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of the Governor

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Referred: Rules

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2

HOUSE CS FOR 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 relating to banks and other financial institu-
7 tions."

8

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

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* Section 1. AS 06.05.005 is amended by adding a new subsection to read:

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(b) The department shall foster and maintain competition among

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banks and financial institutions subject to the provisions of this

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chapter, including but not limited to adoption and enforcement of regu-

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lations eliminating noncompetitive or monopolistic practices or similar

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activity engaged in by a bank or financial institution which tend to

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restrict or lessen competition in any element of trade or commerce.

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* Sec. 2. AS 06.05.010 is repealed and re-enacted to read:

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Sec. 06.05.010. NOTICE AND HEARING. Except for the adoption of

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regulations, under the Administrative Procedure Act (AS 44.62), the

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department shall give public notice of each proposed action but is not

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required to hold a hearing before taking the action unless it receives

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written opposition to the proposed action. Written opposition must be

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filed with the department within the time specified by the department.

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In cases involving extraordinary circumstances requiring immediate

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action, the department may take action without notice and public hearing,

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but upon application to rescind the action taken, the department shall

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promptly hold a hearing on the application.

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* Sec. 3. AS 06.05.035 is amended to read:

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Sec. 06.05.035. EXAMINATION FEE. A bank examined under the pro-

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visions of sec. 25 of this chapter shall pay a fee to the department of

1 \$175 [\$125] per examiner for each day or part of a day required for the
2 examination but not to exceed \$7,500 [\$3,750] per calendar year. The
3 total amount of the fee shall be paid by the bank promptly upon receipt
4 of the examination report and billing from the department.

5 * Sec. 4. AS 06.05.045(a) is amended to read:

6 (a) Every state bank shall make at least four reports of condition
7 each year to the department on days designated by it, and on forms
8 prescribed by it. The report shall be verified by an oath of the presi-
9 dent, vice president, or cashier and by at least three directors,
10 certifying and subscribing under oath that they and each of them have
11 personal knowledge of the facts stated in the report and that the facts
12 are true. The reports shall exhibit in detail and under appropriate
13 heads the resources and liabilities of the bank, and shall be trans-
14 mitted or mailed to the department within 10 days of the receipt of the
15 request from the department [IT].

16 * Sec. 5. AS 06.05.050 is amended to read:

17 Sec. 06.05.050. PUBLICATION OF REPORTS. All reports of condition
18 required by sec. 45(a) of this chapter shall be published immediately in
19 condensed form at least once in a newspaper of general circulation
20 published in the place where the bank is located. If no newspaper is
21 published in that place, then the report shall be published in the
22 newspaper published nearest to that place.

23 * Sec. 6. AS 06.05.055(a) is amended to read:

24 (a) The department shall report to the governor annually, within
25 120 [60] days after the end of each fiscal year. The report shall
26 include

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

29 (2) recommendations for legislation, including but not

1 limited to legislation reasonably necessary to eliminate activities or
2 practices which tend to restrict or lessen competition among banks and
3 financial institutions in any element of trade or commerce;

4 (3) a statement of the status and assets and liabilities of
5 all banking organizations which are in the possession of the department;

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

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

11 * Sec. 7. AS 06.05.065 is repealed and re-enacted to read:

12 Sec. 06.05.065. BANKING INTEREST OF DEPARTMENT OFFICERS AND EM-
13 PLOYEES. (a) No bank examiner of the department who deals with the
14 regulation of lending institutions, special agent selected by the depart-
15 ment to do work relating to lending institutions, the commissioner or
16 deputy commissioner of the department, or the director of banking may be
17 an officer, employee, director, trustee, attorney, stockholder, or
18 partner of a lending institution, or receive, directly or indirectly, a
19 payment or gratuity from a lending institution. A person subject to
20 this section may not borrow money from a state-chartered lending insti-
21 tution except as provided in this section.

22 (b) A person subject to this section may

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

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

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

27 (4) be indebted to a state-chartered lending institution upon
28 an installment debt transferred to the lending institution in the
29 regular course of business by a seller of goods, including but not

1 limited to household goods, mobile homes, motor vehicles, or boats
2 purchased by the employee for personal use only.

3 (c) This section does not limit the authority of an officer or
4 employee of the department acting in his official capacity in the
5 business of the department.

6 (d) An officer or employee who violates this section shall be
7 dismissed and is forever disqualified from holding any position in the
8 department relating to the regulation of state lending institutions. A
9 nonexempt employee dismissed under this section may appeal his dismissal
10 under the State Personnel Act (AS 39.25).

11 (e) Any person who violates this section is guilty of a misde-
12 meanor, and upon conviction is punishable by a fine of not more than
13 \$5,000, or by imprisonment for not more than one year, or by both, and
14 may also be fined an amount equal to the value of the property given or
15 received or the money loaned or borrowed.

