

Original sponsor: Rules Committee by request
of the Governor

Introduced: 2/21/77
Referred: Rules

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 98

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST 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 AS 06.05.010 is repealed and re-enacted to read: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 adoption of
11 regulations, under the Administrative Procedure Act (AS 44.62), the
12 department shall give public notice of each proposed action but is not
13 required to hold a hearing before taking the action unless it receives
14 written opposition to the proposed action. Written opposition must be
15 filed with the department within the time specified by the department.
16 In cases involving extraordinary circumstances requiring immediate
17 action, the department may take action without notice and public hearing,
18 but upon application to rescind the action taken, the department shall
19 promptly 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,
3 certifying and subscribing under oath that they and each of them have
4 personal knowledge of the facts stated in the report and that the facts
5 are true. The reports shall exhibit in detail and under appropriate
6 heads the resources and liabilities of the bank, and shall be trans-
7 mitted or mailed to the department within 10 days of the receipt of the
8 request 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
13 published in the place where the bank is located. If no newspaper is
14 published in that place, then the report shall be published in the
15 newspaper 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 in the possession of the department;

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

28 (5) a statement of condition of each state bank as of the
29 date of the most recent report of condition submitted to the department.

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 AS 06.05.065 is repealed and re-enacted to read:

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

12 (b) A person subject to this section may

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

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

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

17 (4) be indebted to a state-chartered lending institution upon
18 an installment debt transferred to the lending institution in the
19 regular course of business by a seller of goods, including but not
20 limited to household goods, mobile homes, motor vehicles, or boats
21 purchased by the employee for personal use only.

22 (c) This section does not limit the authority of an officer or
23 employee of the department acting in his official capacity in the
24 business of the department.

25 (d) An officer or employee who violates this section shall be
26 dismissed and is forever disqualified from holding any position in the
27 department relating to the regulation of state lending institutions. A
28 nonexempt employee dismissed under this section may appeal his dis-
29 missal under the State Personnel Act (AS 39.25).

1 (e) Any person who violates this section is guilty of a misde-
2 meanor, and upon conviction is punishable by a fine of not more than
3 \$5,000, or by imprisonment for not more than one year, or by both, and
4 may also be fined an amount equal to the value of the property given or
5 received or the money loaned or borrowed.

6 (f) As used in this section, the term "lending institution" means
7 a state-chartered bank, mutual savings bank, savings and loan associa-
8 tion, bank holding company, any other state-chartered financial institu-
9 tion, a foreign banking corporation or institution, or other state-
10 chartered institution doing banking business in the state.

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

12 (a) Each commercial bank which is not a member of the federal
13 reserve system shall maintain total reserves equal to the following
14 percentages of the aggregate amount of its deposits, exclusive of
15 deposits of the United States, the State of Alaska, borough and municipi-
16 pal governments and other deposits of public money which are secured as
17 required by law.

18 (1) 20 per cent of its demand deposits; and

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

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

21 (b) Only vault cash and the amount due from good and solvent banks
22 located in the state [,] or within the United States, the deposits of
23 which are insured by the Federal Deposit Insurance Corporation, may be
24 used in computing the reserves required under (a) of this section and
25 the computation shall be made on the basis of average daily net deposit
26 balances covering bi-weekly periods.

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

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

1 board of directors of the bank.

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

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

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

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

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

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

2 (a) A director, officer, or employee of a state bank who know-
3 ingly, wilfully, or repeatedly [AND PERSISTENTLY] overdraws his account
4 or who permits a customer to do so [,] is engaged in an unsound banking
5 practice [AND SUBJECT TO THE PROVISIONS OF SEC. 5(4) OF THIS CHAPTER].

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

7 Sec. 06.05.215. LIABILITY OF DIRECTORS AND OFFICERS FOR CARELESS
8 OR EXCESSIVE LOANS. An issuing officer, director, executive or managing
9 officer of a state bank who knowingly approves or permits the funds of
10 the bank to be lent or overdrafts to be made in a grossly excessive,
11 negligent or dishonest manner is personally liable for all such loans or
12 overdrafts. The liability may be enforced against the issuing officer,
13 director, executive or managing officer by an action in a court of
14 competent jurisdiction.

