

Introduced: 5/6/89  
Referred: Judiciary, Labor and  
Commerce and Finance

6-0004A

1 IN THE SENATE

BY HALFORD BY REQUEST

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SENATE BILL NO. 328

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6

For an Act entitled: "An Act relating to business and industrial develop-  
ment corporations; and providing for an effective  
date."

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

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

11

CHAPTER 50. BUSINESS AND INDUSTRIAL DEVELOPMENT CORPORATIONS.

12

ARTICLE 1. PURPOSES AND LICENSING.

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Sec. 06.50.010. PURPOSES. The purposes of this Act are to

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(1) promote economic development by encouraging the forma-  
tion of business and industrial development corporations to help meet  
the financing assistance and management assistance needs of businesses  
in the state;

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(2) establish a system of licensing, regulation, and en-  
forcement that will enable business and industrial development corpo-  
rations to satisfy eligibility requirements to participate in the  
program of the Small Business Administration under 15 U.S.C. 636(a)  
and other programs for which they may be eligible;

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(3) provide for business and industrial development corpo-  
rations a system of licensing, regulation, and enforcement designed to  
prevent fraud, conflict of interest, and mismanagement, and to promote  
competent management, accurate record keeping, and appropriate commu-  
nication with shareholders;

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(4) facilitate equity investments in business and indus-  
trial development corporations and the borrowing of money by business

29

1 and industrial development corporations;

2 (5) increase the confidence of prospective equity investors  
3 in and prospective debt sources for business and industrial develop-  
4 ment corporations; and

5 (6) eliminate the restrictions that have discouraged the  
6 formation of business development corporations under AS 10.10 by  
7 repealing AS 10.10 and substituting a more flexible regulatory frame-  
8 work.

9 Sec. 06.50.015. QUALIFICATIONS FOR BIDCO LICENSE. The depart-  
10 ment shall issue a license to operate as a BIDCO to a corporation

11 (1) that submits an application to the department;

12 (2) that is incorporated under AS 10.06 or AS 10.20, or  
13 that has been issued a certificate of authority under AS 10.06 or  
14 AS 10.20 to transact business in the state; to qualify for a license  
15 an applicant may not be a subsidiary unless the parent corporation is  
16 an insurer regulated under AS 21 or a financial institution;

17 (3) that has the net worth required under AS 06.50.030;

18 (4) whose directors, officers, and controlling persons  
19 satisfy the criteria under AS 06.50.050;

20 (5) that demonstrates to the department that it is reason-  
21 able to believe that the corporation will comply with this chapter;

22 (6) that demonstrates to the department a reasonable prom-  
23 ise of being a viable, ongoing BIDCO and of satisfying the basic  
24 objectives of the corporation's BIDCO business plan; and

25 (7) that satisfies the other application requirements  
26 established by the department.

27 Sec. 06.50.020. APPLICATION PROCEDURE. The department shall  
28 establish by regulation the information and forms to be used for the  
29 application. The information must include information on the

1 directors, officers, and controlling persons of the applicant, the  
2 applicant's business plan, including at least three years of detailed  
3 financial projections and other relevant information, and additional  
4 information considered relevant by the department.

5 Sec. 06.50.030. REQUISITE NET WORTH. (a) Except as otherwise  
6 provided in (b) of this section, in order to receive a license, an  
7 applicant must demonstrate that the applicant has a net worth of at  
8 least \$1,000,000 in securities that are at least A-rated by a nation-  
9 ally recognized rating firm.

10 (b) The department may require a minimum net worth of less than  
11 \$1,000,000, but not less than \$500,000, if, in the context of the  
12 applicant's business plan, the initial capitalization amount is ade-  
13 quate for the applicant to transact business as a BIDCO because of  
14 special circumstances including funded overhead, low overhead, or  
15 specialized opportunities.

16 Sec. 06.50.040. DETERMINATION OF NET WORTH. (a) When determin-  
17 ing if an applicant has a net worth or firm financing commitments  
18 adequate to transact business as a BIDCO, the department shall con-  
19 sider

20 (1) the types and variety of financing assistance that the  
21 applicant plans to provide;

22 (2) the experience that the directors, officers, and con-  
23 trolling persons of the applicant have in providing financing and  
24 managerial assistance to business;

25 (3) the financial projections and other relevant informa-  
26 tion from the applicant's business plan; and

27 (4) whether the applicant intends to operate as a profit or  
28 nonprofit corporation.

29 (b) The net worth requirement may be satisfied by firm financing

1 commitments that demonstrate that the applicant will have the required  
2 net worth when the applicant begins transacting business as a BIDCO.

3 Sec. 06.50.045. ASSETS OF SUBSIDIARIES. If an applicant is a  
4 subsidiary, the assets to be used by the applicant to fund the BIDCO  
5 may not exceed three percent of the assets of the parent corporation,  
6 except that if the parent corporation is an insurer regulated under  
7 AS 21, the assets to be used by the applicant to fund the BIDCO may  
8 not exceed 10 percent of the assets of the parent corporation.

9 Sec. 06.50.050. CRITERIA FOR DIRECTORS, OFFICERS, AND CONTROL-  
10 LING PERSONS. (a) An applicant must demonstrate that each director,  
11 officer, and controlling person of the applicant is

12 (1) of good character and sound financial standing;

13 (2) competent to perform the director's or officer's func-  
14 tions for the applicant; and

15 (3) when considered collectively with the other directors,  
16 officers, and controlling persons, adequate to manage the business of  
17 the applicant as a BIDCO.

18 (b) The department may determine that a director, officer, or  
19 controlling person of an applicant is not of good character if the  
20 director, officer, or controlling person, or a director or officer of  
21 a controlling person, has had an administrative sanction imposed under  
22 31 U.S.C. 3801 - 3812 (Program Fraud Civil Remedies Act of 1986) for  
23 an offense under 15 U.S.C. 645, or has been convicted of a crime  
24 involving fraud or dishonesty, including conviction for an offense  
25 under 15 U.S.C. 645 and conviction based on a guilty plea or plea of  
26 nolo contendere.

27 Sec. 06.50.060. DETERMINATION OF FUTURE NONCOMPLIANCE. The  
28 department may determine that it is not reasonable to believe that an  
29 applicant would comply with this chapter if licensed, if the applicant

1 has been convicted of a crime involving fraud or dishonesty, including  
2 conviction based on a guilty plea or plea of nolo contendere.

3 Sec. 06.50.070. PRELIMINARY APPROVAL OF APPLICATION. (a) Upon  
4 request the department may grant preliminary approval of a license to  
5 an applicant before the applicant has obtained the necessary equity  
6 investment commitments or has identified the applicant's directors and  
7 officers.

8 (b) When granting preliminary approval, the department shall  
9 indicate that final approval is conditioned on the department's review  
10 of the applicant's completed fund-raising, including the controlling  
11 persons, and the completed roster of directors and officers.