16 (f) As used in this section, the term "lending institution" means
17 a state-chartered bank, mutual savings bank, savings and loan associa-
18 tion, bank holding company, any other state-chartered financial institu-
19 tion, a foreign banking corporation or institution, or other state-
20 chartered institution doing banking business in the state.

21 * Sec. 8. AS 06.05.075 is amended to read:

22 Sec. 06.05.075. STANDARDS IN REGULATIONS. The department, in the
23 exercise of the power to adopt [MAKE RULES AND ISSUE] regulations under
24 [PURSUANT TO] this chapter, shall act in the interests of promoting and
25 maintaining a sound and competitive banking system, the security of
26 deposits and customers, the preservation of the liquid position of banks
27 and in the interest of preventing injurious credit expansions and con-
28 tractions.

29 * Sec. 9. AS 06.05.200(a) is amended to read:

1 (a) Each commercial bank which is not a member of the federal
2 reserve system shall maintain total reserves equal to the following
3 percentages of the aggregate amount of its deposits, exclusive of
4 deposits of the United States, the State of Alaska, borough and municipi-
5 pal governments and other deposits of public money which are secured as
6 required by law

7 (1) 20 per cent of its demand deposits; and

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

9 * Sec. 10. AS 06.05.200(b) is amended to read:

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

16 * Sec. 11. AS 06.05.205(a) is amended to read:

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

20 * Sec. 12. AS 06.05.205(b) is amended to read:

21 (b) It is unlawful for an officer or employee of a state bank to
22 loan funds of the bank to a person in a sum exceeding 15 per cent of its
23 combined capital [STOCK], surplus, and undivided profits. Unearned
24 income may not be included in determining the amount a bank may loan
25 under this subsection. In the case of a corporation the total of any
26 sum loaned directly to the corporation, and of any sum loaned in such
27 manner or to such person that the capital stock of the corporation is
28 received by the bank as collateral security for such loan or loans,
29 shall never exceed 15 per cent of the combined capital, surplus and

1 undivided profits of the bank. The discount of bills of exchange drawn
2 in good faith against actual existing values, or loans upon gold, gold
3 dust, bullion, cannery products, or other produce in transit, or upon
4 warehouse receipts as collateral security, and the discount of commer-
5 cial or business paper actually owned by a person negotiating the same,
6 are not considered as money borrowed.

7 * Sec. 13. AS 06.05.210 is repealed and re-enacted to read:

8 Sec. 06.05.210. LOANS TO OFFICERS AND EMPLOYEES. (a) Any officer
9 or employee of a state bank may borrow up to \$10,000 from the bank at
10 the discretion of the executive or managing officer of the bank. Loans
11 in excess of \$10,000, or loans of any amount to the executive or man-
12 aging officer of the bank, shall have the prior approval of the board of
13 directors, shall be reported to the department within 30 days and shall
14 be secured by adequate collateral. For the purpose of this section, an
15 overdraft is considered a loan.

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

20 * Sec. 14. AS 06.05.215 is repealed and re-enacted to read:

21 Sec. 06.05.215. LIABILITY OF DIRECTORS AND OFFICERS FOR CARELESS
22 OR EXCESSIVE LOANS. An issuing officer, director, executive or managing
23 officer of a state bank who knowingly approves or permits the funds of
24 the bank to be lent or overdrafts to be made in a grossly excessive,
25 negligent or dishonest manner is personally liable for all such loans or
26 overdrafts. The liability may be enforced against the issuing officer,
27 director, executive or managing officer by an action in a court of
28 competent jurisdiction.

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

1 Sec. 06.05.230. INVESTMENT IN REAL ESTATE AND BANKING PREMISES.

2 A bank may acquire, purchase, hold, convey and hypothecate real property
3 for the following purposes only:

4 (1) real property necessary for the convenient transaction of
5 its business, including banking offices, equipment, furniture and
6 fixtures, leasehold improvements, and parking lots, if the book asset
7 value of the purchase or investment does not exceed 60 per cent of the
8 capital account and the surplus account of the bank; the purchase or
9 investment may consist of stock in a bank building corporation, in which
10 case it must include all obligations of the building corporation to the
11 bank;

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

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

16 * Sec. 16. AS 06.05.235 is repealed and re-enacted to read:

17 Sec. 06.05.235. BANK HOLDING COMPANIES. (a) It is unlawful for
18 a company to own, control or hold with power to vote 25 per cent or more
19 of the capital stock of one or more state banks or state bank holding
20 companies subject to regulation under this chapter. Nothing in this
21 subsection prohibits a company from qualifying as a bank holding company
22 under (b) of this section. However, when it becomes a bona fide neces-
23 sity to avoid loss for a creditor to accept shares of stock in one or
24 more banks or bank holding companies constituting more than 25 per cent
25 of the ownership or control of a bank or bank holding company in payment
26 of indebtedness owing to the creditor, shares of stock may be accepted,
27 but the shares of the one or more banks or bank holding companies ex-
28 ceeding that 25 per cent shall be promptly disposed of under the super-
29 vision of the department.