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

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

19 (1) real property necessary for the convenient transaction of
20 its business, including banking offices, equipment, furniture and
21 fixtures, leasehold improvements, and parking lots, if the book asset
22 value of the purchase or investment does not exceed 60 per cent of the
23 capital account and the surplus account of the bank; the purchase or
24 investment may consist of stock in a bank building corporation, in which
25 case it must include all obligations of the building corporation to the
26 bank;

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

29 (3) the purchase at sale under judgment, decree, lien, or

1 mortgage foreclosure, against security held by it.

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

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

16 (b) A domestic bank holding company, as defined in sec. 540 of
17 this chapter and organized under AS 10.05, which maintains its principal
18 office and place of business in the state and conducts its principal
19 operations in the state, may acquire and own all or any portion of the
20 voting shares or other capital stock of, or all or substantially all of
21 the assets of, one or more banks or bank holding companies. The depart-
22 ment may require a holding company to post a bond with the department in
23 an amount equal to the paid-in capital and paid-in surplus represented
24 by the proportion of bank stock directly or indirectly owned, held, or
25 controlled by it under conditions the department may prescribe to assure
26 full protection of the public. The holding company is subject to an
27 examination by the department or a competent person designated by the
28 department when the department considers it necessary, but not less than
29 once each year. The holding company shall pay a fee to the department

1 of \$175 per examiner for each day or part of a day required for the
2 examination.

3 (c) The department may adopt regulations for bank holding com-
4 panies to assure financially sound banking organization and practice.

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

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

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

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

25 (a) The aggregate amount of outstanding liabilities of a state
26 bank for money borrowed exclusive of (1) capital notes and debentures
27 issued under sec. 307 of this chapter, (2) obligations incurred in
28 connection with the purchase of bank premises as set out in sec. 230(1)
29 of this chapter, and (3) borrowing for emergency purposes as permitted

1 by the department, may not at any time exceed the total amount of its
2 unimpaired capital and one-half of its unimpaired surplus or a larger
3 amount if approved by the department.

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

5 (10) stock in the Federal National Mortgage Association or a
6 Federal Reserve Bank.

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

8 Sec. 06.05.280. BANK FEES AND CHARGES CONNECTED WITH LOANS. (a)
9 A bank may require borrowers to pay all reasonable expenses incurred in
10 connection with the making, closing, disbursing, extending, readjusting
11 or renewing of loans, including, when appropriate, documented secre-
12 tarial expenses, documented loan supervision expenses, appraisal,
13 attorney, abstract, filing, recording and registration fees, title
14 examinations, title insurances, mortgage insurances, credit reports,
15 surveys, drawings of papers, escrow services, loan collection account
16 services, and taxes or charges imposed upon or in connection with the
17 making, recording or filing of a mortgage, deed of trust, or other
18 security instrument intended to perfect a security interest related to
19 the loan. A bank may also require borrowers to pay the cost of all
20 other necessary and incidental services furnished by the bank or by
21 others in connection with loans, including the costs of services of
22 inspectors, engineers, architects or others reasonably required to
23 evaluate or administer the loan. The charges by a bank may be collected
24 by the bank from the borrower or added to the loan amount, and charges
25 by a third party may be collected by the bank from the borrower and paid
26 to the third party, or may be paid directly to the third party by the
27 borrower.

28 (b) The fees and charges authorized by (a) of this section are in
29 addition to the interest authorized by law, and are not a part of the

1 interest collected or agreed to be paid on a loan within the meaning of
2 any law of the state which limits the rate of interest.

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

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

8 Sec. 06.05.305. CAPITAL STRUCTURE. (a) It is unlawful for a
9 corporation to commence and operate a banking business in the state
10 unless the corporation has paid-in capital of at least \$300,000 and
11 paid-in surplus equal to 20 per cent of paid-in capital; and it is
12 unlawful for a bank to operate any branches unless it has an aggregate
13 paid-in capital and paid-in surplus of at least \$1,000,000.

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

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

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

27 (d) The amount of outstanding notes and debentures not maturing
28 within one year shall be added to the capital, [STOCK AND] surplus
29 account, and undivided profits [FUND] of the issuing bank for the

1 purpose of determining the maximum amount that may be loaned by the bank
2 as provided in sec. 205 of this chapter.

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

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

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

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

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

23 Sec. 06.05.342. SUBSCRIPTIONS FOR SHARES. (a) Any subscription
24 agreements and accompanying prospectuses or offering circulars, whether
25 for a proposed state bank or for an increase in capital of an existing
26 state bank, shall be submitted to the department for approval before
27 their use. The department shall determine whether the subscription
28 agreements provide full and accurate disclosure of the material terms of
29 the offering. The department may order the incorporators not to accept

1 any stock subscriptions or to cease accepting subscriptions if it deter-
2 mines that the incorporators are not acting lawfully or in good faith.

