

Original Sponsor: Rules Committee by  
request of the Governor

Offered: 5/27/76  
Referred: Rules

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 528

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act making miscellaneous amendments to the banking  
7 statutes."

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

9 \* Section 1. AS 06.05.010 is repealed and re-enacted to read:

10 Sec. 06.05.010. NOTICE AND HEARING. Except for the formulation of  
11 regulations of general application, the department shall give public  
12 notice of each proposed action, and if it receives written opposition to  
13 a proposed action, the department shall give public notice and hold a  
14 hearing before taking the action. Written opposition must be filed with  
15 the department within the time specified by the department. In cases  
16 involving extraordinary circumstances requiring immediate action the  
17 department may take action without notice and public hearing, but upon  
18 application to rescind the action taken, the department shall promptly  
19 hold a hearing on the application.

20 \* Sec. 2. AS 06.05.035 is amended to read:

21 Sec. 06.05.035. EXAMINATION FEE. A bank examined under the pro-  
22 visions of sec. 25 of this chapter shall pay a fee to the department of  
23 \$175 [\$125] per examiner for each day or part of a day required for the  
24 examination but not to exceed \$7,500 [\$3,750] per calendar year. The  
25 total amount of the fee shall be paid by the bank promptly upon receipt  
26 of the examination report and billing from the department.

27 \* Sec. 3. AS 06.05.045(a) is amended to read:

28 (a) Every state bank shall make at least four reports of condition  
29 each year to the department on days designated by it, and on forms

1 prescribed by it. The report shall be verified by an oath of the presi-  
2 dent, vice president, or cashier and by at least three directors, certi-  
3 fying and subscribing under oath that they and each of them have personal  
4 knowledge of the facts stated in the report and that the facts are true.  
5 The reports shall exhibit in detail and under appropriate heads the  
6 resources and liabilities of the bank, and shall be transmitted or  
7 mailed to the department within 10 days of the receipt of the request  
8 from the department [IT].

9 \* Sec. 4. AS 06.05.050 is amended to read:

10 Sec. 06.05.050. PUBLICATION OF REPORTS. All reports of condition  
11 required by sec. 45(a) of this chapter shall be published immediately in  
12 condensed form at least once in a newspaper of general circulation pub-  
13 lished in the place where the bank is located. If no newspaper is pub-  
14 lished in that place, then the report shall be published in the news-  
15 paper published nearest to that place.

16 \* Sec. 5. AS 06.05.055(a) is amended to read:

17 (a) The department shall report to the governor annually, within  
18 120 [60] days after the end of each fiscal year. The report shall  
19 include

20 (1) the text of all rules of general application, adopted or  
21 altered by the department since its last report;

22 (2) recommendations for legislation;

23 (3) a statement of the status and assets and liabilities of  
24 all banking organizations which are regulated by [IN THE POSSESSION OF]  
25 the department;

26 (4) a summary of all changes occurring since its last report  
27 by reason of opening new state banks, mergers and conversions, increases  
28 and decreases in capital and similar changes;

29 (5) a statement of condition of each state bank as of the

1 date of the most recent report of condition submitted to the department.

2 \* Sec. 6. AS 06.05.065 is repealed and re-enacted to read:

3 Sec. 06.05.065. BANKING INTEREST OF DEPARTMENT OFFICES AND EM-  
4 PLOYEES. (a) No bank examiner of the department who deals with the  
5 regulation of lending institutions, special agent selected by the depart-  
6 ment to do work relating to lending institutions, the commissioner or  
7 deputy commissioner of the department, or the director of banking may be  
8 an officer, employee, director, trustee, attorney, stockholder, or  
9 partner of a lending institution, or receive, directly or indirectly, a  
10 payment or gratuity from a lending institution. A person subject to  
11 this section may not borrow money from a state lending institution  
12 except as provided in this section.

13 (b) A person subject to this section may

14 (1) be a depositor in a lending institution;

15 (2) purchase shares of a savings and loan association on the  
16 same terms available to the public;

17 (3) be a member of an employee credit union;

18 (4) obtain a loan by the assignment of a deposit in a lending  
19 institution that is of equivalent or greater value; and

20 (5) be indebted to a state lending institution upon

21 (A) a mortgage loan upon the mortgagor's real property,  
22 or a loan on a mobile home in which he is living or intends to  
23 live; or

24 (B) an installment debt transferred to the lending  
25 institution in the regular course of business by a seller of goods,  
26 including but not limited to household goods, mobile homes, motor  
27 vehicles, or boats purchased by the employee for personal use only.

28 (c) This section does not limit the authority of an officer or  
29 employee of the department acting in his official capacity in the

1 business of the department.

2 (d) An officer or employee who violates this section shall be  
3 dismissed and is forever disqualified from holding any position in the  
4 department relating to the regulation of state lending institutions.  
5 A nonexempt employee dismissed under this section may appeal his dis-  
6 missal under the state personnel act.

7 (e) Any person who violates this section is guilty of a misde-  
8 meanor, and upon conviction is punishable by a fine of not more than  
9 \$5,000, or by imprisonment for not more than one year, or by both, and  
10 shall also be fined an amount equal to the value of the property given  
11 or received or the money loaned or borrowed.

12 (f) When used in this section, the term "lending institution"  
13 means a bank, savings institution, industrial bank, savings and loan  
14 association, foreign banking corporation or institution, bank holding  
15 company, or other institution doing banking business in the state.

16 \* Sec. 7. AS 06.05.200(a) is amended to read:

17 (a) Each commercial bank which is not a member of the federal  
18 reserve system shall maintain total reserves equal to the following per-  
19 centages of the aggregate amount of its deposits, exclusive of deposits  
20 of the United States, the State of Alaska, borough and municipal govern-  
21 ments and other deposits of public money which are secured as required  
22 by law

23 (1) 20 per cent of its demand deposits; and

24 (2) eight per cent of its time and savings deposits.

25 \* Sec. 8. AS 06.05.200(b) is amended to read:

26 (b) Only vault cash and the amount due from good and solvent banks  
27 located in the state [,] or within the United States, the deposits of  
28 which are insured by the Federal Deposit Insurance Corporation, may be  
29 used in computing the reserves required under (a) of this section and

1 the computation shall be made on the basis of average daily net deposit  
2 balances covering bi-weekly periods.