1 (b) A domestic bank holding company, as defined in sec. 540 of
2 this chapter and organized under AS 10.05, which maintains its principal
3 office and place of business in the state and conducts its principal
4 operations in the state, may acquire and own all or any portion of the
5 voting shares or other capital stock of, or all or substantially all of
6 the assets of, one or more banks or bank holding companies. The depart-
7 ment may require a holding company to post a bond with the department in
8 an amount equal to the paid-in capital and paid-in surplus represented
9 by the proportion of bank stock directly or indirectly owned, held, or
10 controlled by it under conditions the department may prescribe to assure
11 full protection of the public. The holding company is subject to an
12 examination by the department or a competent person designated by the
13 department when the department considers it necessary, but not less than
14 once each year. The holding company shall pay a fee to the department
15 of \$175 per examiner for each day or part of a day required for the
16 examination.

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

19 (d) A person, or an officer, director, agent, or employee of the
20 person, who violates a regulation adopted under (c) of this section is
21 guilty of a misdemeanor, and upon conviction is punishable by a fine of
22 not more than \$5,000, or by imprisonment for not more than one year, or
23 by both; and in the case of a corporation, by a fine of not more than
24 \$10,000.

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

26 Sec. 06.05.238. REQUIRED DIRECTORS' MEETINGS AND STATEMENTS TO THE
27 DEPARTMENT. The department may require a meeting of the board of
28 directors of a state bank to be held in the manner and at the time and
29 place it directs, when, in the judgment of the department, a serious

1 violation of this chapter is involved. Any report of an examination
2 required or allowed by this chapter, any conclusions drawn from such an
3 examination by the department, any recommendations made by the depart-
4 ment relative to it, and any other matters concerning the operation and
5 condition of the bank may be presented to the board of directors by the
6 department. Each member of the board of directors shall furnish to the
7 department a statement on forms to be supplied by the department that he
8 has read and is familiar with the recommendations of the department.

9 * Sec. 18. AS 06.05.255(a) is amended to read:

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

18 * Sec. 19. AS 06.05.270(a) is amended by adding a new paragraph to read:

19 (10) stock in the Federal National Mortgage Association or a
20 Federal Reserve Bank.

21 * Sec. 20. AS 06.05 is amended by adding a new section to read:

22 Sec. 06.05.280. BANK FEES AND CHARGES CONNECTED WITH MORTGAGE
23 LOANS. (a) A bank may require borrowers to pay only the necessary
24 expenses incurred in connection with the making, closing, disbursing,
25 extending, readjusting or renewing of mortgage loans, including, when
26 appropriate, documented secretarial expenses, documented loan super-
27 vision expenses, appraisal, attorney, abstract, filing, recording and
28 registration fees, title examinations, title insurances, mortgage
29 insurances, credit reports, surveys, drawings of papers, escrow ser-

1 vices, mortgage loan collection account services, and taxes or charges
2 imposed upon or in connection with the making, recording or filing of a
3 mortgage, deed of trust, or other security instrument intended to
4 perfect a security interest related to the mortgage loan. A bank may
5 also require borrowers to pay the cost of all other necessary and
6 incidental services furnished by the bank or by others in connection
7 with mortgage loans, including the costs of services of inspectors,
8 engineers, architects or others reasonably required to evaluate or
9 administer the mortgage loan. The charges by a bank may be collected by
10 the bank from the borrower or added to the mortgage loan amount, and
11 charges by a third party may be collected by the bank from the borrower
12 and paid to the third party, or may be paid directly to the third
13 party by the borrower.

14 (b) The fees and charges authorized by (a) of this section are in
15 addition to the interest authorized by law, and are not a part of the
16 interest collected or agreed to be paid on a mortgage loan within the
17 meaning of any law of the state which limits the rate of interest. Any
18 such fees and charges or possible fees and charges shall be disclosed
19 and explained to the borrower in advance, in a manner that the depart-
20 ment may direct.

21 (c) No director, officer or employee of a bank may receive a fee
22 or other compensation of any kind in connection with obtaining a mort-
23 gage loan from a bank, except for services actually rendered as provided
24 in this chapter.

25 * Sec. 21. AS 06.05.305 is repealed and re-enacted to read:

26 Sec. 06.05.305. CAPITAL STRUCTURE. (a) It is unlawful for a
27 corporation to commence and operate a banking business in the state
28 unless the corporation has paid-in capital of at least \$250,000 and
29 paid-in surplus equal to 20 per cent of paid-in capital; and it is

1 unlawful for a bank to operate any branches unless it has an aggregate
2 paid-in capital and paid-in surplus of at least \$800,000.

3 (b) No reduction of capital stock of a state bank may be made to
4 an amount less than is required in this chapter for capital. No re-
5 duction of capital stock, cancellation of stock certificates, or re-
6 ducing of the liability of the stockholders is valid until it is ap-
7 proved by the department.