12 (c) If the department has granted preliminary approval of a  
13 license, the department may, before granting final approval, request  
14 an updated balance sheet and other information that the department  
15 considers relevant.

16 Sec. 06.50.080. DENIAL OF APPLICATION. If the department denies  
17 a license the department shall provide the applicant with a written  
18 statement explaining the basis for the denial.

19 Sec. 06.50.090. DISPLAY OF LICENSE. A licensee shall post the  
20 license in a conspicuous place in the licensee's principal office.

21 Sec. 06.50.100. TRANSFER OR ASSIGNMENT OF LICENSE PROHIBITED. A  
22 licensee may not transfer or assign its license.

23 Sec. 06.50.110. SURRENDER OF LICENSE. (a) Upon approval by a  
24 two-thirds vote of its board of directors and after complying with (b)  
25 and (c) of this section, a licensee may apply to the department to  
26 have the department accept the surrender of the licensee's license.  
27 If the department determines that the requirements of this section  
28 have been satisfied, the department shall approve the application  
29 unless the department determines that the purpose of the application

1 is to evade a current or prospective action by the department under  
2 AS 06.50.730 - 06.50.860.

3 (b) Not less than 60 days before filing an application under (a)  
4 of this section, a licensee shall notify all of its shareholders and  
5 creditors of its intention to file the application. Each creditor  
6 shall be notified of the right to comment to the department. Each  
7 shareholder shall be notified of the right to file with the licensee  
8 an objection to the proposed surrender of the license within the  
9 60-day period and shall be advised that, if the shareholder files an  
10 objection, the shareholder may also send a copy of the objection to  
11 the department.

12 (c) If shareholders representing 20 percent of the outstanding  
13 voting securities of the licensee file an objection with the licensee,  
14 the licensee may not proceed with the application unless the applica-  
15 tion is approved by a vote of shareholders representing two-thirds of  
16 the outstanding voting securities of the licensee.

17 ARTICLE 2. CORPORATE MATTERS.

18 Sec. 06.50.120. CORPORATE NAME. (a) The corporate name of a  
19 licensee must include the word "BIDCO". A licensee may not transact  
20 business under a name other than its corporate name.

21 (b) Before being issued a license, a state corporation that  
22 proposes to apply for a license or that applies for a license may  
23 perform, under a name that indicates that the corporation is a busi-  
24 ness and industrial development corporation, the acts necessary to  
25 apply for and obtain a license and otherwise prepare to begin business  
26 as a licensee. The corporation may not represent that it is a li-  
27 censee until after the license has been obtained.

28 Sec. 06.50.130. BOARD OF DIRECTORS. (a) The board of directors  
29 of a licensee must have at least seven directors.

1 (b) The board of directors shall hold at least one meeting each  
2 calendar quarter.

3 (c) If the licensee is a subsidiary, at least three of the  
4 directors must be persons who are not directors or employees of the  
5 parent corporation.

6 Sec. 06.50.140. NOTICE OF OFFICER AND DIRECTOR CHANGES. Within  
7 30 days of each of the following events, the licensee shall notify the  
8 department in writing of the event and provide additional information  
9 that the department requires:

10 (1) the death, resignation, or removal of a director or  
11 officer;

12 (2) the election of a director; or

13 (3) the appointment of an officer.

14 Sec. 06.50.150. DIVIDENDS. (a) A licensee may not pay or  
15 obligate itself to pay a cash dividend or dividend in kind to the  
16 licensee's shareholders unless the payment is consistent with a divi-  
17 dend policy that has been adopted by the licensee and approved by the  
18 department.

19 (b) When approving dividend policies under this section, the  
20 department shall consider the special characteristics of a BIDCO and  
21 what is necessary to protect the licensee against unsafe or unsound  
22 acts that could threaten the viability of the licensee as an ongoing  
23 BIDCO.

24 (c) The department may at any time withdraw a previous approval  
25 of a dividend policy if the department determines that the withdrawal  
26 is necessary to prevent unsafe or unsound acts.

27 Sec. 06.50.160. STOCK BUY-BACK. A licensee may not buy back or  
28 obligate itself to buy back a share of equity interest from a  
29 shareholder without the prior approval of the department.

ARTICLE 3. TRANSACTION OF BUSINESS.

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2           Sec. 06.50.170. OFFICES. (a) A licensee shall maintain at  
3 least one office in this state.

4           (b) A licensee may not maintain an office outside this state.

5           (c) The location of each office of a licensee shall be rea-  
6 sonably accessible to the public.

7           (d) A licensee shall post in a conspicuous place at each of the  
8 licensee's offices a sign that bears the corporate name of the li-  
9 censee.

10          (e) At each of a licensee's offices, the licensee shall maintain  
11 personnel who are competent to conduct the business of the office.

12          (f) A licensee may not establish, relocate, or close an office  
13 unless the licensee has given the department written notice.

14          Sec. 06.50.180. BUSINESS OF LICENSEE. A licensee may not engage  
15 in a business other than providing financing assistance and management  
16 assistance to businesses.

17          Sec. 06.50.190. GENERAL POWERS. In addition to the other powers  
18 given by this chapter and the powers conferred on the licensee by the  
19 laws under which it is incorporated that are not inconsistent with  
20 this chapter, a licensee may

21           (1) borrow money and otherwise incur indebtedness for the  
22 licensee's purposes, including the issuing of corporate bonds, deben-  
23 tures, notes, and other evidence of indebtedness; a licensee's in-  
24 debtedness may be secured or unsecured, and may involve equity fea-  
25 tures, including provisions for conversion to stock and warrants to  
26 purchase stock;

27           (2) make contracts;

28           (3) incur and pay necessary and incidental operating  
29 expenses;

1 (4) purchase, receive, hold, lease, acquire, sell, convey,  
2 mortgage, pledge, or otherwise acquire or dispose of real or personal  
3 property, and the rights and privileges that are incidental and appur-  
4 tenant to the transactions, if the real or personal property is for  
5 the licensee's use in operating the licensee's business or if the real  
6 or personal property is acquired by the licensee from time to time in  
7 satisfaction of debts or the enforcement of obligations;

8 (5) make donations for charitable, educational, research,  
9 or similar purposes;

10 (6) provide financial assistance and establish the terms  
11 and conditions of the financial assistance;

12 (7) implement a reasonable and prudent policy for con-  
13 serving and investing the licensee's money before the money is used to  
14 provide financing assistance to business or to pay the expenses of the  
15 licensee;

16 (8) exercise the incidental powers that are necessary,  
17 convenient, or reasonably related to providing financing assistance  
18 and management assistance to businesses.

19 Sec. 06.50.200. FINANCING ASSISTANCE FORM, TERMS, AND CONDI-  
20 TIONS. A licensee may determine the form, terms, and conditions for  
21 the financing assistance that it will provide.