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

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

8 Sec. 06.05.345. ARTICLES OF INCORPORATION. (a) The incorporators
9 shall execute articles of incorporation, which shall specify

10 (1) the name assumed by the bank;

11 (2) the judicial district in which the bank is to be located
12 and the community where the bank is to conduct its principal place of
13 business;

14 (3) the nature of its business;

15 (4) the amount of its capital stock which shall be divided
16 into shares of not less than \$1 each;

17 (5) the number of directors of whom there must be at least
18 five but no more than 25;

19 (6) the period for which the bank is organized, if limited.

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

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

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

28 (A) any past and present connection with any bank other
29 than as a customer on terms generally available to the public of

1 each incorporator and proposed director and each pre-incorporation
2 subscriber of more than five per cent of the capital stock;

3 (B) the name, residence and occupation of each pre-
4 incorporation subscriber and the number of shares subscribed for by
5 each;

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

9 (2) the proposed articles of incorporation executed in
10 triplicate together with applicable fees, payable to the department for
11 the filing.

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

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

27 (f) The incorporators shall publish notice of the department's
28 acceptance of the application for a proposed state bank and articles of
29 incorporation once each week for two successive weeks in a newspaper of

1 general circulation published in the community proposed as the bank's
2 principal place of business. If there is no newspaper in the proposed
3 principal place of business, the notice shall be published in a news-
4 paper of general circulation near the community. The first publication
5 of the notice shall appear within 15 days after the application and
6 articles of incorporation have been accepted by the department. The
7 notice shall state:

- 8 (1) the name of the proposed state bank;
- 9 (2) that the proposed bank is to be incorporated under this
10 chapter;
- 11 (3) the purpose of the proposed bank;
- 12 (4) the names and addresses of the incorporators and the
13 initial board of directors as they appear in the articles of incor-
14 poration.

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

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

- 21 (1) the convenience and needs of the public will be served by
22 the bank;
- 23 (2) the population density or other economic characteristics
24 of the area primarily to be served by the bank afford reasonable promise
25 of adequate support for the bank;
- 26 (3) the character and fitness of the incorporators and the
27 members of the initial board of directors are of a nature which commands
28 the confidence of the community and warrants the belief that the busi-
29 ness of the bank will be honestly and efficiently conducted;

1 (4) the capital structure of the bank is adequate in relation
2 to the amount of the anticipated business of the bank and the safety of
3 prospective depositors;

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

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

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

11 (8) other facts and circumstances exist bearing on the bank
12 and its relation to the community which the department considers rele-
13 vant.

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

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

29 (k) At the time of the issuance of the certificate of incorpora-

1 tion by the department the corporate existence begins, unless the
2 certificate provides that it will begin on a stated day in the future in
3 conformity with a provision of the articles of incorporation, in which
4 event the corporate existence begins on the date stated, without further
5 action by either the incorporators or the department. The certificate
6 of incorporation is conclusive evidence that the state bank has been
7 incorporated except as against the department in a proceeding instituted
8 by it to dissolve the bank under sec. 466 of this chapter.

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

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

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

27 (b) The department shall issue a certificate of authority to
28 engage in the banking business to a proposed state bank if, upon review
29 of the information required by this chapter, including the following, it

1 approves the application:

2 (1) certification by an officer to the department by affi-
3 davit that the capital surplus and undivided profits required by the
4 department have been fully paid in cash;

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

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

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

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

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

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

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

21 (b) A bank which is a member of the Federal Deposit Insurance
22 Corporation may not voluntarily relinquish membership without the con-
23 sent of the department. Request for the consent must be made at least
24 180 days before the proposed date of relinquishment.

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

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

1 Sec. 06.05.399. APPLICATION FOR CERTIFICATE OF AUTHORITY FOR
2 BRANCH BANK OR CHANGE OF LOCATION. (a) Before operating a branch bank
3 or changing the location of the principal office or of a branch of the
4 bank, a state bank must apply to the department for a certificate of
5 authority to do so. The application shall be in the form and contain
6 the information the department requires to enable it to determine
7 whether a certificate of authority should be issued, including but not
8 limited to the address at which the state bank or branch will operate.
9 The application must be accompanied by a fee of \$500. The department
10 may assess the bank for an additional amount if its actual costs in
11 processing the application exceed the initial application fee.