8 (c) If a state bank fails to maintain its total adjusted capital
9 accounts and reserves in an amount equal to the substandard assets as
10 reported by the Federal Deposit Insurance Corporation or the state in a
11 bank's latest report of examination, the department shall consider the
12 failure as endangering the safety of the depositor and may direct the
13 bank's directors to increase the capital accounts in an amount suffi-
14 cient to cover substandard assets.

15 * Sec. 22. AS 06.05.307(d) is amended to read:

16 (d) The amount of outstanding notes and debentures not maturing
17 within one year shall be added to the capital, [STOCK AND] surplus
18 account, and undivided profits [FUND] of the issuing bank for the
19 purpose of determining the maximum amount that may be loaned by the bank
20 as provided in sec. 205 of this chapter.

21 * Sec. 23. AS 06.05.310(c) is amended to read:

22 (c) At any time after the expiration of the 60-day period, the
23 board of directors may proceed, by action or otherwise, to collect the
24 assessment from any delinquent stockholder, or it may, whether an
25 action has been commenced or not, at any time before the assessment is
26 actually collected [,] sell the stock of the stockholder and forfeit all
27 the amounts previously collected on the stock [THEREON. THE COLLECTION
28 OF ANY ASSESSMENT UNDER THIS SECTION FOR THE PURPOSE OF REPLACING ANY
29 IMPAIRMENT OF CAPITAL DOES NOT RELIEVE ANY STOCKHOLDER FROM LIABILITY TO

1 THE CREDITORS OF THE BANK AS PROVIDED BY SEC. 315 OF THIS CHAPTER].

2 * Sec. 24. AS 06.05.340 is repealed and re-enacted to read:

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

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

12 Sec. 06.05.342. SUBSCRIPTIONS FOR SHARES. (a) Any subscription
13 agreements and accompanying prospectuses or offering circulars, whether
14 for a proposed state bank or for an increase in capital of an existing
15 state bank, shall be submitted to the department for approval before
16 their use. The department shall determine whether the subscription
17 agreements provide full and accurate disclosure of the material terms of
18 the offering. The department may order the incorporators not to accept
19 any stock subscriptions or to cease accepting subscriptions if it deter-
20 mines that the incorporators are not acting lawfully or in good faith.

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

25 * Sec. 26. AS 06.05.345 is repealed and re-enacted to read:

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

- 28 (1) the name assumed by the bank;
29 (2) the judicial district in which the bank is to be located

1 and the community where the bank is to conduct its principal place of
2 business;

3 (3) the nature of its business;

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

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

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

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

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

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

17 (A) any past and present connection with any bank other
18 than as a customer on terms generally available to the public of
19 each incorporator and proposed director and each pre-incorporation
20 subscriber of more than five per cent of the capital stock;

21 (B) the name, residence and occupation of each pre-
22 incorporation subscriber and the number of shares subscribed for by
23 each;

24 (C) the address of the proposed place of business of the
25 bank or, if an address is not available, a legal description of the
26 proposed place of business;

27 (2) the proposed articles of incorporation executed in
28 triplicate together with applicable fees, payable to the department for
29 the filing.

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

7 (e) The department shall notify the incorporators of its decision
8 on an application for a proposed state bank. If the application and
9 accompanying documents required by (c) of this section do not conform to
10 the requirements of this chapter and to the regulations adopted under
11 this chapter, the department shall return the documents with an ex-
12 planation of the defects. If the department does not act within 30 days
13 of receipt of the application, the application shall be considered ac-
14 cepted; however, acceptance of the application does not constitute
15 approval.

16 (f) The incorporators shall publish notice of the department's
17 acceptance of the application for a proposed state bank and articles of
18 incorporation once each week for two successive weeks in a newspaper of
19 general circulation published in the community proposed as the bank's
20 principal place of business. If there is no newspaper in the proposed
21 principal place of business, the notice shall be published in a news-
22 paper of general circulation near the community. The first publication
23 of the notice shall appear within 15 days after the application and
24 articles of incorporation have been accepted by the department. The
25 notice shall state:

- 26 (1) the name of the proposed state bank;
27 (2) that the proposed bank is to be incorporated under this
28 chapter;
29 (3) the purpose of the proposed bank;

1 (4) the names and addresses of the incorporators and the
2 initial board of directors as they appear in the articles of incor-
3 poration.

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

7 (h) Upon acceptance of an application for approval of a proposed
8 state bank, the department shall conduct an investigation to ascertain
9 whether

10 (1) the convenience and needs of the public will be served by
11 the bank;

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

15 (3) the character and fitness of the incorporators and the
16 members of the initial board of directors are of a nature which commands
17 the confidence of the community and warrants the belief that the busi-
18 ness of the bank will be honestly and efficiently conducted;

19 (4) the capital structure of the bank is adequate in relation
20 to the amount of the anticipated business of the bank and the safety of
21 prospective depositors;

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

25 (6) the addition of the bank is not detrimental to a sound
26 and competitive banking system;

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

29 (8) other facts and circumstances exist bearing on the bank

1 and its relation to the community which the department considers rele-
2 vant.