22 Sec. 06.50.210. FINANCING ASSISTANCE ALLOWED. The financing  
23 assistance that a licensee may provide includes

24 (1) loans;

25 (2) purchase of debt instruments;

26 (3) straight equity investments including the purchase of  
27 common stock or preferred stock;

28 (4) debt with equity features including warrants to  
29 purchase stock, convertible debentures, or receipt of a percent of net

1 income or sales;

2 (5) royalty-based financing;

3 (6) debt guarantee;

4 (7) property leasing.

5 Sec. 06.50.220. PURCHASE OF SECURITIES. Unless prohibited by  
6 regulations of the department, a licensee may purchase the securities  
7 of a business either directly, or indirectly through an underwriter.

8 Sec. 06.50.230. PARTICIPATION IN GOVERNMENTAL PROGRAMS. (a) A  
9 licensee may participate in the program of the Small Business Adminis-  
10 tration under 15 U.S.C. 636(a), or other federal, state, or local  
11 government program for which the licensee is eligible and that has as  
12 the program's function the provision or facilitation of financing  
13 assistance or management assistance to businesses.

14 (b) If a licensee participates in a program referred to in (a)  
15 of this section, the licensee shall comply with the requirements of  
16 the program.

17 Sec. 06.50.240. SCOPE OF MANAGEMENT ASSISTANCE. When providing  
18 management assistance, a licensee may provide management advice,  
19 management services, technical advice, and technical services.

20 Sec. 06.50.250. LIMITATION TO PURPOSES OF BUSINESS. Financing  
21 assistance and management assistance provided by a licensee to a  
22 business shall be for the business purposes of the business.

23 Sec. 06.50.270. CONTROL OF OTHER BUSINESSES. A licensee may not  
24 hold control of another business, except as provided under AS 06.50.-  
25 280 - 06.50.330. In this section, "licensee" includes the licensee in  
26 concert with

27 (1) a director, officer, principal shareholder, or affili-  
28 ate of the licensee;

29 (2) another licensee; or

1 (3) a director, officer, principal shareholder, or affili-  
2 ate of another licensee.

3 Sec. 06.50.280. CONTROL OF ASSISTED BUSINESS. (a) A licensee  
4 that provides financing assistance to a business may acquire and hold  
5 control of the business to the extent necessary to protect the li-  
6 censee's interest as a creditor of, or investor in, the business.

7 (b) Unless the department approves a longer period, a licensee  
8 holding control of a business under this section shall divest itself  
9 of the control as soon as practicable, or within five years after  
10 acquiring the interest, whichever is sooner.

11 (c) If a licensee anticipates acquiring and holding control of a  
12 business under (a) of this section, the licensee shall file with the  
13 department a plan for acquiring and holding control of the business.  
14 The plan must include at least the

15 (1) reasons why it is necessary for the licensee to acquire  
16 and hold control of the business;

17 (2) percentage that the licensee plans to own of the out-  
18 standing voting securities of the business;

19 (3) licensee's proposed course of action upon obtaining  
20 control of the business;

21 (4) length of time the licensee anticipates that it will be  
22 necessary to hold control of the business.

23 Sec. 06.50.290. CONTROL OF SMALL BUSINESS INVESTMENT COMPANY.  
24 With the approval of the department, a licensee may acquire and hold  
25 control of a corporation that is licensed as a small business invest-  
26 ment company under 15 U.S.C. 662 - 697c.

27 Sec. 06.50.300. CONTROL OF LOCAL DEVELOPMENT COMPANY. With the  
28 approval of the department, a licensee may acquire and hold control of  
29 a business that is a local development company under 15 U.S.C. 662

1 (Small Business Investment Program), whether or not the development  
2 company is or may become certified by the Small Business Administra-  
3 tion under 15 U.S.C. 697.

4 Sec. 06.50.310. CONTROL OF BUSINESS PROVIDING FINANCING ASSIS-  
5 TANCE AND MANAGEMENT ASSISTANCE. With the approval of the department,  
6 a licensee may acquire and hold control of another business that is  
7 engaged only in the business of providing financing assistance and  
8 management assistance to businesses.

9 Sec. 06.50.320. CONTROL OF OTHER BUSINESSES. (a) With the  
10 approval of the department, a licensee may acquire and hold control of  
11 a business not otherwise allowed under AS 06.50.270 - 06.50.310.

12 (b) The department may not approve an application under (a) of  
13 this section unless the department determines that

14 (1) the acquisition and control will not cause the amount  
15 of the licensee's investments in businesses covered by this section to  
16 exceed 15 percent of the assets of the licensee; and

17 (2) in the department's judgment the approval will promote  
18 the purposes of this chapter.

19 (c) An approval under (a) of this section may not be for a  
20 period of more than three years, unless the department determines that  
21 a longer period is necessary and consistent with the purposes of this  
22 chapter.

23 Sec. 06.50.325. DEFINITION OF "HOLD CONTROL." In AS 06.50.270 -  
24 06.50.320, "hold control" means to directly or indirectly own, of  
25 record or beneficially, a percentage of a business's voting equity  
26 interests that is more than

27 (1) 40 percent of the outstanding voting equity interests  
28 if the business has outstanding voting equity interests held by fewer  
29 than 50 persons;

1 (2) 25 percent of the outstanding voting equity interests  
2 if the business has outstanding voting equity interests held by 50 or  
3 more persons.

4 Sec. 06.50.330. APPROVAL WITHOUT ORDER. If the department fails  
5 to issue an order approving or denying an application under AS 06.50.-  
6 280, 06.50.290, or 06.50.300 within 60 days from receipt by the de-  
7 partment of an application, the application shall be considered as  
8 approved by the department.

9 Sec. 06.50.340. BUSINESS PRACTICE STANDARD. (a) A licensee  
10 shall transact its business in a safe and sound manner and shall  
11 maintain itself in a safe and sound condition.

12 (b) In determining whether a licensee is transacting business in  
13 a safe and sound manner, the department may not consider the risk of  
14 providing financing assistance to a business, unless the department  
15 determines that the risk is great enough to demonstrate gross misman-  
16 agement when compared with the return that can be realistically ex-  
17 pected.

18 (c) Notwithstanding the other provisions of this section, the  
19 department may

20 (1) if the amount of the financing assistance is unduly  
21 large in relation to the total assets or the total shareholder equity  
22 of the licensee, determine that a licensee's financing assistance to a  
23 single business or group of affiliated businesses violates (a) of this  
24 section or constitutes an unsafe or unsound act;

25 (2) require that a licensee maintain a reserve in the  
26 amount of anticipated losses;

27 (3) require that a licensee have in effect a written fi-  
28 nancing assistance policy approved by the licensee's board of  
29 directors, including credit evaluation and other matters; the depart-

1 ment may not require that a licensee adopt a financing assistance  
2 policy that contains standards that prevent the licensee from exercis-  
3 ing needed flexibility in evaluating and structuring financing assis-  
4 tance to businesses on an individual basis.