3 \* Sec. 9. AS 06.05.205(a) is amended to read:

4 (a) If an officer or employee of a bank loans funds of the bank in  
5 an amount exceeding \$25,000 [\$5,000] to a person he must [SO] notify the  
6 board of directors of the bank.

7 \* Sec. 10. AS 06.05.205(b) is amended to read:

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

23 \* Sec. 11. AS 06.05.210 is repealed and re-enacted to read:

24 Sec. 06.05.210. LOANS TO OFFICERS AND EMPLOYEES. (a) Any officer  
25 or employee of a state bank may borrow up to \$10,000 from the bank at  
26 the discretion of the executive or managing officer of the bank. Loans  
27 in excess of \$10,000 shall have the prior approval of the board of  
28 directors, shall be reported to the department within 30 days and  
29 secured by adequate collateral. For the purpose of this section, an

1 overdraft is considered a loan.

2 (b) An officer or employee of a state bank who violates this  
3 section is guilty of a misdemeanor and, upon conviction is punishable by  
4 a fine of not more than \$5,000 or by imprisonment for not more than one  
5 year, or by both.

6 \* Sec. 12. AS 06.05.212(a) is amended to read:

7 (a) A director, officer, or employee of a state bank who knowingly  
8 wilfully, or repeatedly [AND PERSISTENTLY] overdraws his account or who  
9 permits a customer to do so [,] is engaged in an unsound banking prac-  
10 tice [AND SUBJECT TO THE PROVISIONS OF SEC. 5(4) OF THIS CHAPTER].

11 \* Sec. 13. AS 06.05.215 is repealed and re-enacted to read:

12 Sec. 06.05.215. LIABILITY OF DIRECTORS AND OFFICERS FOR CARELESS  
13 OR EXCESSIVE LOANS. An issuing officer, director, executive or managing  
14 officer of a state bank who knowingly approves or permits the funds of  
15 the bank to be lent or overdrafts to be made in a grossly excessive,  
16 negligent or dishonest manner is personally liable for all the loans  
17 which the bank, its stockholders, or depositors or any other person  
18 sustains because of the violation. The liability may be enforced against  
19 the issuing officer, director, executive or managing officer by an  
20 action in a court of competent jurisdiction.

21 \* Sec. 14. AS 06.05.230 is repealed and re-enacted to read:

22 Sec. 06.05.230. INVESTMENT IN REAL ESTATE AND BANKING PREMISES.  
23 A bank may acquire, purchase, hold, convey and hypothecate real property  
24 for the following purposes only:

25 (1) real property necessary for the convenient transaction  
26 of its business, including banking offices, equipment, furniture  
27 and fixtures, leasehold improvements, and parking lots, if the  
28 book asset value of the purchase or investment does not exceed 60  
29 per cent of the capital account and the surplus account of the bank;

1 the purchase or investment may consist of stock in a bank building  
2 corporation;

3 (2) the satisfaction of or on account of debts previously  
4 contracted in the course of its business;

5 (3) the purchase at sale under judgment, decree, lien, or  
6 mortgage foreclosure, against security held by it.

7 \* Sec. 15. AS 06.05.235 is repealed and re-enacted to read:

8 Sec. 06.05.235. BANK HOLDING COMPANIES. (a) It is unlawful for a  
9 company to own, control or hold with power to vote 25 per cent or more  
10 of the capital stock of one or more state banks or state bank holding  
11 companies subject to regulation under this chapter. Nothing in this  
12 subsection prohibits a company from qualifying as a bank holding company  
13 under (b) of this section. However, when it becomes a bona fide neces-  
14 sity to avoid loss for a creditor to accept shares of stock in one or  
15 more banks or bank holding companies constituting more than 25 per cent  
16 of the ownership or control of a bank or bank holding company in payment  
17 of indebtedness owing to the creditor, shares of stock may be accepted,  
18 but the shares of the one or more banks or bank holding companies  
19 exceeding that 25 per cent shall be promptly disposed of under the  
20 supervision of the department.

21 (b) A domestic bank holding company, as defined in sec. 540 of  
22 this chapter and organized under AS 10.05, which maintains its principal  
23 office and place of business in the state and conducts its principal  
24 operations in the state, may acquire and own all or any portion of the  
25 voting shares or other capital stock of, or all or substantially all of  
26 the assets of, one or more banks or bank holding companies. The depart-  
27 ment may require a holding company to post a bond with the department in  
28 an amount equal to the paid-in capital and paid-in surplus represented  
29 by the proportion of bank stock directly or indirectly owned, held, or

1 controlled by it under conditions the department may prescribe to  
2 assure full protection of the public. The holding company is subject to  
3 an examination by the department or a competent person designated by the  
4 department when the department considers it necessary, but not less  
5 than once each year. The holding company shall pay a fee to the depart-  
6 ment of \$175 per examiner for each day or part of a day required for the  
7 examination.

8 (c) The department may promulgate regulations for bank holding  
9 companies to assure financially sound banking organization and  
10 practice.

11 (d) A person or an officer, director, agent, or employee of the  
12 person, who violates a regulation promulgated under (c) of this section  
13 is guilty of a misdemeanor, and upon conviction is punishable by a fine  
14 of not more than \$5,000, or by imprisonment for not more than one year,  
15 or by both; and in the case of a corporation, by a fine of not more than  
16 \$10,000.

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

18 Sec. 06.05.238. REQUIRED DIRECTORS' MEETINGS AND STATEMENTS TO THE  
19 DEPARTMENT. When the department considers it necessary it may require a  
20 meeting of the board of directors of a state bank to be held in the  
21 manner and at the time and place it directs. Any report of an examina-  
22 tion required or allowed by this chapter, any conclusions drawn from  
23 such an examination by the department, any recommendations made by the  
24 department relative to it, and any other matters concerning the opera-  
25 tion and condition of the bank may be presented to the board of directors  
26 by the department. Each member of the board of directors shall furnish  
27 to the department a statement on forms to be supplied by the department  
28 that he has read and is familiar with the recommendations of the depart-  
29 ment.