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

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

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

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

28 (2) the population density and other economic characteristics
29 of the area primarily to be served afford reasonable promise of adequate

1 support for a branch or a relocated principal office;

2 (3) the capital structure of the state bank is adequate in
3 relation to the anticipated business and costs of operating at the
4 proposed location;

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

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

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

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

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

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

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

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

28 (a) The officers of a bank shall be elected by the board of
29 directors. No officer may be elected for a period longer than one year.

1 An officer may be removed by the board of directors at any time but
2 removal shall not prejudice any rights that he may have to damages for
3 breach of contract of employment. The president of a bank or other
4 chief officer responsible for the management of the bank must be a
5 member of the board of directors.

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

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

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

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

16 * Sec. 32. AS 06.05.450 is amended to read:

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

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

27 Sec. 06.05.465. VOLUNTARY LIQUIDATION; REQUIREMENTS FOR APPROVAL.
28 (a) With the approval of the department, a bank may voluntarily liqui-
29 date and dissolve. This approval shall be granted if the department

1 finds that

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

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

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

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

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

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

18 (3) published as the department requires.

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

1 (e) As soon after approval as is practicable, the bank shall
2 resign all fiduciary positions and take whatever action may be necessary
3 to settle its fiduciary accounts.

4 (f) The contents of safe deposit boxes which have not been removed
5 within 30 days after demand shall be opened and the contents dealt with
6 in the manner provided for boxes upon which the payment of rental is in
7 default, and the sealed packages containing the contents and the certi-
8 ficates together with any other unclaimed property held by the bank as
9 bailee and certified inventories of that property shall be transferred
10 to the department which shall retain it for five years unless claimed by
11 the person entitled to it before that time. After five years the depart-
12 ment shall sell or otherwise appropriately dispose of the property. The
13 proceeds of any sale shall be transferred to the state treasury and
14 shall be deposited in the general fund.

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

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

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

27 (2) any unclaimed funds payable to a depositor or creditor
28 have been transmitted to the department; and

29 (3) approval of the department.

1 (i) Any unclaimed distribution to a stockholder or a depositor
2 shall be held until 90 days after the final distribution and then
3 transmitted to the department. Unclaimed funds of a stockholder or a
4 depositor shall be held by the department for five years and, unless
5 claimed by the person entitled to them before that date, shall be
6 transferred to the state treasury and deposited in the general fund.

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

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

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

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

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

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

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

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

4 (4) the department's examination has been obstructed or
5 impeded;

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

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

11 (7) the bank has lost, or received notice of the termination
12 or suspension of, its membership in the Federal Deposit Insurance
13 Corporation or has relinquished its membership in the Federal Deposit
14 Insurance Corporation without the consent of the department.

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

1 liquidate the bank in accordance with this chapter. As soon as practi-
2 cable after taking possession, the department shall make an inventory of
3 the assets and file a copy of it with the superior court.

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

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

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

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

1 the aggregate amount of such claims the department will proceed to
2 effect the reorganization.

3 (g) No judgment, lien, or attachment may be executed upon any
4 asset of the bank while it is in possession of the department. Upon the
5 election of the department in connection with a liquidation or reorgani-
6 zation,

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

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

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

17 (i) All necessary and reasonable expenses resulting from the
18 department's possession of a bank and of its reorganization or liqui-
19 dation shall be paid from the assets of the bank.

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

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

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

29 (3) the plan provides for the issuance of common stock in an

1 amount that will provide an adequate ratio to deposits;

2 (4) any exchange of new common stock for obligations or stock
3 of the bank will be effected in inverse order of the priorities in
4 liquidation of the classes that will retain an interest in the bank and
5 upon terms that fairly adjust any change in the relative interest of
6 the respective classes that will be produced by the exchange;

7 (5) the plan assures the removal of any director, officer, or
8 employee responsible for an unsound or unlawful action or the existence
9 of an unsound condition;

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

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

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

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

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

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

26 (m) Within six months after the commencement of involuntary
27 liquidation, the department may terminate any executory contract for
28 services or advertising to which a bank is a party or any obligation of
29 a bank as a lessee. A lessor who receives 60 days notice of the depart-

1 ment's decision to terminate a lease has no claim for rent, other than
2 rent accrued to the date of termination, and has no claim for damages
3 due to the termination.