5 Sec. 06.50.350. PROHIBITION OF CONFLICT OF INTEREST. A conflict  
6 of interest that does or could impair the impartial judgment of a  
7 director or employee of a licensee is prohibited.

8 Sec. 06.50.360. DISCLOSURE OF POTENTIAL CONFLICT OF INTEREST. A  
9 person shall disclose a potential conflict of interest that occurs in  
10 a transaction in the financing documents of the transaction or, if the  
11 transaction does not involve financing assistance, in another appro-  
12 priate document, if the person

13 (1) participates in a decision of a licensee relating to  
14 the transaction; and

15 (2) knows of a potential conflict of interest involving the  
16 transaction.

17 Sec. 06.50.370. POTENTIAL CONFLICTS OF INTEREST DEFINED. (a)  
18 In AS 06.50.350 - 06.50.360, licensee transactions that involve a  
19 potential conflict of interest include

20 (1) providing financing assistance to a principal share-  
21 holder of the licensee, to a person controlled by a principal share-  
22 holder of the licensee, or to a director, officer, partner, relative,  
23 controlling person, or affiliate of a principal shareholder of the  
24 licensee;

25 (2) providing financing assistance to a business to which  
26 one or more of the following provides or plans to provide contempo-  
27 raneous financing assistance:

28 (A) a principal shareholder of the licensee;

29 (B) a director, officer, partner, relative, control-

1 ling person, or affiliate of a principal shareholder of a li-  
2 censee;

3 (C) an affiliate of a principal shareholder of a  
4 licensee; or

5 (D) a person controlled by a principal shareholder of  
6 the licensee;

7 (3) providing financing assistance to a business that has  
8 or is expected to have a substantial business relationship with an-  
9 other business that has a director, officer, or controlling person who  
10 is also

11 (A) a director, officer, or controlling person of the  
12 licensee; or

13 (B) the spouse of a director, officer, or controlling  
14 person of the licensee;

15 (4) providing financing assistance to a business if the  
16 business, or a director, officer, or controlling person of the busi-  
17 ness contemporaneously has lent or will lend money to an associate of  
18 the licensee;

19 (5) providing financing assistance for the purchase of  
20 property of an associate or principal shareholder of the licensee;

21 (6) selling or otherwise transferring an asset of the  
22 licensee to an associate or principal shareholder of the licensee.

23 (b) In this section, "relative" means a parent, child, sibling,  
24 spouse, grandparent, grandchild, nephew, niece, aunt, or uncle, or a  
25 relative of the same degree through marriage.

26 Sec. 06.50.380. ENCUMBRANCE OF PROPERTY. Except with the ap-  
27 proval of the department, a licensee may not provide a lien on or  
28 security interest in the licensee's property for the purpose of  
29 securing an obligation of another person or an obligation incurred for

1 the benefit of another person.

2 ARTICLE 4. MERGERS AND ACQUISITIONS.

3 Sec. 06.50.400. ACQUIRING CONTROL OF A LICENSEE. Except as  
4 otherwise provided under AS 06.50.270 - 06.50.330, a person may not  
5 acquire control of a licensee without the prior approval of the de-  
6 partment.

7 Sec. 06.50.410. APPLICATION TO ACQUIRE CONTROL. (a) The de-  
8 partment shall approve an application to acquire control of a licensee  
9 under AS 06.50.400 if the department determines that

10 (1) the applicant and the directors and officers of the  
11 applicant are of good character and sound financial standing;

12 (2) it is reasonable to believe that the applicant will  
13 comply with this chapter; and

14 (3) the plans, if any, of the applicant to make a major  
15 change in the business, corporate structure, or management of the  
16 licensee are not detrimental to the safety and soundness of the li-  
17 censee.

18 (b) If, after notice and a hearing, the department determines  
19 that the criteria for approval in (a) of this section have not been  
20 satisfied, the department shall deny the application.

21 Sec. 06.50.420. DETERMINATIONS. (a) When the department is  
22 reviewing an application under AS 06.50.410, the department may deter-  
23 mine that an

24 (1) applicant or a director or officer of an applicant is  
25 not of good character if the person has been convicted of a crime  
26 involving fraud or dishonesty, including conviction based on a guilty  
27 plea or plea of nolo contendere;

28 (2) applicant's plan to make a major change in the  
29 management of a licensee is detrimental to the safety and soundness of

1 the licensee if the plan provides for a person to become a director or  
2 officer of the licensee and the person has been convicted of a crime  
3 involving fraud or dishonesty, including conviction based on a guilty  
4 plea or plea of nolo contendere.

5 (b) The conditions described in (a) of this section are not the  
6 only conditions upon which the department may determine that an appli-  
7 cant or a director or an officer of an applicant is not of good char-  
8 acter or that an applicant's plan to make a major change in the man-  
9 agement of a licensee is detrimental to the safety and soundness of  
10 the licensee.

11 Sec. 06.50.430. MERGER. A licensee may not merge with another  
12 corporation unless the merger is approved by the department, and, if  
13 the licensee is not the surviving corporation, the surviving corpora-  
14 tion is a licensee.

15 Sec. 06.50.440. PURCHASE. A licensee may not purchase all or  
16 substantially all of the business of another person unless the pur-  
17 chase is approved by the department.

18 Sec. 06.50.450. SALE. A licensee may not sell all or substan-  
19 tially all of the licensee's business or of the business of an office  
20 of the licensee to another person unless the purchaser is a licensee  
21 and the sale is approved by the department.

22 Sec. 06.50.460. DEPARTMENT APPROVAL. The department may not  
23 approve a merger, purchase, or sale under AS 06.50.430 - 06.50.450  
24 unless the department determines that

25 (1) the merger, purchase, or sale will be safe and sound  
26 with respect to the acquiring licensee;

27 (2) upon consummation of the merger, purchase, or sale, it  
28 is reasonable to believe that the acquiring licensee will comply with  
29 this chapter;

1 (3) the merger, purchase, or sale will not have a major  
2 detrimental effect on competition in the providing of financial assis-  
3 tance or management assistance to businesses, or, if there will be a  
4 detrimental effect, the merger, purchase, or sale is necessary in the  
5 interests of the safety and soundness of a party to the merger, pur-  
6 chase, or sale, or is otherwise, on balance, in the public interest.

7 ARTICLE 5. REGULATION, REPORTING, AND EXAMINATION.

8 Sec. 06.50.470. ADMINISTRATION. (a) The department shall  
9 administer this chapter. The department may issue orders and adopt  
10 regulations that, in the opinion of the department, are necessary to  
11 execute, enforce, and achieve the purposes of this chapter. Adoption  
12 of regulations under this chapter is subject to the Administrative  
13 Procedure Act (AS 44.62).

