

Original sponsor: Rules Committee by request
of the Governor

Offered: 3/15/78
Referred: Rules

1 IN THE SENATE

BY THE COMMERCE COMMITTEE

2 HOUSE CS FOR CS FOR SENATE BILL NO. 98(Commerce) am H

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - SECOND 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:

9 * Section 1. AS 06.05.035 is repealed and re-enacted to read:

10 Sec. 06.05.035. EXAMINATION FEE. A bank examined under the pro-
11 visions of sec. 25 of this chapter shall pay an examination fee as pro-
12 vided in AS 06.01.010.

13 * Sec. 2. AS 06.05.045(a) is amended to read:

14 (a) Every state bank shall make at least four reports of condition
15 each year to the department on days designated by it, and on forms
16 prescribed by it. The report shall be verified by an oath of the presi-
17 dent, vice president, or cashier and by at least three directors, certi-
18 fying and subscribing under oath that they and each of them have per-
19 sonal knowledge of the facts stated in the report and that the facts are
20 true. The reports shall exhibit in detail and under appropriate heads
21 the resources and liabilities of the bank, and shall be transmitted or
22 mailed to the department within 10 days of the receipt of the request
23 from the department [IT].

24 * Sec. 3. AS 06.05.050 is amended to read:

25 Sec. 06.05.050. PUBLICATION OF REPORTS. All reports of condition
26 required by sec. 45(a) of this chapter shall be published immediately in
27 condensed form at least once in a newspaper of general circulation
28 published in the place where the bank is located. If no newspaper is
29 published in that place, then the report shall be published in the

1 newspaper published nearest to that place.

2 * Sec. 4. AS 06.05.055(a) is amended to read:

3 (a) The department shall report to the governor annually, within
4 120 [60] days after the end of each fiscal year. The report shall
5 include

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

8 (2) recommendations for legislation;

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

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

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

16 * Sec. 5. AS 06.05.065 is repealed and re-enacted to read:

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

27 (b) A person subject to this section may

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

29 (2) purchase shares of a savings and loan association on the

1 same terms available to the public;

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

3 (4) be indebted to a state-chartered lending institution upon
4 an installment debt transferred to the lending institution in the regu-
5 lar course of business by a seller of goods, including but not limited
6 to household goods, mobile homes, motor vehicles, or boats purchased by
7 the employee for personal use only.

8 (c) This section does not limit the authority of an officer or
9 employee of the department acting in his official capacity in the busi-
10 ness of the department.

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

16 (e) Any person who violates this section is guilty of a misde-
17 meanor, and upon conviction is punishable by a fine of not more than
18 \$5,000, or by imprisonment for not more than one year, or by both, and
19 may also be fined an amount equal to the value of the property given or
20 received or the money loaned or borrowed.

21 (f) As used in this section, the term "lending institution" means
22 a state-chartered bank, mutual savings bank, savings and loan associa-
23 tion, bank holding company, any other state-chartered financial institu-
24 tion, a foreign banking corporation or institution, or other state-
25 chartered institution doing banking business in the state.

26 * Sec. 6. AS 06.05.075 is amended to read:

27 Sec. 06.05.075. STANDARDS IN REGULATIONS. The department, in the
28 exercise of the power to adopt [MAKE RULES AND ISSUE] regulations under
29 [PURSUANT TO] this chapter, shall act in the interests of promoting and

1 maintaining a sound and competitive banking system, the security of
2 deposits and customers, the preservation of the liquid position of banks
3 and in the interest of preventing injurious credit expansions and con-
4 tractions.

5 * Sec. 7. AS 06.05.166(a) is amended to read:

6 (a) A bank organized under or doing business under the laws of the
7 state or a national bank may remain closed on the legal holidays de-
8 scribed in AS 44.12.010, 44.12.020 and 44.12.025, except that no bank
9 may be closed for more than three consecutive days. The bank shall post
10 a notice of holiday closing in the place of business affected at least
11 15 days in advance. A bank may operate a branch bank on a different
12 schedule approved by the department if operation on a different schedule
13 will provide better service.

14 * Sec. 8. AS 06.05.175 is amended to read:

15 Sec. 06.05.175. DEPOSITOR AND CUSTOMER RECORDS CONFIDENTIAL. (a)
16 The bank records pertaining to depositors and customers are confidential
17 and shall not be made public except (1) when the bank, customer or
18 depositor is compelled to disclose the contents of the records by a
19 court, (2) when their disclosure is required by federal or state law or
20 regulation, (3) when disclosure is authorized in writing by the deposi-
21 tor or customer, [OR] (4) when disclosure is made to the holder of a
22 negotiable instrument drawn on the bank as to whether the drawer has
23 sufficient funds in the bank to cover the instrument, or (5) when an
24 inquiry has been made by a bank, savings association, or savings and
25 loan association regulated under this title, or by a credit-reporting
26 agency regulated under the Fair Credit Reporting Act (P.L. 91-508; 15
27 USC 1681) solely for the express purpose of determining the credit
28 worthiness of the depositor or customer as an applicant for credit and
29 the information disclosed by the bank or any entity making the inquiry

1 under this paragraph pertains only to the payment habits of the deposi-
2 tor or customer in connection with loans and other credit accommodations
3 and does not pertain to records concerning deposit balances in savings
4 or checking accounts.