1 \* Sec. 17. AS 06.05.255(a) is amended to read:

2 (a) The aggregate amount of outstanding liabilities of a state  
3 bank for money borrowed exclusive of (1) capital notes and debentures  
4 issued under sec. 307 of this chapter, (2) obligations incurred in  
5 connection with the purchase of bank premises as set out in sec. 230(1)  
6 of this chapter, and (3) borrowing for emergency purposes as permitted  
7 by the department, may not at any time exceed the total amount of its  
8 unimpaired capital and one-half of its unimpaired surplus or a larger  
9 amount if approved by the department.

10 \* Sec. 18. AS 06.05.270(a) is amended by adding a new paragraph to read:

11 (10) stock in the Federal National Mortgage Association or a  
12 Federal Reserve Bank.

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

14 Sec. 06.05.280. BANK FEES AND CHARGES CONNECTED WITH LOANS. (a)  
15 A bank may require borrowers to pay all reasonable expenses incurred in  
16 connection with the making, closing, disbursing, extending, readjusting  
17 or renewing of loans, including, when appropriate, appraisal, attorney,  
18 abstract, filing, recording and registration fees, title examination,  
19 title insurance, mortgage insurance, credit report, survey, drawing of  
20 papers, escrow services, loan collection account services, and taxes or  
21 charges imposed upon or in connection with the making, recording or  
22 filing of a mortgage, deed of trust, or other security instrument in-  
23 tended to perfect a security interest related to the loan. A bank may  
24 also require borrowers to pay the cost of all other necessary and inci-  
25 dental services furnished by the bank or by others in connection with  
26 loans, including the costs of services of inspectors, engineers, archi-  
27 tects or others reasonably required to evaluate or administer the loan.  
28 The charges by a bank may be collected by the bank from the borrower or  
29 added to the loan amount, and charges by a third party may be collected

1 by the bank from the borrower and paid to the third party, or may be  
2 paid directly to the third party by the borrower.

3 (b) The fees and charges authorized by (a) of this section are in  
4 addition to the interest authorized by law, and are not a part of the  
5 interest collected or agreed to be paid on a loan within the meaning of  
6 any law of the state which limits the rate of interest.

7 (c) No bank or director, officer or employee of a bank may receive  
8 a fee or other compensation of any kind in connection with obtaining a  
9 loan from a bank, except for services actually rendered as provided in  
10 this chapter.

11 \* Sec. 20. AS 06.05.305 is repealed and re-enacted to read:

12 Sec. 06.05.305. CAPITAL STRUCTURE. (a) It is unlawful for a cor-  
13 poration to commence and operate a banking business in the state unless  
14 the corporation has capital and surplus of at least \$150,000; and it is  
15 unlawful for a bank to operate any branches unless it has an aggregate  
16 capital and surplus of at least \$800,000.

17 (b) No reduction of capital stock of a state bank may be made to  
18 an amount less than is required in this chapter for capital. No reduc-  
19 tion of capital stock, cancellation of stock certificates, or reducing  
20 of the liability of the stockholders is valid until it is approved by  
21 the department.

22 (c) If a state bank fails to maintain its total adjusted capital  
23 accounts and reserves in an amount equal to the substandard assets as  
24 reported by the Federal Deposit Insurance Corporation or the state in a  
25 bank's latest report of examination, the department shall consider the  
26 failure as endangering the safety of the depositor and may direct the  
27 bank's directors to increase the capital accounts in an amount suffi-  
28 cient to cover substandard assets.

29 \* Sec. 21. AS 06.05.307(d) is amended to read:

1 (d) The amount of outstanding notes and debentures not maturing  
2 within one year shall be added to the capital, [STOCK AND] surplus  
3 account, and undivided profit [FUND] of the issuing bank for the purpose  
4 of determining the maximum amount that may be loaned by the bank as pro-  
5 vided in sec. 205 of this chapter.

6 \* Sec. 22. AS 06.05.310(c) is amended to read:

7 (c) At any time after the expiration of the 60-day period, the  
8 board of directors may proceed, by action or otherwise, to collect the  
9 assessment from any delinquent stockholder, or it may, whether an action  
10 has been commenced or not, at any time before the assessment is actually  
11 collected [,] sell the stock of the stockholder and forfeit all the  
12 amounts previously collected on the stock. [THEREON. THE COLLECTION OF  
13 ANY ASSESSMENT UNDER THIS SECTION FOR THE PURPOSE OF REPLACING ANY IM-  
14 PAIRMENT OF CAPITAL DOES NOT RELIEVE ANY STOCKHOLDER FROM LIABILITY TO  
15 THE CREDITORS OF THE BANK AS PROVIDED BY SEC. 315 OF THIS CHAPTER.]

16 \* Sec. 23. AS 06.05.340 is repealed and re-enacted to read:

17 Sec. 06.05.340. REMUNERATION FOR ORGANIZING STATE BANKS. A bank  
18 may not pay directly or indirectly a fee, commission, or bonus of any  
19 kind for its promotion and organization or for securing a subscription  
20 to the original capital or to any increase in capital. However, this  
21 section does not prohibit the payment of reasonable compensation for  
22 legal, accounting, and econometric services, or payments to a securities  
23 broker-dealer registered under AS 45.55 for services that have been per-  
24 formed in connection with the sale of bank securities.

25 \* Sec. 24. AS 06.05 is amended by adding a new section to read:

26 Sec. 06.05.342. SUBSCRIPTIONS FOR SHARES. (a) Any subscription  
27 agreements and accompanying prospectuses or offering circulars, whether  
28 for a proposed state bank or for an increase in capital of an existing  
29 state bank, shall be submitted before they are used to the department

1 for approval based upon their providing full disclosure of the material  
2 terms of the offering. The department may order the incorporators not  
3 to accept any stock subscriptions or to cease accepting subscriptions if  
4 it determines that the incorporators are not acting lawfully or in good  
5 faith.

6 (b) In the case of a proposed state bank, the incorporators shall  
7 submit a list of subscribers, providing the name, residence address, and  
8 occupation of each subscriber and the number of shares for which he has  
9 subscribed.