14 (b) The department shall adopt regulations relating to

- 15 (1) diversity requirements;
- 16 (2) debt-equity ratio;
- 17 (3) control of other businesses;
- 18 (4) asset quality;
- 19 (5) the boards of directors;
- 20 (6) accounting requirements;
- 21 (7) conflicts of interest.

22 Sec. 06.50.480. CONDITIONS OF ORDER OR LICENSE. When the de-  
23 partment issues an order or license under this chapter, the department  
24 may impose conditions that the department determines are necessary to  
25 carry out the purposes of this chapter.

26 Sec. 06.50.490. DECLARATORY RULINGS. The department may provide  
27 to an interested person a declaratory ruling on a provision of this  
28 chapter.

29 Sec. 06.50.500. JUDICIAL REVIEW. A final order, decision,

1 license, or other official act of the department under this chapter is  
2 subject to judicial review by the superior court under the applicable  
3 rules of court.

4 Sec. 06.50.510. INVESTIGATIONS. The department may make public  
5 or private investigations inside or outside the state that the depart-  
6 ment considers necessary to determine whether to approve an applica-  
7 tion for a license, to determine whether a person has violated or is  
8 about to violate this chapter, to aid in the enforcement of this  
9 chapter, or to aid in issuing an order or adopting a regulation under  
10 this chapter.

11 Sec. 06.50.520. INVESTIGATIVE POWERS. For the purposes of an  
12 investigation, examination, or other proceeding under this chapter,  
13 the department may administer oaths and affirmations, subpoena wit-  
14 nesses, compel the attendance of witnesses, take evidence, and require  
15 the production of books, papers, correspondence, memoranda, agree-  
16 ments, and other documents or records that the department considers  
17 relevant or material to the proceeding.

18 Sec. 06.50.530. FAILURE TO COMPLY. If a person fails to comply  
19 with a subpoena issued by the department under this chapter or to  
20 testify with respect to a matter covered by this chapter, the superior  
21 court may issue an order requiring the attendance of the person and  
22 the giving of testimony or production of evidence.

23 Sec. 06.50.540. SERVICE OF PROCESS. If the department is au-  
24 thorized to make service of process in connection with a noncriminal  
25 administrative proceeding under this chapter, the department may make  
26 the service by registered or certified mail.

27 Sec. 06.50.550. FEES. A person shall pay the department  
28 (1) \$2,500 for filing an application for a license;  
29 (2) \$1,250 for filing an application for approval to ac-

1       quire control of a licensee;

2               (3) \$1,250 for filing an application for approval for a  
3 merger, purchase, or sale under AS 06.50.430 - 06.50.460; if two or  
4 more applications relating to the same merger, purchase, or sale are  
5 filed, the fee for filing each application is the figure resulting  
6 from dividing \$1,250 by the number of the applications;

7               (4) \$2,500 each calendar year at the time established by  
8 the department, if the person is a licensee;

9               (5) a fee established by the department for the examination  
10 of a licensee or a subsidiary of a licensee; the department shall base  
11 the fee on the number of examiner hours used for the examination and  
12 the travel expenses involved; the department shall bill examiner time  
13 at a rate between \$25 and \$40 an hour; the fee shall be paid within 10  
14 days after receiving a statement from the department.

15       Sec. 06.50.560. FEE PAYMENT AND REFUNDS. A fee for filing an  
16 application with the department shall be paid at the time the applica-  
17 tion is filed with the department and is not refundable.

18       Sec. 06.50.570. ACCOUNTING FOR FEES. The department shall  
19 account for all fees paid under this chapter and deposit them in the  
20 general fund.

21       Sec. 06.50.580. RECORD AND REPORT REQUIREMENTS. (a) A licensee  
22 shall make and keep books, accounts and other records in the form and  
23 manner, at the place, and for the period of time that the department  
24 establishes by regulation.

25               (b) A licensee, affiliate of a licensee, and a subsidiary of a  
26 licensee shall file with the department the reports that the depart-  
27 ment requires. A report must be in the form and contain the informa-  
28 tion that the department requires.

29               (c) The department may require by order that a licensee write

1 down an asset on the licensee's books and records at a valuation that  
2 represents the current value of the asset.

3 (d) Not later than 90 days after the close of the calendar year,  
4 or a longer period if specified by the department, a licensee shall  
5 file with the department an audit report containing

6 (1) for a licensee that is organized under AS 10.06, or  
7 that has been issued a certificate of authority under AS 10.06 to  
8 transact business in the state, financial statements, including a  
9 balance sheet, statement of income or loss, statement of changes in  
10 capital accounts, and statement of changes in financial position for,  
11 or as of the end of, the calendar year, prepared with an audit by an  
12 independent certified public accountant in accordance with generally  
13 accepted accounting principles;

14 (2) for a licensee that has been incorporated under AS 10.-  
15 20 or that has been issued a certificate of authority under AS 10.20  
16 to transact business in the state, financial statements that are  
17 comparable to the statements required by (1) of this subsection;

18 (3) a report, certificate, or opinion of the independent  
19 certified public accountant who performs the audit, stating that the  
20 financial statements were prepared in accordance with generally ac-  
21 cepted accounting principles; and

22 (4) other information that the department requires.

23 Sec. 06.50.590. RECORDS AND REPORTS KEPT BY OTHERS. (a) If a  
24 person other than a licensee makes or keeps all or part of the books,  
25 accounts, or other records of the licensee, this chapter applies to  
26 the person with respect to the books, accounts, and other records to  
27 the same extent as if the person were the licensee.

28 (b) If a person other than an affiliate or subsidiary of a  
29 licensee makes or keeps all or part of the books, accounts, or other

1 records of the affiliate or subsidiary, this chapter applies to the  
2 person with respect to the books, accounts, and other records to the  
3 same extent as if the person were the affiliate or subsidiary.

4 (c) If the department considers it expedient, the department may  
5 require a licensee to obtain the approval of the department before  
6 permitting another person to make or keep all or part of the books,  
7 accounts, or other records of the licensee.

8 Sec. 06.50.600. INFORMATION ON ECONOMIC DEVELOPMENT EFFECT.  
9 Each year the department shall publish and provide to the legislature  
10 information on the effect of this chapter on promoting economic devel-  
11 opment in the state. The information must include aggregate statis-  
12 tics on

13 (1) the number and dollar amount of the financing assis-  
14 tance made by licensees to businesses;

15 (2) the number and dollar amount of the financing assis-  
16 tance made by licensees to businesses organized into broad categories  
17 of industry; the standard industrial classification manual may be used  
18 for the categories;

19 (3) the number and dollar amount of the financing assis-  
20 tance made by licensees to minority-owned businesses and to businesses  
21 owned by women; and

22 (4) estimates of the number of jobs created or retained.

23 Sec. 06.50.610. EXAMINATION OF LICENSEES AND SUBSIDIARIES. (a)  
24 The department may at any time examine a licensee or a subsidiary of a  
25 licensee. Licensure under this chapter constitutes implied consent to  
26 examination by the department.