5 (b) When disclosure of bank records is required or allowed under
6 (a)(1), (2) or (5) of this section, the bank shall notify the depositor
7 or customer of the disclosure. If notification before disclosure is not
8 possible, the bank shall immediately notify the customer or depositor of
9 the disclosure or inquiry. However, no notification shall be made if
10 disclosure is made under a search warrant or under a subpoena issued by
11 or at the behest of a grand jury.

12 (c) A person who does any one of the following commits a misde-
13 meanor and is subject to a fine not to exceed \$1,000, or to imprisonment
14 not to exceed 30 days, or to both:

15 (1) wilfully discloses information from bank records pertain-
16 ing to depositors and customers except as specifically authorized by (a)
17 of this section;

18 (2) wilfully misrepresents the purpose for which disclosure
19 under this section is requested and who thereby causes disclosure to be
20 made; or

21 (3) wilfully discloses information received under (a)(5) of
22 this section for a purpose other than those specified in (a)(5) of this
23 section.

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

25 (a) Each commercial bank which is not a member of the federal
26 reserve system shall maintain total reserves equal to the following
27 percentages of the aggregate amount of its deposits, exclusive of de-
28 posits of the United States, the State of Alaska, borough and municipal
29 governments and other deposits of public money which are secured as

1 required by law

2 (1) 20 per cent of its demand deposits; and

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

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

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

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

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

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

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

1 are not considered as money borrowed.

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

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

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

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

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

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

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

28 (1) real property necessary for the convenient transaction of
29 its business, including banking offices, equipment, furniture and fix-

1 tures, leasehold improvements, and parking lots, if the book asset value
2 of the purchase or investment does not exceed 60 per cent of the capital
3 account and the surplus account of the bank; the purchase or investment
4 may consist of stock in a bank building corporation, in which case it
5 must include all obligations of the building corporation to the bank;

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

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

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

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

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

1 by the proportion of bank stock directly or indirectly owned, held, or
2 controlled by it under conditions the department may prescribe to assure
3 full protection of the public. The holding company is subject to an
4 examination by the department or a competent person designated by the
5 department when the department considers it necessary, but not less than
6 once each year. The holding company shall pay an examination fee in
7 accordance with AS 06.01.010.

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

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

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

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

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

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

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

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

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

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

1 added to the mortgage loan amount, and charges by a third party may be
2 collected by the bank from the borrower and paid to the third party, or
3 may be paid directly to the third party by the borrower.

4 (b) The fees and charges authorized by (a) of this section are in
5 addition to the interest authorized by law, and are not a part of the
6 interest collected or agreed to be paid on a mortgage loan within the
7 meaning of any law of the state which limits the rate of interest. Any
8 such fees and charges or possible fees and charges shall be disclosed
9 and explained to the borrower in advance, in a manner that the depart-
10 ment may direct.

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

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

16 Sec. 06.05.305. CAPITAL STRUCTURE. (a) It is unlawful for a
17 corporation to commence and operate a banking business in the state
18 unless the corporation has paid-in capital of at least \$250,000 and
19 paid-in surplus equal to 20 per cent of paid-in capital; and it is
20 unlawful for a bank to operate any branches unless it has an aggregate
21 paid-in capital and paid-in surplus of at least \$800,000.

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

27 (c) If a state bank fails to maintain its total adjusted capital
28 accounts and reserves in an amount equal to the substandard assets as
29 reported by the Federal Deposit Insurance Corporation or the state in a

1 bank's latest report of examination, the department shall consider the
2 failure as endangering the safety of the depositor and may direct the
3 bank's directors to increase the capital accounts in an amount suffi-
4 cient to cover substandard assets.

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

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

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

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

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

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

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

2 Sec. 06.05.342. SUBSCRIPTIONS FOR SHARES. (a) Any subscription
3 agreements and accompanying prospectuses or offering circulars, whether
4 for a proposed state bank or for an increase in capital of an existing
5 state bank, shall be submitted to the department for approval before
6 their use. The department shall determine whether the subscription
7 agreements provide full and accurate disclosure of the material terms of
8 the offering. The department may order the incorporators not to accept
9 any stock subscriptions or to cease accepting subscriptions if it deter-
10 mines that the incorporators are not acting lawfully or in good faith.