3 (i) No later than six months after the application for approval
4 has been accepted the department shall approve or deny it. The time may
5 be extended by up to six additional months when warranted by exceptional
6 circumstances, as determined by the department. Within 60 days after
7 the second publication of the notice required by (f) of this section,
8 any person opposing the application may file with the department written
9 objections to it. When it approves or denies the application, the
10 department shall notify the incorporators and any other person who
11 requested in writing that he or she be notified, and, if the application
12 is denied, the department shall state the reasons for its decision and
13 return all copies of the articles of incorporation.

14 (j) If the department approves the application, the approval
15 shall be endorsed on the articles of incorporation, and the articles of
16 incorporation shall be filed and a certificate of incorporation issued.
17 The department shall retain one copy of the approved articles for its
18 files, file one copy with the Department of Revenue, and return one copy
19 to the incorporators.

20 (k) At the time of the issuance of the certificate of incorpora-
21 tion by the department the corporate existence begins, unless the
22 certificate provides that it will begin on a stated day in the future in
23 conformity with a provision of the articles of incorporation, in which
24 event the corporate existence begins on the date stated, without further
25 action by either the incorporators or the department. The certificate
26 of incorporation is conclusive evidence that the state bank has been
27 incorporated except as against the department in a proceeding instituted
28 by it to dissolve the bank under sec. 466 of this chapter.

29 (l) A bank may amend its articles of incorporation in any manner

1 consistent with this chapter by a vote of its stockholders representing
2 two-thirds of the capital at any regular meeting or at a special meeting
3 called for that purpose. A certificate of the terms of the amendments
4 shall be executed by a majority of the directors and filed in the same
5 manner as the articles of incorporation.

6 * Sec. 27. AS 06.05.350 is repealed and re-enacted to read:

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

18 (b) The department shall issue a certificate of authority to
19 engage in the banking business to a proposed state bank if, upon review
20 of the information required by this chapter, including the following, it
21 approves the application:

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

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

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

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

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

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

8 * Sec. 28. AS 06.05.355 is repealed and re-enacted to read:

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

12 (b) A bank which is a member of the Federal Deposit Insurance
13 Corporation may not voluntarily relinquish membership without the con-
14 sent of the department. Request for the consent must be made at least
15 180 days before the proposed date of relinquishment.

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

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

21 Sec. 06.05.399. APPLICATION FOR CERTIFICATE OF AUTHORITY FOR
22 BRANCH BANK OR CHANGE OF LOCATION. (a) Before operating a branch bank
23 or changing the location of the principal office or of a branch of the
24 bank, a state bank must apply to the department for a certificate of
25 authority to do so. The application shall be in the form and contain
26 the information the department requires to enable it to determine
27 whether a certificate of authority should be issued, including but not
28 limited to the address at which the state bank or branch will operate.
29 The application must be accompanied by a fee of \$500. The department

1 may assess the bank for an additional amount if its actual costs in
2 processing the application exceed the initial application fee, but the
3 additional amount assessed may in no case exceed \$2,000.

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

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

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

18 (1) the addition of the proposed facility in the community is
19 not detrimental to a sound and competitive banking system;

20 (2) the population density and other economic characteristics
21 of the area primarily to be served afford reasonable promise of adequate
22 support for a branch or a relocated principal office;

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

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

28 (e) No later than 150 days after the application for a certificate
29 of authority to operate a branch bank or to change location has been

1 accepted, the department shall make a determination whether to approve
2 the application. Within 30 days after the second publication of the
3 notice referred to in (c) of this section, any person opposing the
4 pending application may file written objections with the department.
5 When it approves or denies the application, the department shall notify
6 the bank and any other person who requested in writing that he be noti-
7 fied; and if the application is denied, the department shall state the
8 reasons for its decision.

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

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

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

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

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

19 * Sec. 30. AS 06.05.437(a) is amended to read:

20 (a) The officers of a bank shall be elected by the board of
21 directors. No officer may be elected for a period longer than one year.
22 An officer may be removed by the board of directors at any time but
23 removal shall not prejudice any rights that he may have to damages for
24 breach of contract of employment. The president of a bank or other
25 chief officer responsible for the management of the bank must be a
26 member of the board of directors.

27 * Sec. 31. AS 06.05.441(a) is amended to read:

28 (a) Before a bank dividend is declared, or the net profits for the
29 period covered by the dividend disposed of, not less than one-fifth of

1 these net profits shall be carried to the bank surplus account [FUND]
2 until the surplus account [FUND] amounts to 100 per cent of the paid-in
3 capital of the bank.