10 \* Sec. 25. AS 06.05.345 is repealed and re-enacted to read:

11 Sec. 06.05.345. INCORPORATION. (a) In addition to meeting the  
12 requirements of the Alaska Business Corporation Act (AS 10.05), the  
13 articles of incorporation shall include the following:

14 (1) the name of the bank and a provision that it is incor-  
15 porated solely for the purpose of conducting banking and trust busi-  
16 nesses as defined in this chapter;

17 (2) the judicial district in which the bank is to be located  
18 and the community where its principal place of business will be located.

19 (b) The articles of incorporation shall be signed by all of the  
20 incorporators and acknowledged before an officer authorized to take  
21 acknowledgements.

22 (c) Before commencing business, the incorporators of a proposed  
23 state bank shall obtain the approval of the department. In applying for  
24 the approval the incorporators shall submit to the department

25 (1) an application in the form and containing the information  
26 the department requires, including but not limited to the following:

27 (A) any past and present connection with any bank other  
28 than as a customer on terms generally available to the public of  
29 each incorporator and proposed director and each pre-incorporation

1 subscriber of more than five per cent of the capital stock;

2 (B) the name, residence and occupation of each preincor-  
3 poration subscriber and the number of shares subscribed for by  
4 each;

5 (C) the address of the proposed place of business of the  
6 bank or, if an address is not available, a legal description of  
7 the proposed place of business;

8 (2) the proposed articles of incorporation executed in  
9 triplicate together with applicable fees, payable to the department for  
10 the filing as set out in the Alaska Business Corporation Act (AS 10.05).

11 (d) An application for approval of a proposed bank shall be accom-  
12 panied by an application fee of \$1,000. The department may assess the  
13 incorporators for additional amounts; for example, the actual costs  
14 incurred in processing the application if they exceed \$1,000. Each  
15 incorporator is personally, jointly and severally liable for payment of  
16 the total assessment.

17 (e) The department shall notify the incorporators of its decision  
18 on an application for a proposed state bank. If the application and  
19 accompanying documents required by (c) of this section do not conform to  
20 the requirements of this chapter and to the regulations adopted under  
21 this chapter, the department shall return the documents with an explana-  
22 tion of the defects. If the department does not act within 30 days of  
23 receipt of the application, the application shall be considered accepted  
24 however, acceptance of the application does not constitute approval.

25 (f) The incorporators shall publish notice of the department's  
26 acceptance of the application for a proposed state bank and articles of  
27 incorporation once each week for two successive weeks in a newspaper of  
28 general circulation published in the community proposed as the bank's  
29 principal place of business. If there is no newspaper in the proposed

1 principal place of business, the notice shall be published in a news-  
2 paper of general circulation near the community. The first publication  
3 of the notice shall appear within 15 days after the application and  
4 articles of incorporation have been accepted by the department. The  
5 notice shall state:

6 (1) the name of the proposed state bank;

7 (2) that the proposed bank is to be incorporated under this  
8 chapter;

9 (3) the purpose of the proposed bank;

10 (4) the names and addresses of the incorporators and the  
11 initial board of directors as they appear in the articles of incor-  
12 poration.

13 (g) Proof of publication under (f) of this section, shall be by  
14 affidavit of the publisher of the newspaper in which it was made and  
15 shall be filed with the department.

16 (h) Upon acceptance of an application for approval of a proposed  
17 state bank, the department shall conduct an investigation to ascertain  
18 whether:

19 (1) the convenience and needs of the public will be served by  
20 the bank;

21 (2) the population density or other economic characteristics  
22 of the area primarily to be served by the bank afford reasonable promise  
23 of adequate support for the bank;

24 (3) the character and fitness of the incorporators and the  
25 members of the initial board of directors are of a nature which commands  
26 the confidence of the community and warrants the belief that the business  
27 of the bank will be honestly and efficiently conducted;

28 (4) the capital structure of the bank is adequate in relation  
29 to the amount of the anticipated business of the bank and the safety of

1 prospective depositors;

2 (5) the bank will have personnel with adequate knowledge and  
3 experience to conduct its business and officers that are of good charac-  
4 ter and financial responsibility;

5 (6) the addition of the bank is not detrimental to a sound  
6 banking system;

7 (7) the name is not deceptively similar to that of another  
8 bank and is not otherwise misleading;

9 (8) other facts and circumstances bearing on the bank and its  
10 relation to the community which the department considers relevant.

11 (i) No later than one year after the application for approval has  
12 been accepted the department shall approve or deny it. Within 60 days  
13 after the second publication of the notice required by (f) of this  
14 section, any person opposing the application may file with the depart-  
15 ment written objections to it. When it approves or denies the appli-  
16 cation, the department shall notify the incorporators and any other  
17 person who requested in writing that he or she be notified, and, if the  
18 application is denied, the department shall state the reasons for its  
19 decision and return all copies of the articles of incorporation.

20 (j) If the department approves the application, the approval shall  
21 be endorsed on the articles of incorporation, and the articles of incor-  
22 poration shall be filed and a certificate of incorporation issued. The  
23 department shall retain one copy of the approved articles for its files,  
24 file one copy with the Department of Revenue and return one copy to the  
25 incorporators.

26 (k) At the time of the issuance of the certificate of incorpora-  
27 tion by the department the corporate existence begins, unless the  
28 certificate in conformity with a provision of the articles of incorpora-  
29 tion provides that it will begin on a stated day in the future, in which

1 event the corporate existence begins on the day stated, without further  
2 action by either the incorporators or the department. The certificate  
3 of incorporation is conclusive evidence of the fact that the state bank  
4 has been incorporated except as against the department in a proceeding  
5 instituted by it to dissolve the bank under sec. 466 of this chapter.

6 (1) A bank may amend its articles of incorporation in any manner  
7 consistent with this chapter by a vote of its stockholders representing  
8 two-thirds of the capital at any regular meeting or at a special meeting  
9 called for that purpose. A certificate of the terms of the amendments  
10 shall be executed by a majority of the directors and filed in the same  
11 manner as the articles of incorporation.