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

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

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

18 (1) the name assumed by the bank;

19 (2) the judicial district in which the bank is to be located
20 and the community where the bank is to conduct its principal place of
21 business;

22 (3) the nature of its business;

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

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

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

28 (b) The articles of incorporation must be signed by all of the
29 incorporators and acknowledged before an officer authorized to take

1 acknowledgements.

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

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

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

11 (B) the name, residence and occupation of each pre-
12 incorporation subscriber and the number of shares subscribed for by
13 each;

14 (C) the address of the proposed place of business of the
15 bank or, if an address is not available, a legal description of the
16 proposed place of business;

17 (2) the proposed articles of incorporation executed in trip-
18 licate together with applicable fees, payable to the department for the
19 filing.

20 (d) Investigation expenses incurred by the department in process-
21 ing an application for approval of a proposed bank shall be charged to
22 and paid by the applicant in accordance with AS 06.01.010. At the time
23 of submitting the application to the department, the applicant shall pay
24 to the department \$1,000 in partial payment of the investigation expen-
25 ses incurred by the department. If the investigation expenses incurred
26 by the department do not exceed \$1,000, the remainder shall be promptly
27 refunded to the applicant.

28 (e) The department shall notify the incorporators of its decision
29 on an application for a proposed state bank. If the application and

1 accompanying documents required by (c) of this section do not conform to
2 the requirements of this chapter and to the regulations adopted under
3 this chapter, the department shall return the documents with an ex-
4 planation of the defects. If the department does not act within 30 days
5 of receipt of the application, the application shall be considered ac-
6 cepted; however, acceptance of the application does not constitute
7 approval.

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

- 18 (1) the name of the proposed state bank;
- 19 (2) that the proposed bank is to be incorporated under this
20 chapter;
- 21 (3) the purpose of the proposed bank;
- 22 (4) the names and addresses of the incorporators and the
23 initial board of directors as they appear in the articles of incor-
24 poration.

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

28 (h) Upon acceptance of an application for approval of a proposed
29 state bank, the department shall conduct an investigation to ascertain

1 whether

2 (1) the convenience and needs of the public will be served by
3 the bank;

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

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

11 (4) the capital structure of the bank is adequate in relation
12 to the amount of the anticipated business of the bank and the safety of
13 prospective depositors;

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

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

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

21 (8) other facts and circumstances exist bearing on the bank
22 and its relation to the community which the department considers rele-
23 vant.

24 (i) No later than six months after the application for approval
25 has been accepted the department shall approve or deny it. The time may
26 be extended by up to six additional months when warranted by exceptional
27 circumstances, as determined by the department. Within 60 days after
28 the second publication of the notice required by (f) of this section,
29 any person opposing the application may file with the department written

1 objections to it. When it approves or denies the application, the
2 department shall notify the incorporators and any other person who
3 requested in writing that he or she be notified, and, if the application
4 is denied, the department shall state the reasons for its decision and
5 return all copies of the articles of incorporation.

6 (j) If the department approves the application, the approval shall
7 be endorsed on the articles of incorporation, and the articles of incor-
8 poration shall be filed and a certificate of incorporation issued. The
9 department shall retain one copy of the approved articles for its files,
10 file one copy with the Department of Revenue, and return one copy to the
11 incorporators.

12 (k) At the time of the issuance of the certificate of incorpora-
13 tion by the department the corporate existence begins, unless the certi-
14 ficate provides that it will begin on a stated day in the future in
15 conformity with a provision of the articles of incorporation, in which
16 event the corporate existence begins on the date stated, without further
17 action by either the incorporators or the department. The certificate
18 of incorporation is conclusive evidence that the state bank has been
19 incorporated except as against the department in a proceeding instituted
20 by it to dissolve the bank under sec. 466 of this chapter.

21 (l) A bank may amend its articles of incorporation in any manner
22 consistent with this chapter by a vote of its stockholders representing
23 two-thirds of the capital at any regular meeting or at a special meeting
24 called for that purpose. A certificate of the terms of the amendments
25 shall be executed by a majority of the directors and filed in the same
26 manner as the articles of incorporation.

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

28 Sec. 06.05.350. CERTIFICATE OF AUTHORITY. (a) Until it receives
29 a certificate of authority from the department to engage in the banking

1 business, a state bank may not accept deposits or transact any business
2 except what is incidental to its commencement of business or to obtain-
3 ing subscriptions and payment for its shares. If, in violation of this
4 subsection, a state bank transacts business before it receives a certi-
5 ficate of authority to engage in the banking business, the directors and
6 officers who wilfully authorized or participated in the action are
7 personally, jointly, and severally liable for the debts and liabilities
8 of the bank incurred before the certificate of authority to engage in
9 the banking business is received.

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

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

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

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

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

22 (5) the bank has complied with all the requirements of this
23 chapter and any conditions imposed by the department and has advised the
24 department in writing of any changes that have occurred in the facts
25 reflected in the material it filed under sec. 345 of this chapter.