4 * Sec. 32. AS 06.05.443(3) is amended to read:

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

8 * Sec. 33. AS 06.05.450 is amended to read:

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

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

19 Sec. 06.05.464. NOTICE OF DURATION OF CHARGES AND CONDITIONS. (a)
20 A bank or other financial institution shall, in a manner the department
21 directs, disclose and explain to the customer the duration of a price,
22 fee, charge, or condition of any account or service which is to be
23 provided to the customer. The disclosure and explanation shall be made
24 before the account or service is provided to the customer.

25 (b) A bank or other financial institution may make no change,
26 without prior approval of the customer, in a price, fee, charge or
27 condition of an account or service during the period disclosed under (a)
28 of this section.

29 (c) A bank or other financial institution may make no change,

1 without prior approval of the customer, in a price, fee, charge, or
2 condition of any account or service without at least 60 days advance
3 disclosure and explanation to the customer, in a manner the department
4 directs. This subsection does not authorize any change during the
5 period disclosed under (a) of this section, although notice of a change
6 may be given to the customer during that period, if effective at least
7 60 days after the notice is given and not before the end of the period.

8 * Sec. 35. AS 06.05.465 is repealed and re-enacted to read:

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

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

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

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

18 (b) Upon approval by the department of voluntary liquidation under
19 (a) of this section a bank shall immediately cease to do business and
20 retain only the powers necessary to effect an orderly liquidation. It
21 shall proceed to pay its depositors and creditors and to conclude its
22 affairs.

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

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

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

29 (3) published as the department requires.

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

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

15 (f) The contents of safe deposit boxes which have not been removed
16 within 30 days after demand shall be opened and the contents dealt with
17 in the manner provided for boxes upon which the payment of rental is in
18 default, and the sealed packages containing the contents and the certi-
19 ficates together with any other unclaimed property held by the bank as
20 bailee and certified inventories of that property shall be transferred
21 to the department which shall retain it for five years unless claimed by
22 the person entitled to it before that time. After five years the de-
23 partment shall sell or otherwise appropriately dispose of the property.
24 The proceeds of any sale shall be transferred to the state treasury and
25 shall be deposited in the general fund.

26 (g) The approval of an application for voluntary liquidation does
27 not impair any right of a depositor or creditor to payment in full, and
28 all lawful claims of creditors and depositors shall promptly be paid.
29 The unearned portion of the rental of a safe deposit box shall be

1 returned to the lessee.

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

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

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

11 (3) approval of the department.

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

18 * Sec. 36. AS 06.05 is amended by adding a new section to read:

19 Sec. 06.05.466. INVOLUNTARY DISSOLUTION BEFORE COMMENCEMENT OF
20 BUSINESS. (a) Before the issuance of a certificate of authority, the
21 department may dissolve and cause the liquidation of a state bank if the
22 department discovers, after its approval of the articles of incorpora-
23 tion, a reason why the bank should not have been incorporated, or if a
24 certificate of authority has not been issued within one year after the
25 issuance of the certificate of incorporation or within the time the
26 department allowed for satisfaction of conditions precedent to the
27 issuance of a certificate of authority. After giving the bank notice
28 and an opportunity for hearing, the department shall file a statement of
29 facts and issue a certificate of dissolution.

1 (b) A bank dissolved under (a) of this section shall immediately
2 proceed to liquidate under sec. 465(c) and (d) of this chapter. The
3 department may take possession of the bank if it considers it necessary
4 to effect a liquidation that complies with sec. 465(c) and (d) of this
5 chapter.

6 * Sec. 37. AS 06.05.470 is repealed and re-enacted to read:

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

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

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

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

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

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

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

22 (7) the bank has lost, or received notice of the termination
23 or suspension of, its membership in the Federal Deposit Insurance
24 Corporation or has relinquished its membership in the Federal Deposit
25 Insurance Corporation without the consent of the department.

26 (b) The department shall take possession under (a) of this section
27 by posting upon the bank premises a notice stating that it is assuming
28 possession under this chapter. Its possession is considered to commence
29 at the time of posting of the notice. The notice shall also be filed in

1 the superior court of the judicial district in which the bank is lo-
2 cated. The department shall notify the Federal Reserve Bank if the bank
3 in the possession of the department is a member of the Federal Reserve
4 System. When the department has taken possession, it is vested with the
5 full and exclusive power of management and control, including the power
6 to assess outstanding capital stock under sec. 310 of this chapter, to
7 continue or discontinue the business, to stop or limit the payment of
8 its obligations, to employ necessary assistants, to execute any in-
9 strument in the name of the bank, to commence, defend and conduct in its
10 name any action or proceeding in which it may be a party, to terminate
11 its possession by restoring the bank to its board of directors, and to
12 reorganize or liquidate the bank in accordance with this chapter. As
13 soon as practicable after taking possession, the department shall make
14 an inventory of the assets and file a copy of it with the superior
15 court.

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

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

29 (e) If the department decides to liquidate a bank, it shall give

1 notice to the directors, stockholders, depositors, and creditors as it
2 may prescribe. Any objection to the liquidation shall be filed with
3 the department within 15 days after that notice has been mailed. The
4 department may proceed to liquidate the bank within 15 days after
5 notice has been mailed.