4 (n) As soon after the commencement of involuntary liquidation as
5 is practicable, the department shall take the necessary steps to termi-
6 nate all fiduciary positions held by a bank and take action necessary to
7 surrender all property held by the bank as a fiduciary and to settle its
8 fiduciary accounts.

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

13 (p) The contents of safe deposit boxes in banks being liquidated
14 by the department shall be disposed of by the department as in sec.
15 465(f) of this chapter.

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

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

20 (2) determine the amount, if any, owing to each known cre-
21 ditor or depositor and the priority class of his claim under this
22 chapter;

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

25 (4) provide for publication in newspapers once a week for
26 three successive weeks, a notice of the times and the places the sche-
27 dule of determinations will be available for inspection and the date, no
28 sooner than 30 days after the first publication, when the department
29 will file its schedule in court.

1 (r) Within 30 days after the filing of the department's schedule
2 under (q)(3) of this section, any creditor, depositor, or stockholder
3 may file with the superior court an objection to any determination made.
4 Objections filed shall be heard and determined by the court, upon notice
5 to the department and interested claimants as the court may prescribe.
6 If the objection is sustained, the court shall direct an appropriate
7 modification of the schedule.

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

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

- 16 (1) obligations incurred by the department;
- 17 (2) wages and salaries of officers and employees earned
18 during the three-month period preceding the department's possession in
19 an amount not exceeding \$3,000 for each person;
- 20 (3) fees and assessments due to the department;
- 21 (4) deposits to the extent of \$1,000 for each depositor.

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

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

28 (w) When the department has liquidated a bank, any assets remain-
29 ing after all claims have been paid shall be distributed to the stock-

1 holders in accordance with their respective interests.

2 (x) Unclaimed funds remaining after the completion of the liqui-
3 dation by the department shall be retained for five years by it unless
4 sooner claimed by the owner. After that, the remaining sum shall be
5 transferred to the general fund.

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

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

25 * Sec. 36. AS 06.05.505 is amended to read:

26 Sec. 06.05.505. UNLAWFUL FAILURE TO TRANSMIT REPORTS REQUIRED BY
27 DEPARTMENT. Every bank which fails to make, transmit and publish any
28 report required under sec. 45 of this chapter is subject to a penalty of
29 \$100 [\$10] a day for each day's delay after the period specified in that

1 section. Any bank is considered to have transmitted a report to the
2 department on the day when the bank has deposited it in a United States
3 post office in the state, properly addressed to the department, postage
4 prepaid, and registered if the post office is a registry office.

5 * Sec. 37. AS 06.05.520 is amended to read:

6 Sec. 06.05.520. PENALTY. Any person who violates any provision of
7 this chapter for which no specific penalty is provided is guilty of a
8 misdemeanor, and upon conviction is punishable by a fine of not more
9 than \$5,000, or by imprisonment for not more than one year, or by both.
10 In case of conviction of [VIOLATION BY] a corporation for violation of
11 this chapter, the corporation is punishable by a fine of not more than
12 \$20,000 [\$5,000].

13 * Sec. 38. AS 06.05.540(9) is repealed and re-enacted to read:

14 (9) "domestic bank holding company" means a domestic corpora-
15 tion that is organized under AS 10.05 and that has control over a bank
16 or another domestic bank holding company through one of the following:

17 (A) the company directly or indirectly or acting through
18 one or more other persons owns, controls, or has power to vote 25
19 per cent or more of any class of voting securities of the bank or
20 company;

21 (B) the company controls in any manner the election of
22 a majority of the directors or trustees of the bank or company; or

23 (C) the department determines, after notice and oppor-
24 tunity for hearing, that the company directly or indirectly exer-
25 cises a controlling influence over the management of policies of
26 the bank or company.

27 * Sec. 39. AS 06.05.540 is amended by adding new paragraphs to read:

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

1 (A) provision for payment of taxes and expenses of
2 operations,

3 (B) transfers to reserves allocated to a particular
4 asset or class of assets,

5 (C) losses estimated or sustained on a particular asset
6 or class of assets in excess of the amount of reserves allocated
7 for it,

8 (D) transfers to surplus and capital,

9 (E) amounts declared as dividends to stockholders;

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

13 * Sec. 40. AS 06.05.315, 06.05.335, 06.05.365, 06.05.370, 06.05.375,
14 06.05.400 - 06.05.425, 06.05.455, and 06.05.475 are repealed.