27 (b) The department shall examine a licensee at least once during  
28 each calendar year.

29 (c) At the department's request the following persons shall

1 provide to the department the books, accounts, and records of a li-  
2 censee or a licensee's subsidiary and shall otherwise facilitate the  
3 department's examination of the licensee to the fullest extent possi-  
4 ble:

5 (1) a director, officer, or employee of a licensee being  
6 examined by the department;

7 (2) a director, officer, or employee of a subsidiary of a  
8 licensee being examined by the department;

9 (3) a person having custody of the books, accounts, or  
10 records of a licensee being examined by the department;

11 (4) a person having custody of the books, accounts, or  
12 records of a subsidiary of a licensee being examined by the depart-  
13 ment.

14 (d) The department may retain a certified public accountant,  
15 attorney, appraiser, or other person to assist the department in the  
16 examination of a licensee or a subsidiary of a licensee if the depart-  
17 ment determines that the assistance is necessary. Within 10 days  
18 after receipt of a statement from the department, the licensee being  
19 examined shall pay the fees of a person retained by the department  
20 under this subsection.

21 ARTICLE 6. CERTAIN UNLAWFUL ACTIVITIES.

22 Sec. 06.50.620. MISREPRESENTATION. (a) Except as otherwise  
23 provided in AS 06.50.120, a person transacting business in the state  
24 who is not a licensee may not knowingly use a name or title that  
25 indicates that the person is a business and industrial development  
26 corporation or otherwise represent that the person is a BIDCO or a  
27 licensee.

28 (b) A licensee may not knowingly misrepresent the meaning or  
29 effect of its license.

1           Sec. 06.50.640. INSPECTION OR COPYING REFUSAL. A person having  
2 custody of all or part of the books, accounts, or other records of a  
3 licensee may not knowingly refuse to allow the department, upon re-  
4 quest, to inspect or make copies of the records.

5           Sec. 06.50.660. FINANCING ASSISTANCE TO ASSOCIATES OF LICENSEE.  
6 A licensee may not directly or indirectly provide financing assistance  
7 to an associate of the licensee.

8           Sec. 06.50.670. FINANCING ASSISTANCE TO DISCHARGE OBLIGATION TO  
9 ASSOCIATE OF LICENSEE. A licensee may not directly or indirectly  
10 provide financing assistance to discharge, or to free money for use in  
11 discharging, part or all of an obligation to an associate of the  
12 licensee. This section does not apply to a transaction effected by an  
13 associate of a licensee in the normal course of the associate's busi-  
14 ness involving a line of credit or financing assistance with a term of  
15 not more than five years.

16           Sec. 06.50.680. CONTEMPORANEOUS FINANCING ASSISTANCE. (a) If  
17 the terms on which a licensee provides financing assistance to a  
18 business are less favorable to the licensee than the terms on which an  
19 associate of the licensee provides financing assistance to the busi-  
20 ness, the licensee may not directly or indirectly provide the assis-  
21 tance to the business within one year before or after the associate  
22 provides assistance.

23           (b) If the financing assistance provided by the licensee's  
24 associate is of a different kind from the financing assistance provid-  
25 ed by the licensee, the burden is on the licensee to prove that the  
26 terms on which the licensee provided the financing assistance were at  
27 least as favorable to the licensee as the terms on which the associate  
28 provided the assistance.

29           (c) This section does not apply

1 (1) if the associate is a controlling person of the li-  
2 censee and is also the only shareholder of the licensee;

3 (2) if the associate is a subsidiary of the licensee;

4 (3) to a transaction effected by an associate of a licensee  
5 in the normal course of the associate's business involving either a  
6 line of credit or financing assistance with a term of not more than  
7 five years.

8 Sec. 06.50.690. COMPENSATION OF ASSOCIATE. (a) An associate of  
9 a licensee may not directly or indirectly receive from a person to  
10 whom the licensee provides financing assistance compensation in con-  
11 nection with the providing of the financing assistance or anything of  
12 value for procuring, influencing, or attempting to procure or influ-  
13 ence the licensee's action with respect to providing the financing  
14 assistance.

15 (b) This section does not apply to the receipt of fees by an  
16 associate of a licensee for bona fide closing services performed by  
17 the associate if

18 (1) the associate, with the consent and knowledge of the  
19 person to whom the financing assistance is provided, is designated by  
20 the licensee to perform the services;

21 (2) the services are appropriate and necessary under the  
22 circumstances;

23 (3) the fees for the services are approved as reasonable by  
24 the licensee; and

25 (4) the fees for the services are collected by the licensee  
26 on behalf of the associate.

27 (c) In (b) of this section, "closing services" means services  
28 performed in connection with the providing of financing assistance and  
29 includes appraising property and preparing credit reports; "closing

1 services" does not include a service that is performed after providing  
2 the financing assistance.

3 Sec. 06.50.700. EXEMPTIONS. (a) If the department finds that  
4 the exemption is in the public interest and that the regulation of the  
5 person, transaction, or class is not necessary for the purposes of  
6 this chapter, the department may exempt a person or transaction or  
7 class of persons or transactions from AS 06.50.660 - 06.50.690.

8 (b) The department may make an exemption under (a) of this  
9 section by order or regulation. The exemption may be unconditional or  
10 upon specified terms and conditions and for specified periods.

11 (c) When making an exemption under (a) of this section, the  
12 department shall consider the applicable conflict of interest pro-  
13 visions of federal law or regulation governing federal financing  
14 programs.

15 Sec. 06.50.710. CRIMINAL PENALTY. (a) A person who knowingly  
16 commits an act that violates AS 06.50.620 - 06.50.700 is guilty of a  
17 class C felony.

18 (b) This section does not apply to an act committed or omitted  
19 in good faith in conformity with an order, regulation, declaratory  
20 ruling, or written interpretative opinion of the department, even if  
21 the order, regulation, declaratory ruling, or written interpretative  
22 opinion is later amended, rescinded, or repealed, or determined by  
23 judicial or other authority to be invalid.

24 Sec. 06.50.720. RELATIONSHIP TO OTHER CRIMINAL PROVISIONS. This  
25 chapter does not limit the power of the state to prosecute a person  
26 for an act that constitutes a crime under another statute.

27 ARTICLE 7. ENFORCEMENT.

28 Sec. 06.50.730. INJUNCTION AND ENFORCED COMPLIANCE. If, in the  
29 opinion of the department, a person has violated this chapter, or if

1 there is reasonable cause to believe that a person is about to violate  
2 this chapter, the department may bring an action in superior court to  
3 enjoin the violation or to enforce compliance with this chapter. Upon  
4 a proper showing, a restraining order, preliminary or permanent in-  
5 junction, or writ of mandamus shall be granted, and a receiver or a  
6 conservator may be appointed for the defendant or the defendant's  
7 assets.