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

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

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

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

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

29 (i) All necessary and reasonable expenses resulting from the

1 department's possession of a bank and of its reorganization or liqui-
2 dation shall be paid from the assets of the bank.

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

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

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

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

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

19 (5) the plan assures the removal of any director, officer, or
20 employee responsible for an unsound or unlawful action or the existence
21 of an unsound condition;

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

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

28 (1) In liquidating a bank, the department may exercise any power
29 incidental to liquidating a bank, but it may not, without the approval

1 of the superior court,

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

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

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

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

16 (n) As soon after the commencement of involuntary liquidation as
17 is practicable, the department shall take the necessary steps to termi-
18 nate all fiduciary positions held by a bank and take action necessary to
19 surrender all property held by the bank as a fiduciary and to settle its
20 fiduciary accounts.

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

25 (p) The contents of safe deposit boxes in banks being liquidated
26 by the department shall be disposed of by the department as in sec.
27 465(f) of this chapter.

28 (q) Within six months after the last day specified in the notice
29 for the filing of claims, or within a longer period if allowed by the

1 superior court, the department shall

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

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

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

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

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

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

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

28 (1) obligations incurred by the department;

29 (2) wages and salaries of officers and employees earned

1 during the three-month period preceding the department's possession in
2 an amount not exceeding \$3,000 for each person;

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

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

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

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

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

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

18 (y) When the assets have been distributed in accordance with this
19 chapter, the department shall file an account with the superior court.
20 Upon approval of the account, the department is relieved of liability in
21 connection with the liquidation and the court shall cancel the certi-
22 ficate of authority and enter an order of dissolution. Upon the filing
23 of the order, the department shall issue a certificate of dissolution of
24 the corporation under the Alaska Business Corporation Act (AS 10.05).

25 (z) The department may appoint the Federal Deposit Insurance
26 Corporation as receiver for a bank of which it has taken possession and
27 whose deposits are insured by that corporation. Upon filing with the
28 court a certificate indicating the acceptance by the Federal Deposit
29 Insurance Corporation, the possession of and title to all the assets,

1 business, and property are considered transferred to that corporation.
2 The department is then relieved from all responsibility and liability in
3 respect to the liquidation of the bank. The Federal Deposit Insurance
4 Corporation may liquidate, reorganize, merge or consolidate the bank in
5 the manner permitted by the laws of the United States or by this chap-
6 ter, possessing all rights, powers, duties and obligations of the
7 department.

8 * Sec. 38. AS 06.05.505 is amended to read:

9 Sec. 06.05.505. UNLAWFUL FAILURE TO TRANSMIT REPORTS REQUIRED BY
10 DEPARTMENT. Every bank which fails to make, transmit and publish any
11 report required under sec. 45 of this chapter is subject to a penalty of
12 \$100 [\$10] a day for each day's delay after the period specified in that
13 section. Any bank is considered to have transmitted a report to the
14 department on the day when the bank has deposited it in a United States
15 post office in the state, properly addressed to the department, postage
16 prepaid, and registered if the post office is a registry office.

17 * Sec. 39. AS 06.05 is amended by adding a new section to read:

18 Sec. 06.05.516. RESTRAINT OF TRADE. (a) It is unlawful
19 (1) for a bank or financial institution, or any of its
20 officers, directors, agents or employees, to monopolize, attempt to
21 monopolize, combine or conspire with another bank or financial institu-
22 tion, or any of its officers, directors, agents or employees to mono-
23 polize, any part of trade or commerce, or enter into a contract, agree-
24 ment or understanding if the effect of the contract, agreement or
25 understanding may be substantially to lessen competition or tend to
26 create a monopoly in any line of commerce in the state or any section of
27 the state;

28 (2) for a person to acquire and hold, directly or indirectly,
29 the whole or any part of the stock, other share capital, or assets of a

1 corporation regulated under the provisions of this chapter after the
2 effective date of this Act if the effect of the acquisition and holding
3 may be substantially to lessen competition and to tend to create a
4 monopoly in any line of commerce in the state or any section of the
5 state; this paragraph does not apply to purchasing the stock of a cor-
6 poration solely for investment if it is not used by voting or otherwise
7 to bring about, or in attempting to bring about, the substantial les-
8 sening of competition;

9 (3) for a person to be at the same time a director, officer
10 or trustee in any two or more banks or financial institutions if the
11 effect may be substantially to lessen competition or tend to create a
12 monopoly.

13 (b) This section does not apply to mergers, acquisitions or hold-
14 ing companies permitted by sec. 235 of this chapter, or to mergers,
15 acquisitions or holding companies permitted and regulated by a regula-
16 tory agency of the United States having jurisdiction and control over
17 those mergers and acquisitions.