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

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

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

4 (b) A bank which is a member of the Federal Deposit Insurance
5 Corporation may not voluntarily relinquish membership without the con-
6 sent of the department. Request for the consent must be made at least
7 180 days before the proposed date of relinquishment.

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

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

13 Sec. 06.05.399. APPLICATION FOR CERTIFICATE OF AUTHORITY FOR
14 BRANCH BANK OR CHANGE OF LOCATION. (a) Before operating a branch bank
15 as a permanent location or mobile facility branch bank or changing the
16 location of the principal office or of a branch of the bank at a perma-
17 nent location, a state bank must apply to the commissioner for a certi-
18 ficate of authority to do so. The application must be in the form and
19 contain the information the commissioner requires to enable him to
20 determine whether a certificate of authority should be issued, including
21 but not limited to the address at which the state bank or branch at a
22 permanent location will operate. Investigation expenses incurred by the
23 department in processing applications shall be charged to and paid by
24 the applicant as provided in AS 06.01.010. At the time of submitting
25 the application to the commissioner, the applicant shall pay to the
26 department \$500 in partial payment of those investigation expenses
27 incurred by the department. If the investigation expenses incurred by
28 the department do not exceed \$500, the remainder shall be promptly
29 refunded to the applicant.

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

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

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

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

17 (2) the population density and other economic characteristics
18 of the area primarily to be served afford reasonable promise of adequate
19 support for a branch at a permanent location or mobile facility branch
20 bank or a relocated principal office or branch at a permanent location;

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

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

26 (e) No later than 150 days after the application for a certificate
27 of authority to operate a branch bank or to change location has been
28 accepted, the department shall make a determination whether to approve
29 the application. Within 30 days after the second publication of the

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

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

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

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

12 (3) approval of the application for insurance has been re-
13 ceived from the Federal Deposit Insurance Corporation.

14 (g) 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. 30. AS 06.05.437(a) is amended to read:

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

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

26 (a) Before a bank dividend is declared, or the net profits for the
27 period covered by the dividend disposed of, not less than one-fifth of
28 these net profits shall be carried to the bank surplus account [FUND]
29 until the surplus account [FUND] amounts to 100 per cent of the paid-in

1 capital of the bank.

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

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

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

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

16 * Sec. 34. AS 06.05.465 is repealed and re-enacted to read:

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

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

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

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

26 (b) Upon approval by the department of voluntary liquidation under
27 (a) of this section a bank shall immediately cease to do business and
28 retain only the powers necessary to effect an orderly liquidation. It
29 shall proceed to pay its depositors and creditors and to conclude its

1 affairs.

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

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

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

8 (3) published as the department requires.

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

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

23 (f) The contents of safe deposit boxes which have not been removed
24 within 30 days after demand shall be opened and the contents dealt with
25 in the manner provided for boxes upon which the payment of rental is in
26 default, and the sealed packages containing the contents and the certi-
27 ficates together with any other unclaimed property held by the bank as
28 bailee and certified inventories of that property shall be transferred
29 to the department which shall retain it for five years unless claimed by

1 the person entitled to it before that time. After five years the de-
2 partment shall sell or otherwise appropriately dispose of the property.
3 The proceeds of any sale shall be transferred to the state treasury and
4 shall be deposited in the general fund.

5 (g) The approval of an application for voluntary liquidation does
6 not impair any right of a depositor or creditor to payment in full, and
7 all lawful claims of creditors and depositors shall promptly be paid.
8 The unearned portion of the rental of a safe deposit box shall be re-
9 turned to the lessee.

10 (h) Any assets remaining after the discharge of all obligations
11 shall be distributed to the stockholders in accordance with their re-
12 spective interests. No distribution may be made before

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

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

19 (3) approval of the department.

20 (i) Any unclaimed distribution to a stockholder or a depositor
21 shall be held until 90 days after the final distribution and then trans-
22 mitted to the department. Unclaimed funds of a stockholder or a deposi-
23 tor shall be held by the department for five years and, unless claimed
24 by the person entitled to them before that date, shall be transferred to
25 the state treasury and deposited in the general fund.

26 * Sec. 35. AS 06.05 is amended by adding a new section to read:

27 Sec. 06.05.466. INVOLUNTARY DISSOLUTION BEFORE COMMENCEMENT OF
28 BUSINESS. (a) Before the issuance of a certificate of authority, the
29 department may dissolve and cause the liquidation of a state bank if the

1 department discovers, after its approval of the articles of incorpora-
2 tion, a reason why the bank should not have been incorporated, or if a
3 certificate of authority has not been issued within one year after the
4 issuance of the certificate of incorporation or within the time the
5 department allowed for satisfaction of conditions precedent to the
6 issuance of a certificate of authority. After giving the bank notice
7 and an opportunity for hearing, the department shall file a statement of
8 facts and issue a certificate of dissolution.