8 Sec. 06.50.740. CEASE AND DESIST ORDERS FOR UNLICENSED PERSONS.  
9 If the department finds that a person has violated or that there is  
10 reasonable cause to believe that the person is about to violate  
11 AS 06.50.120(b) or 06.50.620(a), the department may order the person  
12 to cease and desist from the violation unless and until the person is  
13 issued a license under this chapter.

14 Sec. 06.50.750. CEASE AND DESIST ORDERS FOR VIOLATIONS BY LI-  
15 CENSEES. After notice and a hearing, if the department determines  
16 that a licensee or a subject person of a licensee has violated or is  
17 violating, or that there is reasonable cause to believe that the  
18 licensee or subject person is about to violate this chapter, the  
19 department may order the licensee or subject person to cease and  
20 desist from the action or violation. The order may require the  
21 licensee or subject person to take affirmative action to correct a  
22 condition resulting from the action or violation.

23 Sec. 06.50.760. CEASE AND DESIST ORDERS FOR UNSAFE AND UNSOUND  
24 ACTS. After notice and a hearing, if the department determines that a  
25 licensee or subject person of a licensee has engaged in or that there  
26 is a reasonable cause to believe that the licensee or subject person  
27 is about to engage in an unsafe or unsound act with respect to the  
28 business of the licensee, the department may order the licensee or  
29 subject person to cease and desist from the action or violation. The

1 order may require the licensee or subject person to take affirmative  
2 action to correct a condition resulting from the action or violation.

3 Sec. 06.50.770. OTHER CEASE AND DESIST ORDERS. If the depart-  
4 ment determines that a factor set out in AS 06.50.750 - 06.50.760 is  
5 true with respect to a licensee or subject person of a licensee and  
6 that the action or violation is likely to cause the insolvency or  
7 substantial dissipation of the assets or earnings of the licensee, is  
8 likely to seriously weaken the condition of the licensee, or is likely  
9 to otherwise seriously prejudice the interests of the licensee before  
10 the completion of proceedings conducted under AS 06.50.750 - 06.50.-  
11 760, the department may order the licensee or subject person to cease  
12 and desist from the action or violation. The order may require the  
13 licensee or subject person to take affirmative action to correct a  
14 condition resulting from the action or violation.

15 Sec. 06.50.780. REMOVAL AND SUSPENSION ORDERS IN CASES OF VIOLA-  
16 TION OR BREACH OF DUTY. (a) The department may issue an order remov-  
17 ing a subject person of a licensee from office with the licensee and  
18 prohibiting the subject person from further participating in any  
19 manner in the conduct of the business of the licensee if the depart-  
20 ment determines after notice and a hearing that

21 (1) the person has violated this chapter or another appli-  
22 cable law, has engaged in an unsafe or unsound act with respect to the  
23 business of the licensee, or has engaged in an act that constitutes a  
24 breach of the person's fiduciary duty;

25 (2) the act, violation, or breach of fiduciary duty has  
26 caused or is likely to cause substantial financial loss or other  
27 damage to the licensee, has seriously prejudiced or is likely to  
28 seriously prejudice the interest of the licensee, or the person has  
29 received financial gain by reason of the act, violation, or breach of

1           fiduciary duty; and

2                   (3) the act, violation, or breach of fiduciary duty in-  
3           volves dishonesty on the part of the person, demonstrates the person's  
4           gross negligence with respect to the business of the licensee, or  
5           demonstrates the person's wilful disregard for the safety and sound-  
6           ness of the licensee.

7           (b) The department may issue an order removing a subject person  
8           of the licensee from office with the licensee and prohibiting the  
9           subject person from further participating in any manner in the conduct  
10          of the business of the licensee, except with the prior consent of the  
11          department if, after notice and a hearing, the department determines  
12          that, by engaging or participating in an act with respect to a finan-  
13          cial or other business institution that resulted in substantial finan-  
14          cial loss or other damage, the subject person of a licensee demon-  
15          strated

16                   (1) dishonesty or a wilful or continuing disregard for the  
17          safety and soundness of the financial or other business institution;  
18          and

19                   (2) unfitness to continue as a subject person of the li-  
20          censee or to participate in conducting the business of the licensee.

21          (c) The department may immediately issue an order suspending a  
22          subject person of a licensee from the person's office, if any, with  
23          the licensee and prohibiting the subject person from further partic-  
24          ipating in any manner in the conduct of the business of the licensee  
25          except with the consent of the department, if the department deter-  
26          mines that

27                   (1) the factors in (a) or (b) of this section are true with  
28          respect to the person; and

29                   (2) an immediate order is necessary to protect the inter-

1           ests of the licensee or the public.

2           Sec. 06.50.790. REMOVAL AND SUSPENSION ORDERS IN CASES OF IN-  
3           DICTMENT OR CONVICTION. (a) If the department determines that a  
4           subject person of a licensee has been indicted by a grand jury or has  
5           been bound over for trial by a court for a crime involving dishonesty  
6           or breach of trust, and that the continuation of the person as a  
7           subject person of the licensee may threaten the interests of the  
8           licensee or may threaten to impair public confidence in the licensee,  
9           the department may issue an order suspending the person from the  
10          person's office, if any, with the licensee and prohibiting the person  
11          from further participating in any manner in the conduct of the busi-  
12          ness of the licensee until the person's charge has been disposed of.

13          (b) If the department determines that a subject person or former  
14          subject person of a licensee to whom an order was issued under (a) of  
15          this section, or another subject person of a licensee, has been con-  
16          victed of a crime involving dishonesty or breach of trust, and that  
17          the continuation or resumption of the person as a subject person of  
18          the licensee may threaten the interests of the licensee, the depart-  
19          ment may issue an order suspending or removing the person from the  
20          person's office, if any, with the licensee and prohibiting the person  
21          from further participating in any manner in the conduct of the busi-  
22          ness of the licensee, except with the prior consent of the department.

23          (c) The failure to convict a subject person who is charged with  
24          a crime involving dishonesty or breach of trust does not prevent the  
25          department from issuing an order to the person under another provision  
26          of this chapter.

27          Sec. 06.50.795. DEFINITION OF "OFFICE." In AS 06.50.780 -  
28          06.50.790, "office" means, when used with respect to a licensee, the  
29          position of director, officer, or employee of the licensee or of a

1 subsidiary of the licensee.

2 Sec. 06.50.800. HEARINGS ON ORDERS. (a) Within 30 days after  
3 an order is issued under AS 06.50.740, 06.50.770, 06.50.780(c), or  
4 06.50.790, the licensee or subject person of a licensee to whom the  
5 order is directed may file with the department an application for a  
6 hearing on the order.

7 (b) If the department fails to begin a hearing within 15 busi-  
8 ness days after the application is filed or within a longer period to  
9 which the licensee or subject person consents, the order shall be  
10 considered rescinded.