12 \* Sec. 26. AS 06.05.350 is repealed and re-enacted to read:

13 Sec. 06.05.350. CERTIFICATE OF AUTHORITY. (a) Until it receives  
14 a certificate of authority from the department to engage in the banking  
15 business, a state bank may not accept deposits or transact any business  
16 except what is incidental to its commencement of business or to obtain-  
17 ing subscriptions and payment for its shares. If, in violation of this  
18 subsection, a state bank transacts business before it receives a certifi-  
19 cate of authority to engage in the banking business, the directors and  
20 officers who wilfully authorized or participated in the action are  
21 personally, jointly, and severally liable for the debts and liabilities  
22 of the bank incurred before the certificate of authority to engage in  
23 the banking business is received.

24 (b) The department shall issue a certificate of authority to en-  
25 gage in the banking business to a proposed state bank if, upon review of  
26 the information required by this chapter, including the following, it  
27 approves the application:

28 (1) certification by an officer to the department by affi-  
29 davit that the capital surplus and undivided profits required by the

1 department have been fully paid in cash;

2 (2) a list of stockholders, giving the name, address, and  
3 number of shares held by each has been filed with the department;

4 (3) bylaws have been adopted and filed with the department;

5 (4) the bank has received approval of its application for  
6 insurance from the Federal Deposit Insurance Corporation;

7 (5) the bank has complied with all the requirements of this  
8 chapter and any conditions imposed by the department and has advised the  
9 department in writing of any changes that have occurred in the facts  
10 reflected in the material it filed under sec. 334 of this chapter.

11 (c) If the rights conferred by a certificate of authority are not  
12 exercised within one year from the date of its issuance, the certificate  
13 lapses.

14 \* Sec. 27. AS 06.05.355 is repealed and re-enacted to read:

15 Sec. 06.05.355. DEPOSIT INSURANCE REQUIRED. (a) A bank incor-  
16 porated under this chapter may not begin business until it is a member  
17 in the Federal Deposit Insurance Corporation.

18 (b) A bank which is a member in the Federal Deposit Insurance  
19 Corporation may not voluntarily relinquish membership without the  
20 consent of the department. Request for the consent must be made at  
21 least 180 days before the proposed date of relinquishment.

22 (c) Relinquishment of membership without giving notice and ob-  
23 taining the department's consent, involuntary loss of membership, or  
24 failure to become a member constitutes cause for the department to take  
25 possession of the bank in the manner provided by this chapter.

26 \* Sec. 28. AS 06.05 is amended by adding a new section to read:

27 Sec. 06.05.399. APPLICATION FOR CERTIFICATE OF AUTHORITY FOR  
28 BRANCH BANK OR CHANGE OF LOCATION. (a) Before operating a branch bank  
29 or changing the location of the principal office or of a branch of the

1 bank, a state bank must apply to the department for a certificate of  
2 authority to do so. The application shall be in the form and contain  
3 the information the department requires to enable it to determine  
4 whether a certificate of authority should be issued, including but not  
5 limited to the address at which the state bank or branch will operate.  
6 The application must be accompanied by a fee of \$500. The department  
7 may assess the bank for an additional amount if its actual costs in  
8 processing the application exceed the initial application fee.

9 (b) The department shall notify the state bank of its action on  
10 the application for a branch bank or for a change of location. If the  
11 application and the accompanying documents do not conform to the re-  
12 quirements of (a) of this section, the department shall return them with  
13 an explanation of the defects in them. If the department does not  
14 respond within 30 days of its receipt of the application, it shall be  
15 considered to have been accepted.

16 (c) The state bank shall publish notice of the acceptance by the  
17 department of the application for a branch bank or for approval to  
18 change location in the manner provided in sec. 345(f) and (g) of this  
19 chapter. The notice shall state the proposed location.

20 (d) Upon acceptance of an application for a certificate of author-  
21 ity to operate a branch bank or for approval to change location, the  
22 department shall conduct an investigation to ascertain whether

23 (1) the addition of the proposed facility in the community is  
24 not detrimental to a sound banking system;

25 (2) the population density and other economic character-  
26 istics of the area primarily to be served afford reasonable promise of  
27 adequate support for a branch or a relocated principal office;

28 (3) the capital structure of the state bank is adequate in  
29 relation to the anticipated business and costs of operating at the

1 proposed location;

2 (4) the name is not deceptively similar to that of another  
3 branch or bank and is not otherwise misleading.

4 (e) No later than 150 days after the application for a certificate  
5 of authority to operate a branch bank or to change location has been  
6 accepted, the department shall make a determination whether to approve  
7 the application. Within 30 days after the second publication of the  
8 notice referred to in (c) of this section, any person opposing the  
9 pending application may file written objections with the department.  
10 When it approves or denies the application, the department shall notify  
11 the bank and any other person who requested in writing that he or she be  
12 notified; and if the application is denied, the department shall state  
13 the reasons for its decision.

14 (f) The department shall issue a certificate of authority to  
15 operate a branch bank or to change location if

16 (1) all conditions imposed by the department in granting the  
17 certificate have been fulfilled;

18 (2) the requirements of this chapter are satisfied;

19 (3) approval of the application for insurance has been  
20 received from the Federal Deposit Insurance Corporation.

21 (g) If the rights conferred by a certificate of authority are not  
22 exercised within one year from the date of its issuance, the certificate  
23 lapses.

24 \* Sec. 29. AS 06.05.437(a) is amended to read:

25 (a) The officers of a bank shall be elected by the board of  
26 directors. No officer may be elected for a period longer than one year.  
27 An officer may be removed by the board of directors at any time but  
28 removal shall not prejudice any rights that he may have to damages for  
29 breach of contract of employment. The president of a bank shall be a

1 member of the board of directors.

2 \* Sec. 30. AS 06.05.441(a) is amended to read:

3 (a) Before a bank dividend is declared, or the net profits for the  
4 period covered by the dividend disposed of, not less than one-fifth of  
5 these net profits shall be carried to the bank surplus account [FUND]  
6 until the surplus account [FUND] amounts to 100 per cent of the paid-in  
7 capital of the bank.