9 (b) A bank dissolved under (a) of this section shall immediately
10 proceed to liquidate under sec. 465(c) and (d) of this chapter. The
11 department may take possession of the bank if it considers it necessary
12 to effect a liquidation that complies with sec. 465(c) and (d) of this
13 chapter.

14 * Sec. 36. AS 06.05.470 is repealed and re-enacted to read:

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

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

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

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

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

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

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

1 (7) the bank has lost, or received notice of the termination
2 or suspension of, its membership in the Federal Deposit Insurance Cor-
3 poration or has relinquished its membership in the Federal Deposit
4 Insurance Corporation without the consent of the department.

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

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

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

8 (e) If the department decides to liquidate a bank, it shall give
9 notice to the directors, stockholders, depositors, and creditors as it
10 may prescribe. Any objection to the liquidation shall be filed with the
11 department within 15 days after that notice has been mailed. The de-
12 partment may proceed to liquidate the bank within 15 days after notice
13 has been mailed.

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

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

27 (1) any lien or attachment, other than an attorney's or
28 mechanic's lien, obtained upon any asset of the bank during the de-
29 partment's possession or within four months before commencement of that

1 possession shall be vacated except liens created by the department while
2 in possession; and

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

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

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

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

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

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

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

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

27 (5) the plan assures the removal of any director, officer, or
28 employee responsible for an unsound or unlawful action or the existence
29 of an unsound condition;

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

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

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

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

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

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

17 (m) Within six months after the commencement of involuntary liqui-
18 dation, the department may terminate any executory contract for services
19 or advertising to which a bank is a party or any obligation of a bank as
20 a lessee. A lessor who receives 60 days notice of the department's
21 decision to terminate a lease has no claim for rent, other than rent
22 accrued to the date of termination, and has no claim for damages due to
23 the termination.

24 (n) As soon after the commencement of involuntary liquidation as
25 is practicable, the department shall take the necessary steps to termi-
26 nate all fiduciary positions held by a bank and take action necessary to
27 surrender all property held by the bank as a fiduciary and to settle its
28 fiduciary accounts.

29 (o) As soon after commencement of liquidation by the department as

1 practicable, it shall proceed as in sec. 465(c) and (d) of this chapter
2 relating to voluntary liquidation by banks, except that no notice need
3 be sent relating to fiduciary accounts.

4 (p) The contents of safe deposit boxes in banks being liquidated
5 by the department shall be disposed of by the department as in sec.
6 465(f) of this chapter.

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

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

11 (2) determine the amount, if any, owing to each known cre-
12 ditor or depositor and the priority class of his claim under this chap-
13 ter;

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

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

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

28 (s) After filing its schedule, the department may make partial
29 distribution to the holders of claims which are undisputed or have been

1 allowed by the court if an adequate reserve is established for the
2 payment of disputed claims. As soon as it is practicable after the
3 determination of all objections, the department shall make final distri-
4 bution.

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

7 (1) obligations incurred by the department;

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

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

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

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

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

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

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

26 (y) When the assets have been distributed in accordance with this
27 chapter, the department shall file an account with the superior court.
28 Upon approval of the account, the department is relieved of liability in
29 connection with the liquidation and the court shall cancel the certi-

1 ficate of authority and enter an order of dissolution. Upon the filing
2 of the order, the department shall issue a certificate of dissolution of
3 the corporation.

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

16 * Sec. 37. AS 06.05.505 is amended to read:

17 Sec. 06.05.505. UNLAWFUL FAILURE TO TRANSMIT REPORTS REQUIRED BY
18 DEPARTMENT. Every bank which fails to make, transmit and publish any
19 report required under sec. 45 of this chapter is subject to a penalty of
20 \$100 [\$10] a day for each day's delay after the period specified in that
21 section. Any bank is considered to have transmitted a report to the
22 department on the day when the bank has deposited it in a United States
23 post office in the state, properly addressed to the department, postage
24 prepaid, and registered if the post office is a registry office.

25 * Sec. 38. AS 06.05.520 is amended to read:

26 Sec. 06.05.520. PENALTY. Any person who violates any provision of
27 this chapter for which no specific penalty is provided is guilty of a
28 misdemeanor, and upon conviction is punishable by a fine of not more
29 than \$5,000, or by imprisonment for not more than one year, or by both.

1 In case of conviction of [VIOLATION BY] a corporation for violation of
2 this chapter, the corporation is punishable by a fine of not more than
3 \$20,000 [\$5,000].

4 * Sec. 39. AS 06.05.540(9) is repealed and re-enacted to read:

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

8 (A) the company directly or indirectly or acting through
9 one or more other persons owns, controls, or has power to vote 10
10 per cent or more of any class of voting securities of the bank or
11 company;

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

14 (C) the department determines, after notice and oppor-
15 tunity for hearing, that the company directly or indirectly exer-
16 cises a controlling influence over the management of policies of
17 the bank or company.

