken that causes a bank to become a subsidiary of a bank holding company;

(3) a bank holding company to acquire direct or indirect ownership or control of voting shares of a bank if, after the acquisition, the bank holding company will directly or indirectly own or control more than five per cent of the voting shares of the bank;

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

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

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

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

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

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

(c) The commissioner may not approve

(1) an acquisition or merger or consolidation under this section which would result in a monopoly, or which would be in furtherance of a combination or conspiracy to monopolize or to attempt to monopolize or to attempt to monopolize the business of banking; or

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

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

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

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

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

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

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

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

(A) holding or operating properties used wholly or substantially by a banking subsidiary of a bank holding company in the operations of that banking subsidiary or acquired for the future use of that banking subsidiary; or

(B) conducting a safe deposit business; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

of one, the cost of which shall be assessed against, and paid by, the holding company. The commissioner shall use available reports of examinations by and filings to federal and state supervisory authorities for the purpose of this chapter.

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

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

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

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

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

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

Sec. 06.40.060. ORDERS AND INJUNCTIONS. If it appears to the commissioner that a person has engaged or is about to engage in an act or practice in violation of a provision of this chapter or regulation or order under this chapter, he may

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

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

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

Sec. 06.40.070. PENALTIES. (a) A company which wilfully violates a provision of this chapter, or a regulation or order issued by the commissioner under this chapter, is, upon conviction, punishable by a fine of not more than $1,000 for each day during which the violation continues. An individual who wilfully participates in a violation of a provision of this chapter, or a regulation or order issued by the commissioner under this chapter is, upon conviction, punishable by a fine of not more than $10,000, or by imprisonment for not more than one year, or by both. Every officer, director, agent and employee of a bank holding company or a subsidiary who wilfully makes false entries in a book, report, or statement of such bank holding company is, upon conviction, punishable by a fine of not more than $10,000, or by imprisonment for not more than five years, or by both.

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

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

Sec. 06.40.080. DEFINITIONS. In this chapter

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

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

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

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

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

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

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

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

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

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

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

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

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