8 \* Sec. 31. AS 06.05.443(3) is amended to read:

9 (3) all assets or depreciation which the department [DIRECTOR  
10 OF BANKS OR A DULY APPOINTED EXAMINER] may have required to be charged  
11 off;

12 \* Sec. 32. AS 06.05.450 is amended to read:

13 Sec. 06.05.450. STOCKHOLDERS LIST [ACCOUNTING REQUIREMENTS]. Each  
14 bank shall keep a book in which it shall enter the name and residence of  
15 each stockholder of the bank, the class and number of shares held by  
16 each, the time when each person became a stockholder, and all transfers  
17 of stock, stating the time when made, the number of shares, and by whom  
18 transferred. [IN ALL CIVIL AND CRIMINAL ACTIONS AND PROCEEDINGS, THE  
19 BOOK IS PRIMA FACIE EVIDENCE OF THE FACTS STATED IN IT.] A list of the  
20 stockholders shall be available for inspection [POSTED] in the bank  
21 office showing the number of shares held by each stockholder of record.

22 \* Sec. 33. AS 06.05.465 is repealed and re-enacted to read:

23 Sec. 06.05.465. VOLUNTARY LIQUIDATION; REQUIREMENTS FOR APPROVAL.

24 (a) With the approval of the department, a bank may voluntarily liqui-  
25 date and dissolve. This approval shall be granted if the department  
26 finds that

27 (1) the proposal to liquidate and dissolve has been approved  
28 by a vote of two-thirds of the outstanding voting stock at a meeting  
29 called for the purpose of considering that action;

1 (2) the bank is solvent and has sufficient liquid assets to  
2 promptly pay off depositors and creditors.

3 (b) Upon approval by the department of voluntary liquidation under  
4 (a) of this section a bank shall immediately cease to do business and  
5 retain only the powers necessary to effect an orderly liquidation. It  
6 shall proceed to pay its depositors and creditors and to conclude its  
7 affairs.

8 (c) Within 30 days after the approval, a notice of voluntary  
9 liquidation shall be

10 (1) mailed to the last known post office address of each  
11 depositor, creditor, person interested in funds held as a fiduciary,  
12 lessee of a safe deposit box, or bailor of property;

13 (2) posted conspicuously on the premises of the bank; and

14 (3) published as the department requires.

15 (d) The bank shall mail with the notice sent under (c)(1) of this  
16 section a statement of the amount shown on its books to be the claim of  
17 the depositor or creditor. The notice shall also demand that property  
18 held by the bank as bailee or in a safe deposit box be withdrawn by the  
19 person entitled to it within 30 days. That notice shall direct that  
20 objections of depositors and creditors, if the amount claimed differs  
21 from that in the statement, be filed with the bank in accordance with  
22 the procedure described in the notice, before a specified date which is  
23 not less than 60 days from the date of first publication. The notice  
24 shall also include other information the department or the bank con-  
25 siders necessary.

26 (e) As soon after approval as is practicable, the bank shall  
27 resign all fiduciary positions and take what action may be necessary to  
28 settle its fiduciary accounts.

29 (f) The contents of safe deposit boxes which have not been removed

1 within 30 days after demand shall be opened and the contents dealt with  
2 in the manner provided for boxes upon which the payment of rental is in  
3 default, and the sealed packages containing the contents and the certi-  
4 ficates together with any other unclaimed property held by the bank as  
5 bailee and certified inventories of that property shall be transferred  
6 to the department which shall retain it for five years unless sooner  
7 claimed by the person entitled to it. After five years the department  
8 shall sell or otherwise appropriately dispose of the property. The  
9 proceeds of any sale shall be transferred to the state treasury and  
10 deposited in the general fund.

11 (g) The approval of an application for voluntary liquidation does  
12 not impair any right of a depositor or creditor to payment in full, and  
13 all lawful claims of creditors and depositors shall promptly be paid.  
14 The unearned portion of the rental of a safe deposit box shall be  
15 returned to the lessee.

16 (h) Any assets remaining after the discharge of all obligations  
17 shall be distributed to the stockholders in accordance with their  
18 respective interests. No distribution may be made before

19 (1) all claims of depositors and creditors have been paid,  
20 or, in the case of any disputed claim, the bank has transmitted to the  
21 department a sum adequate to meet any liability that may be judicially  
22 determined;

23 (2) any funds payable to a depositor or creditor and un-  
24 claimed have been transmitted to the department; and

25 (3) approval of the department.

26 (i) Any unclaimed distribution to a stockholder or a depositor  
27 shall be held until 90 days after the final distribution and then  
28 transmitted to the department. Unclaimed funds of a stockholder or a  
29 depositor shall be held by the department for five years and, unless

1 sooner claimed by the person entitled to them, shall be transferred to  
2 the state treasury and deposited in the general fund.

3 \* Sec. 34. AS 06.05 is amended by adding a new section to read:

4 Sec. 06.05.466. INVOLUNTARY DISSOLUTION BEFORE COMMENCEMENT OF  
5 BUSINESS. (a) Before the issuance of a certificate of authority, the  
6 department may dissolve and cause the liquidation of a state bank if the  
7 department discovers, after its approval of the articles of incorpora-  
8 tion, a reason why the bank should not have been incorporated, or if a  
9 certificate of authority has not been issued within one year after the  
10 issuance of the certificate of incorporation or within the time the  
11 department allowed for satisfaction of conditions precedent to the  
12 issuance of a certificate of authority. After giving the bank notice  
13 and an opportunity for hearing, the department shall file a statement of  
14 facts and issue a certificate of dissolution.

15 (b) A bank dissolved under (a) of this section shall immediately  
16 proceed to liquidate under sec. 465(c) and (d) of this chapter. The  
17 department may take possession of the bank if it considers it necessary  
18 to effect a liquidation that complies with sec. 465(c) and (d) of this  
19 chapter.