18 * Sec. 40. AS 06.05.540 is amended by adding new paragraphs to read:

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

21 (A) provision for payment of taxes and expenses of
22 operations,

23 (B) transfers to reserves allocated to a particular
24 asset or class of assets,

25 (C) losses estimated or sustained on a particular asset
26 or class of assets in excess of the amount of reserves allocated
27 for it,

28 (D) transfers to surplus and capital,

29 (E) amounts declared as dividends to stockholders;

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

4 * Sec. 41. AS 06.30.105(c) is amended to read:

5 (c) At a meeting of the members, voting may be in person or by
6 proxy. Every proxy shall be in writing and signed by the member or his
7 authorized attorney in fact and, when filed with the secretary, shall,
8 unless otherwise specified in the proxy, continue in force from year to
9 year until revoked by a writing delivered to the secretary or until
10 superseded by another proxy. A member's proxy shall be considered to be
11 temporarily revoked by the physical presence of the member or his au-
12 thorized attorney in fact at a meeting of the members, for the duration
13 of the physical presence of the member or his authorized attorney in
14 fact at that meeting.

15 * Sec. 42. AS 06 is amended by adding a new chapter to read:

16 CHAPTER 1. ADMINISTRATION.

17 Sec. 06.01.010. EXAMINATION FEES AND ASSESSMENTS. (a) The expen-
18 ses of the department reasonably incurred in the examination or investi-
19 gation of all financial institutions or applications to establish finan-
20 cial institutions regulated by the department under this title shall be
21 charged to and paid by each financial institution as provided in (b) of
22 this section.

23 (b) The commissioner shall assess every financial institution, and
24 every applicant to establish a financial institution, a fee for the
25 actual expenses incurred by the department in connection with any exami-
26 nation or investigation, whether regular or special. The fee shall
27 include the proportionate part of the salaries and cost of employee
28 benefits of the examiners while conducting examinations or investiga-
29 tions and while preparing reports of them, and transportation costs and

1 per diem of each examiner while away from his duty station. However,
2 the cost to the financial institution in connection with an examination
3 may not exceed \$7,500 per examination. The assessment shall be made by
4 the commissioner as soon as feasible after the examination or investi-
5 gation has been completed. All assessments shall be paid to and re-
6 ceived by the department by each institution within 30 days after re-
7 ceipt of notice of the assessment.

8 (c) Any financial institution which fails to make the payments
9 required by the commissioner under (a) and (b) of this section within
10 the time specified is subject to a penalty of not more than \$100 each
11 day it is late. The penalty, together with the amount due under (a) of
12 this section, may be recovered in a civil action brought by the depart-
13 ment.

14 Sec. 06.01.020. GENERAL POWERS OF DEPARTMENT. The commissioner
15 may by regulation authorize financial institutions, except licensees
16 subject to AS 06.20, to exercise any of the powers conferred upon a
17 federally chartered bank, trust company, savings association, or other
18 federally chartered institution doing business in this state which is
19 subject to the regulations of the United States Comptroller of the
20 Currency, the Federal Reserve Board, the Federal Home Loan Bank Board,
21 the Federal Deposit Insurance Corporation or the successor or successors
22 of them, if the commissioner finds that the exercise of the power both:

- 23 (1) serves the public convenience and advantage; and
24 (2) equalizes and maintains the quality of competition be-
25 tween state-chartered financial institutions and corresponding federally
26 chartered financial institutions.

27 Sec. 06.01.030. ORDERS AND INJUNCTIONS; NOTICE AND HEARINGS; REGU-
28 LATIONS. (a) Whenever it appears to the commissioner that a person has
29 engaged in or is about to engage in an act or practice in violation of

1 any provision of this title or of a regulation adopted under it, the
2 commissioner may

3 (1) if he considers it to be in the public interest, issue an
4 order directing the person to stop the act or practice; reasonable
5 notice and an opportunity for a hearing must be given before issuing the
6 order; however, the commissioner may issue a temporary order pending the
7 hearing which remains in effect until 10 days after the hearing is held
8 and which becomes final if the person to whom the notice is addressed
9 does not request a hearing within 15 days after receipt of the notice;
10 or

11 (2) bring an action in the superior court to enjoin the acts
12 or practices and to enforce compliance with this title or a regulation
13 adopted under it; upon a proper showing, the department is entitled to
14 the appropriate remedy, and a receiver or conservator may be appointed
15 for the defendant or the defendant's assets; the commissioner is not
16 required to post a bond.

17 (b) Except as provided in (a) of this section, the department
18 shall give public notice of each proposed action, but it is not required
19 to hold a hearing before taking the action unless it receives written
20 opposition to the proposed action. Written opposition must be filed
21 with the department within the time specified by the department. In
22 cases involving extraordinary circumstances requiring immediate action,
23 the department may take action without notice and public hearing, but
24 upon application to rescind the action taken, the department shall
25 promptly hold a hearing on the application.