18 (c) If the attorney general determines, upon complaint by a pri-
19 vate party, by the department, or otherwise, that a person has engaged
20 in, or is engaging in, or is about to engage in an act declared unlawful
21 in (a) of this section, he may commence an investigation. The attorney
22 general may compel production of documentary material and take testi-
23 mony, under oath, before instituting an action under this subsection.
24 The attorney general may bring an action to enjoin a violation of (a) of
25 this section. In the resolution of the action, the court may make any
26 order or judgment as may be necessary to restore to a person in interest
27 any property which may have been acquired by an act made unlawful by (a)
28 of this section, and as may be necessary to prevent continuing or future
29 violations of this section.

1 (d) A person who is injured in his business or property by a
2 violation of (a) of this section may bring a civil action

3 (1) for damages sustained by him, and if the judgment is for
4 the plaintiff and the trier of fact finds that the defendant's conduct
5 was wilful, the plaintiff shall be awarded threefold the amount of
6 damages sustained by him, plus the costs of the suit, including reason-
7 able attorney fees;

8 (2) to enjoin the unlawful practice, and if the judgment is
9 for the plaintiff, he may be awarded the costs of the suit, including
10 reasonable attorney fees.

11 * Sec. 40. AS 06.05.520 is amended to read:

12 Sec. 06.05.520. PENALTY. Any person who violates any provision of
13 this chapter for which no specific penalty is provided is guilty of a
14 misdemeanor, and upon conviction is punishable by a fine of not more
15 than \$5,000, or by imprisonment for not more than one year, or by both.
16 In case of conviction of [VIOLATION BY] a corporation for violation of
17 this chapter, the corporation is punishable by a fine of not more than
18 \$20,000 [\$5,000].

19 * Sec. 41. AS 06.05.540(9) is repealed and re-enacted to read:

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

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

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

29 (C) the department determines, after notice and oppor-

1 tunity for hearing, that the company directly or indirectly exer-
2 cises a controlling influence over the management of policies of
3 the bank or company.

4 * Sec. 42. AS 06.05.540 is amended by adding new paragraphs to read:

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

7 (A) provision for payment of taxes and expenses of
8 operations,

9 (B) transfers to reserves allocated to a particular
10 asset or class of assets,

11 (C) losses estimated or sustained on a particular asset
12 or class of assets in excess of the amount of reserves allocated
13 for it,

14 (D) transfers to surplus and capital,

15 (E) amounts declared as dividends to stockholders;

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

19 * Sec. 43. AS 06.30.105(c) is amended to read:

20 (c) At a meeting of the members, voting may be in person or by
21 proxy. Every proxy shall be in writing and signed by the member or his
22 authorized attorney in fact and, when filed with the secretary, shall,
23 unless otherwise specified in the proxy, continue in force from year to
24 year until revoked by a writing delivered to the secretary or until
25 superseded by another proxy. A member's proxy shall be considered to
26 be temporarily revoked by the physical presence of the member or his
27 authorized attorney in fact at a meeting of the members, for the dura-
28 tion of the physical presence of the member or his authorized attorney
29 in fact at that meeting.

1 * Sec. 44. AS 45.45 is amended by adding a new section to read:

2 Sec. 45.45.075. DISCLOSURE OF INTEREST PAID ON DEPOSITS. (a)

3 Every national or state bank, savings and loan institution, credit union
4 or other financial institution which solicits or accepts in the normal
5 course of business deposits on which interest or dividends are paid
6 shall provide a written notice to a depositor or a potential depositor,
7 upon demand or upon his opening an account, which contains the following
8 information:

- 9 (1) the annual interest or dividend rate;
10 (2) the method of computing the interest or dividend;
11 (3) the dates on which interest or dividends are credited;
12 (4) the minimum balance required to earn interest or divi-
13 dends;
14 (5) a description of any withdrawal penalties;
15 (6) the date the deposit begins to earn interest or divi-
16 dends;
17 (7) whether the interest or dividends are compounded.

18 (b) An institution covered by (a) of this section which does not
19 advertise or declare in advance a specific rate to be paid as interest
20 or dividends on deposits shall provide, in lieu of the information
21 required under (a)(1) of this section, a detailed description of the
22 factors upon which the amount of interest or dividends depends.

23 (c) The commissioner of commerce and economic development shall
24 promulgate regulations to implement this section which shall specify the
25 form and content of the written notice required under this section. The
26 regulations shall provide for inclusion in the notice interest or
27 dividend calculations showing annual yield at that institution's present
28 rate based upon three standard hypothetical accounts prepared for that
29 purpose by the department to illustrate the effect of that institution's

1 method of computing interest or dividends.

2 * Sec. 45. AS 06.05.315, 06.05.335, 06.05.365, 06.05.370, 06.05.375,
3 06.05.400 - 06.05.425, 06.05.455, and 06.05.475 are repealed.

4 * Sec. 46. If any provision of this Act, or the application of it to any
5 person or circumstance is held invalid, the remainder of this Act and the
6 application to other persons or circumstances shall not be affected thereby.

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