20 \* Sec. 35. AS 06.05.470 is repealed and re-enacted to read:

21 Sec. 06.05.470. DEPARTMENT IN POSSESSION. (a) After a hearing  
22 and upon notice prescribed by the department, the department may take  
23 possession of a bank if the department finds

24 (1) the bank's capital is impaired or it is otherwise in an  
25 unsound condition;

26 (2) the bank's business is being conducted in an unlawful or  
27 unsound manner;

28 (3) the bank is unable to continue normal operations;

29 (4) the department's examination has been obstructed or

1       impeded;

2               (5) the bank voluntarily places its affairs and assets under  
3 the department's control;

4               (6) the bank holding corporation which controls the bank  
5 refuses to permit an examination as provided in sec. 235 of this chap-  
6 ter;

7               (7) the bank has lost or received notice of the termination  
8 or suspension of its membership in the Federal Deposit Insurance Cor-  
9 poration or has relinquished its membership in the Federal Deposit  
10 Insurance Corporation without the consent of the department.

11              (b) The department shall take possession under (a) of this section  
12 by posting upon the bank premises a notice stating that it is assuming  
13 possession under this chapter. Its possession is considered to commence  
14 at the time of posting of the notice. The notice shall also be filed in  
15 the superior court of the judicial district in which the bank is lo-  
16 cated. The department shall notify the Federal Reserve Bank if the bank  
17 in the possession of the department is a member of the Federal Reserve  
18 System. When the department has taken possession, it is vested with the  
19 full and exclusive power of management and control, including the power  
20 to assess outstanding capital stock under sec. 310 of this chapter, to  
21 continue or discontinue the business, to stop or limit the payment of  
22 its obligations, to employ necessary assistants, to execute any instru-  
23 ment in the name of the bank, to commence, defend and conduct in its  
24 name any action or proceeding in which it may be a party, to terminate  
25 its possession by restoring the bank to its board of directors, and to  
26 reorganize or liquidate the bank in accordance with this chapter. As  
27 soon as practicable after taking possession, the department shall make  
28 an inventory of the assets and file a copy of it with the superior  
29 court.

1 (c) When the department has taken possession, there shall be a  
2 postponement, until six months after the commencement of that posses-  
3 sion, of the date upon which any period of limitation fixed by a statute  
4 or agreement would otherwise expire on a claim or right of action of the  
5 bank, or upon which an appeal must be taken or a pleading or other  
6 document must be filed by the bank in any pending action or proceeding.

7 (d) If, in the opinion of the department, an emergency exists  
8 which will result in serious losses to the depositors, it may take  
9 possession of a bank without prior hearing. Within 10 days after the  
10 department has taken possession, any interested party may file with it  
11 an application for an order vacating the possession. The department  
12 shall grant the application if it finds that its action was unauthorized  
13 under this chapter.

14 (e) If the department decides to liquidate a bank, it shall give  
15 notice to the directors, stockholders, depositors, and creditors as it  
16 may prescribe. Any objection to the liquidation shall be filed with the  
17 department within 15 days after that notice has been mailed. The  
18 department may proceed to liquidate the bank within 15 days after  
19 notice has been mailed.

20 (f) If the department decides to reorganize a bank or, after  
21 staying the liquidation, orders a reorganization, the department, after  
22 according a hearing to all interested parties, shall enter an order  
23 proposing a reorganization plan. A copy of the plan shall be sent to  
24 each depositor and creditor who will not receive payment of his claim in  
25 full under the plan together with notice that unless within 30 days the  
26 plan is disapproved in writing by persons holding one-third or more of  
27 the aggregate amount of such claims the department will proceed to  
28 effect the reorganization.

29 (g) No judgment, lien, or attachment may be executed upon any

1 asset of the bank while it is in possession of the department. Upon the  
2 election of the department in connection with a liquidation or reorgani-  
3 zation,

4 (1) any lien or attachment, other than an attorney's or  
5 mechanic's lien, obtained upon any asset of the bank during the depart-  
6 ment's possession or within four months before commencement of that  
7 possession shall be vacated except liens created by the department while  
8 in possession; and

9 (2) any transfer of an asset of the bank made after or in  
10 contemplation of its insolvency with intent to effect a preference is  
11 void.

12 (h) The department may borrow money in the name of the bank in its  
13 possession and may pledge assets of the bank as security for the loan.

14 (i) All necessary and reasonable expenses resulting from the  
15 department's possession of a bank and of its reorganization or liquida-  
16 tion shall be paid from the assets of the bank.

17 (j) A plan of reorganization may not be prescribed under this  
18 chapter unless, in the opinion of the department,

19 (1) the plan is fair to all classes of depositors, creditors,  
20 and stockholders;

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

26 (3) the plan provides for the issuance of common stock in an  
27 amount that will provide an adequate ratio to deposits;

28 (4) any exchange of new common stock for obligations or stock  
29 of the bank will be effected in inverse order of the priorities in

1 liquidation of the classes that will retain an interest in the bank and  
2 upon terms that fairly adjust any change in the relative interest of the  
3 respective classes that will be produced by the exchange;

4 (5) the plan assures the removal of any director, officer, or  
5 employee responsible for any unsound or unlawful action or the existence  
6 of any unsound condition;

7 (6) any merger or consolidation provided by the plan conforms  
8 to the requirements of this chapter.

9 (k) When in the course of reorganization supervening conditions  
10 render a plan of reorganization unfair or its execution impractical, the  
11 department may modify the plan or liquidate the bank. This action shall  
12 be taken by order upon reasonable notice.

13 (l) In liquidating a bank, the department may exercise any power  
14 incidental to liquidating a bank, but it may not, without the approval  
15 of the superior court,

16 (1) sell any asset of the bank having an appraised value in  
17 excess of \$10,000;

18 (2) compromise or release any claim which exceeds \$10,000,  
19 exclusive of interest;

20 (3) make payment on a claim, other than a claim upon an  
21 obligation incurred by the department, before preparing and filing a  
22 schedule of its determinations in accordance with (q) of this section.

23 (m) Within six months after the commencement of involuntary  
24 liquidation, the department may terminate any executory contract for  
25 services or advertising to which a bank is a party or any obligation of  
26 a bank as a lessee. A lessor who receives 60 days notice of the depart-  
27 ment's decision to terminate a lease has no claim for rent, other than  
28 rent accrued to the date of termination, and has no claim for damages  
29 due to the termination.

1 (n) As soon after the commencement of involuntary liquidation as  
2 is practicable, the department shall take the necessary steps to ter-  
3 minate all fiduciary positions held by a bank and take action necessary  
4 to surrender all property held by the bank as a fiduciary and to settle  
5 its fiduciary accounts.