26 (c) Hearings required or authorized under this title are not
27 subject to AS 44.62.330 - 44.62.630 of the Administrative Procedure Act,
28 except as required by AS 44.62.560 and 44.62.570.

29 (d) The department shall adopt regulations, consistent with the

1 provisions of this title, establishing procedures for hearings held
2 under this section. The Administrative Procedure Act (AS 44.62) applies
3 to all regulations adopted or authorized under this title.

4 (e) For the purpose of hearings, investigations or proceedings
5 under this title, and except as otherwise provided in this title, the
6 department or an officer designated by the commissioner may administer
7 oaths and affirmations, subpoena witnesses, compel their attendance,
8 take evidence, and require the production of books, papers, corres-
9 pondence, memoranda, agreements, or other documents or records which the
10 department considers relevant or material to the inquiry.

11 Sec. 06.01.040. EXAMINATION POLICY. It shall be the policy of the
12 department to conduct, whenever reasonably possible, joint examinations
13 with the Federal Deposit Insurance Corporation of those institutions
14 subject to this title whose accounts are insured through that corpora-
15 tion.

16 Sec. 06.01.050. DEFINITIONS. As used in this chapter unless the
17 context otherwise requires:

18 (1) "commissioner" means the commissioner of commerce and
19 economic development or his designee;

20 (2) "department" means the Department of Commerce and Eco-
21 nomic Development;

22 (3) "financial institution" means an institution subject to
23 the regulation of the department under this title.

24 * Sec. 43. AS 06.05.540(5) is amended to read:

25 (5) "commissioner" means the commissioner of commerce and
26 economic development or his designee;

27 * Sec. 44. AS 06.20.030 is repealed and re-enacted to read:

28 Sec. 06.20.030. FEES AND CHARGES. (a) Investigation expenses
29 incurred by the department in processing an application for licensure

1 shall be charged to and paid by the applicant in accordance with AS 06.-
2 01.010. At the time of submitting the application to the commissioner,
3 the applicant shall pay to the department \$400 in partial payment of
4 those investigation expenses incurred by the department. If the in-
5 vestigation expenses incurred by the department do not exceed \$400, the
6 remainder shall be promptly refunded to the applicant.

7 (b) An applicant shall pay to the department at the time of sub-
8 mitting an application a sum, in addition to that specified in (a) of
9 this section, of \$200 as an annual license fee for a period terminating
10 on the last day of the current calendar year. If the application is
11 filed after June 30, the additional sum is \$100.

12 (c) The license fee required by this section is in place of the
13 tax levied by the Alaska Business License Act (AS 43.70).

14 * Sec. 45. AS 06.20.060 is amended to read:

15 Sec. 06.20.060. ISSUANCE OF LICENSE. Upon the filing of the
16 application, the payment of the fees and the approval of the bond, the
17 department shall issue a license to the applicant if it finds upon
18 investigation that (1) the financial responsibility, experience, charac-
19 ter, and general fitness of the applicant and of the members thereof if
20 the applicant is a copartnership or association, and of the officers and
21 directors thereof if the applicant is a corporation, are such as to
22 command the confidence of the community and to warrant belief that the
23 business will be operated honestly, fairly, and efficiently within the
24 purposes of this chapter, and (2) allowing the applicant to engage in
25 business will promote the convenience and advantage of the community in
26 which the business is to be conducted, and (3) the applicant has avail-
27 able for the operation of the business at the specific location liquid
28 assets of at least \$10,000. The foregoing facts are conditions prece-
29 dent to the issuance of a license under this chapter. The license

1 permits the applicant to make loans in accordance with this chapter at
2 the location specified in the application. The license remains in full
3 force and effect until it is surrendered by the licensee or revoked or
4 suspended. If the department denies the application, it shall notify
5 the applicant of the denial, bill the applicant for any outstanding
6 expenses incurred by the department during the investigation and return
7 the bond if those expenses have been paid [AND LICENSE FEE AND RETAIN
8 THE \$200 INVESTIGATION FEE]. The department shall approve or deny every
9 application for license within 60 days from the filing thereof with the
10 fees and the approved bond. If the application is denied, the depart-
11 ment shall within 20 days thereafter, serve upon the applicant a copy of
12 the written decision and findings. The decision and findings may be
13 reviewed in the manner provided in AS 44.62.560 and 44.62.570 of the
14 Administrative Procedure Act (AS 44.62).

15 * Sec. 46. AS 06.20.100 is amended to read:

16 Sec. 06.20.100. [ANNUAL LICENSE FEE AND] NEW BOND. On or before
17 December 20 of each year, every licensee shall [PAY A FEE OF \$200 TO THE
18 DEPARTMENT AS AN ANNUAL LICENSE FEE FOR THE NEXT SUCCEEDING CALENDAR
19 YEAR. AT THE SAME TIME THE LICENSEE SHALL] file a new bond which com-
20 plies with sec. 50 of this chapter.

21 * Sec. 47. AS 06.20.170 is amended to read:

22 Sec. 06.20.170. ANNUAL EXAMINATION. The department shall make the
23 examination of the affairs, business, office, and records of each licen-
24 see at least once each year. Examination fees are to be charged to and
25 paid by the licensee in accordance with AS 06.01.010. [THE LICENSEE
26 SHALL PAY THE ACTUAL COST OF THE EXAMINATION.] The department may
27 maintain an action for the recovery of these costs in any court of
28 competent jurisdiction, with recourse to the bonds referred to in secs.
29 50 and 80 of this chapter.

1 * Sec. 48. AS 06.30.310 is amended to read:

2 Sec. 06.30.310. INVESTIGATION, FEES, AND APPROVAL. Investigation
3 expenses incurred by the department in processing an application shall
4 be charged to and paid by the applicant in accordance with AS 06.01.010.
5 At the time of submitting the application to the commissioner, the
6 applicant shall pay to the department \$1,000 in partial payment of those
7 investigation expenses incurred by the department. If the investigation
8 expenses incurred by the department do not exceed \$1,000, the remainder
9 shall be promptly refunded to the applicant. [THE APPLICANT SHALL PAY A
10 FEE OF \$100 WITH ITS APPLICATION.] The commissioner shall conduct an
11 investigation of the applicant at its expense and shall approve the
12 application if the investigation discloses that savers and investors are
13 reasonably protected as provided in this chapter and that the appli-
14 cant's home-financing operation is sound and [REASONABLY] consistent
15 with the law of this state. Approval shall be withdrawn when these
16 conditions do not exist.

17 * Sec. 49. AS 06.30.790 is repealed and re-enacted to read:

18 Sec. 06.30.790. INCORPORATION FEE. Investigation expenses in-
19 curred by the department in processing an application to incorporate an
20 association or for a certificate of authority for an association shall
21 be charged to and paid by the organizers in accordance with AS 06.01.-
22 010. At the time of submitting the application to the department, the
23 organizers shall pay to the department \$1,000 in partial payment of
24 those investigation expenses incurred by the department. If the inves-
25 tigation expenses incurred by the department do not exceed \$1,000, the
26 remainder shall be promptly refunded to the applicant.

27 * Sec. 50. AS 06.30.795 is repealed and re-enacted to read:

28 Sec. 06.30.795. FEE FOR CHANGE OF LOCATION, ESTABLISHING OF BRANCH
29 OFFICE, CHANGE OF NAME. Investigation expenses incurred by the depart-

1 ment in processing an application to change the location of the home
2 office, to establish a branch office or an agency, or to change the name
3 of an association shall be charged to and paid by the applicant in
4 accordance with AS 06.01.010. At the time of submitting the application
5 to the commissioner to establish a branch office or an agency, the
6 applicant shall pay to the department \$500 in partial payment of those
7 investigation expenses incurred by the department. If the investigation
8 expenses incurred by the department do not exceed \$500, the remainder
9 shall be promptly refunded to the applicant.

10 *Sec. 51. AS 06.30.800 is repealed and re-enacted to read:

11 Sec. 06.30.800. EXAMINATION FEE. An association examined under
12 the provisions of sec. 635 of this chapter shall pay an examination fee
13 in accordance with AS 06.01.010.

14 *Sec. 52. AS 06.30.805 is repealed and re-enacted to read:

15 Sec. 06.30.805. MERGER FEE. The associations proposing to merge
16 or consolidate shall be charged and shall pay the investigation expenses
17 incurred by the department, in accordance with AS 06.01.010. The fee
18 shall be paid in equal parts by the associations which are parties to
19 the proposed merger or consolidation.

20 *Sec. 53. AS 06.30.810 is repealed and re-enacted to read:

21 Sec. 06.30.810. FEE FOR REORGANIZATION. An applicant proposing a
22 plan of reorganization, transfer of assets in bulk, or certificate of
23 dissolution shall be charged and shall pay the investigation expenses
24 incurred by the department, in accordance with AS 06.01.010.

25 *Sec. 54. AS 06.05.010, 06.05.005(3)(B), 06.05.005(4), 06.05.315, 06.-
26 05.335, 06.05.365, 06.05.370, 06.05.375, 06.05.400 - 06.05.425, 06.05.455,
27 06.05.475, AS 06.30.020, 06.30.660, AS 44.62.330(a)(19) and 44.62.330(a)(21)
28 are repealed.

29 *Sec. 55. If any provision of this Act, or the application of it to any

1 person or circumstance is held invalid, the remainder of this Act and the
2 application to other persons or circumstances shall not be affected thereby.
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