6 (o) As soon after commencement of liquidation by the department as  
7 practicable, it shall proceed as in sec. 465(c) and (d) of this chapter  
8 relating to voluntary liquidation by banks, except that no notice need  
9 be sent relating to fiduciary accounts.

10 (p) The contents of safe deposit boxes in banks being liquidated  
11 by the department shall be disposed of by the department as in sec.  
12 465(f) of this chapter.

13 (q) Within six months after the last day specified in the notice  
14 for the filing of claims, or within a longer period if allowed by the  
15 superior court, the department shall

16 (1) reject any claim that it determines to be invalid;

17 (2) determine the amount, if any, owing to each known credi-  
18 tor or depositor and the priority class of his claim under this chapter;

19 (3) prepare a schedule of its determinations for filing in  
20 the superior court;

21 (4) provide for publication in newspapers once a week for  
22 three successive weeks, a notice of the times and the places the sched-  
23 ule of determinations will be available for inspection and the date, no  
24 sooner than 30 days after the first publication, when the department  
25 will file its schedule in court.

26 (r) Within 30 days after the filing of the department's schedule  
27 under (q)(3) of this section, any creditor, depositor, or stockholder  
28 may file with the superior court an objection to any determination made.  
29 Objections filed shall be heard and determined by the court, upon

1 notice to the department and interested claimants as the court may  
2 prescribe. If the objection is sustained, the court shall direct an  
3 appropriate modification of the schedule.

4 (s) After filing its schedule, the department may make partial  
5 distribution to the holders of claims which are undisputed or have been  
6 allowed by the court if an adequate reserve is established for the  
7 payment of disputed claims. As soon as it is practicable after the  
8 determination of all objections, the department shall make final dis-  
9 tribution.

10 (t) The following claims have priority in liquidation proceedings,  
11 in the order listed:

12 (1) obligations incurred by the department;

13 (2) wages and salaries of officers and employees earned  
14 during the three-month period preceding the department's possession in  
15 an amount not exceeding \$3,000 for each person;

16 (3) fees and assessments due to the department;

17 (4) deposits to the extent of \$1,000 for each depositor.

18 (u) After the payment of all other claims with interest at the  
19 legal rate applicable to court judgments, the department shall pay  
20 claims otherwise valid which were not filed within the time prescribed.

21 (v) If the sum available for any class of creditors is insuffi-  
22 cient to provide payment in full, that sum shall be distributed pro rata  
23 to the claimants in the class.

24 (w) When the department has liquidated a bank, any assets remain-  
25 ing after all claims have been paid shall be distributed to the stock-  
26 holders in accordance with their respective interests.

27 (x) Unclaimed funds remaining after the completion of the liquida-  
28 tion by the department shall be retained for five years by it unless  
29 sooner claimed by the owner. After that, the remaining sum shall be

1 transferred to the general fund.

2 (y) When the assets have been distributed in accordance with this  
3 chapter, the department shall file an account with the superior court.  
4 Upon approval of the account, the department is relieved of liability in  
5 connection with the liquidation and the court shall cancel the certifi-  
6 cate of authority and enter an order of dissolution. Upon the filing of  
7 the order, the department shall issue a certificate of dissolution of  
8 the corporation under the Alaska Business Corporation Act (AS 10.05).

9 (z) The department may appoint the Federal Deposit Insurance  
10 Corporation as receiver for a bank of which it has taken possession and  
11 whose deposits are insured by that corporation. Upon filing with the  
12 court a certificate indicating the acceptance by the Federal Deposit  
13 Insurance Corporation, the possession of and title to all the assets,  
14 business, and property are considered transferred to that corporation.  
15 The department is then relieved from all responsibility and liability in  
16 respect to the liquidation of the bank. The Federal Deposit Insurance  
17 Corporation may liquidate, reorganize, merge or consolidate the bank in  
18 the manner permitted by the laws of the United States or by this chap-  
19 ter, possessing all rights, powers, duties and obligations of the  
20 department.

21 \* Sec. 36. AS 06.05.505 is amended to read:

22 Sec. 06.05.505. UNLAWFUL FAILURE TO TRANSMIT REPORTS REQUIRED BY  
23 DEPARTMENT. Every bank which fails to make, transmit and publish any  
24 report required under sec. 45 of this chapter is subject to a penalty of  
25 \$100 [\$10] a day for each day's delay after the period specified in that  
26 section. Any bank is considered to have transmitted a report to the  
27 department on the day when the bank has deposited it in a United States  
28 post office in the state, properly addressed to the department, postage  
29 prepaid, and registered if the post office is a registry office.

1 \* Sec. 37. AS 06.05.520 is amended to read:

2       Sec. 06.05.520. PENALTY. Any person who violates any provision of  
3 this chapter for which no specific penalty is provided is guilty of a  
4 misdemeanor, and upon conviction is punishable by a fine of not more  
5 than \$5,000, or by imprisonment for not more than one year, or by both.  
6 In case of conviction of [VIOLATION BY] a corporation for violation of  
7 this section, the corporation is punishable by a fine of not more than  
8 \$20,000 [\$5,000].

9 \* Sec. 38. AS 06.05.540 is amended by adding new paragraphs to read:

10       (17) "undivided profits" means the accumulated, undistributed  
11 net profit of a bank, including any residue after

12               (A) provision for payment of taxes and expenses of  
13 operations,

14               (B) transfers to reserves allocated to a particular  
15 asset or class of assets,

16               (C) losses estimated or sustained on a particular asset  
17 or class of assets in excess of the amount of reserves allocated  
18 for it,

19               (D) transfers to surplus and capital,

20               (E) amounts declared as dividends to stockholders;

21       (18) "company" means any bank, corporation, partnership,  
22 joint stock company, business trust, association or similar organiza-  
23 tion, domestic or foreign.

24 \* Sec. 39. AS 06.05.315, 06.05.330, 06.05.335, 06.05.365, 06.05.370,  
25 06.05.375, 06.05.385, 06.05.400 - 06.05.425, 06.05.455, 06.05.460, and  
26 06.05.475 are repealed.  
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