11 (c) After the hearing, the department shall affirm, modify, or  
12 rescind the order.

13 (d) A person to whom an order is issued under this section may  
14 apply to the department to modify or rescind the order. The depart-  
15 ment may not modify or rescind the order unless the department deter-  
16 mines that it is in the public interest to do so and that it is rea-  
17 sonable to believe that the person will comply with this chapter.

18 (e) The right of a licensee or subject person to whom an order  
19 is issued under AS 06.50.740, 06.50.770, 06.50.780(c), or 06.50.790 to  
20 an interlocutory review of the order is not affected by the failure of  
21 the licensee or subject person to apply to the department for a hear-  
22 ing on the order issued under this section.

23 Sec. 06.50.810. DISCLOSURE TO SHAREHOLDERS. If the department  
24 determines that the results of a department communication or order  
25 addressed to the licensee or to a subject person of the licensee  
26 should be disclosed to the licensee's shareholders, the department may  
27 require the licensee to make the disclosure in the form and manner  
28 determined by the department.

29 Sec. 06.50.820. MEETINGS OF DIRECTORS AND SHAREHOLDERS CALLED BY

1 DEPARTMENT. (a) If the department considers it expedient, the de-  
2 partment may call a meeting of the board of directors or of the share-  
3 holders of a licensee.

4 (b) The department shall send notification of the time, place,  
5 and purpose of the meeting not less than five days before the meeting  
6 to each director, if a directors' meeting, or to each shareholder, if  
7 a shareholders' meeting, either by personal service or by registered  
8 or certified mail sent to the person's last known address as shown in  
9 the records of the department.

10 (c) The licensee shall pay the notice and meeting expenses for a  
11 meeting of shareholders called under (a) of this section.

12 Sec. 06.50.830. ORDERS RESTRICTING ADDITIONAL FINANCING ASSIS-  
13 TANCE. (a) The department may issue an order directing a licensee to  
14 refrain from providing additional financing assistance to businesses  
15 if, in the opinion of the department, the order is necessary to pro-  
16 tect the interests of the licensee or the public, and if, after notice  
17 and a hearing, the department determines that

18 (1) the licensee or a controlling person, subsidiary, or  
19 affiliate of the licensee has violated this chapter or another appli-  
20 cable law;

21 (2) the licensee is conducting the licensee's business in  
22 an unsafe and unsound manner;

23 (3) the licensee is in a condition that makes it unsafe or  
24 unsound for the licensee to transact business;

25 (4) the licensee has ceased to transact business as a  
26 BIDCO;

27 (5) the licensee is insolvent;

28 (6) the licensee has suspended payment of the licensee's  
29 obligations, has made an assignment for the benefit of the licensee's

1 creditors, or has admitted in writing the licensee's inability to pay  
2 the licensee's debts as the debts become due;

3 (7) the licensee has applied for an adjudication of bank-  
4 ruptcy, reorganization, arrangement, or other relief under a bank-  
5 ruptcy, reorganization, insolvency, or moratorium law, an involuntary  
6 petition in bankruptcy against the person has not been dismissed in 90  
7 days, or a person has applied for the relief under the law against a  
8 licensee and the relief has been granted or the licensee has by an  
9 affirmative act approved of or consented to the action; or

10 (8) a fact or condition exists that would have been grounds  
11 for denying the licensee a license if the fact or condition had exist-  
12 ed when the licensee applied for the license.

13 (b) If the department determines that a factor in (a) of this  
14 section is true with respect to a licensee and that it is necessary  
15 for the protection of the interests of the licensee or the public that  
16 the department immediately prevent the licensee from providing addi-  
17 tional financing assistance to businesses, the department may issue  
18 the order without a hearing.

19 (c) If the department consents, a licensee that has been the  
20 subject of an order under (a) or (b) of this section may resume pro-  
21 viding financing assistance to businesses under the conditions that  
22 the department prescribes.

23 (d) A person to whom an order is issued under (a) or (b) of this  
24 section may apply to the department to modify or rescind the order.  
25 The department may not grant the application unless the department  
26 determines that it is in the interest of the public to do so and that  
27 it is reasonable to believe that the person will comply with this  
28 chapter.

29 Sec. 06.50.840. TAKING POSSESSION OF LICENSEE. (a) If the

1 department finds that a factor in AS 06.50.830 is true with respect to  
2 a licensee and that it is necessary for the protection of the inter-  
3 ests of the licensee or of the public, the department may take immedi-  
4 ate possession of the property and business of the licensee and ap-  
5 point a conservator for the licensee.

6 (b) The department may appoint as conservator one of the employ-  
7 ees of the division of banking, securities, and corporations of the  
8 department or another competent and disinterested person. The divi-  
9 sion shall be reimbursed out of the assets of the conservatorship for  
10 all money expended by the division in connection with the conservator-  
11 ship. Upon the approval of the department, the expenses of the con-  
12 servatorship paid for by the division shall be paid out of the assets  
13 of the licensee. Payment of the division expenses shall take priority  
14 over other payments from the assets and shall be fully paid before a  
15 final distribution is made.

16 (c) Under the direction of the department, the conservator shall  
17 take possession of the books, records, and assets of the licensee and  
18 shall take other action that is necessary to conserve the assets of  
19 the licensee or to ensure payment of obligations of the licensee  
20 pending further disposition of the licensee's business.

21 (d) At an appropriate time, the department may terminate the  
22 conservatorship and permit the licensee to resume the transaction of  
23 the licensee's business subject to the terms, conditions, restric-  
24 tions, and limitations the department prescribes.

25 Sec. 06.50.850. RECEIVERSHIP. (a) The department may apply to  
26 the superior court for the appointment of a receiver for a licensee,  
27 if the department determines that the licensee should be liquidated  
28 because

29 (1) the licensee is insolvent;

1 (2) the licensee has suspended payment of the licensee's  
2 obligations, has made an assignment for the benefit of the licensee's  
3 creditors, or has admitted in writing the licensee's inability to pay  
4 the licensee's debts as the debts become due;

5 (3) the licensee has applied for an adjudication of bank-  
6 ruptcy, reorganization, arrangement, or other relief under a bank-  
7 ruptcy, reorganization, insolvency, or moratorium law;

8 (4) a person has applied for the relief described under (3)  
9 of this subsection against a licensee and the licensee has by an  
10 affirmative act approved of or consented to the action or the relief  
11 has been granted; or

12 (5) the licensee is in a condition that makes it unsafe or  
13 unsound for the licensee to transact business.

14 (b) If a receiver is appointed under (a) of this section, the  
15 receiver shall liquidate the property and business of the licensee.

16 Sec. 06.50.860. CIVIL PENALTY. (a) If after notice and a  
17 hearing the department finds that a person has violated this chapter,  
18 the department may order the person to pay to the department a civil  
19 penalty in the amount the department specifies. The civil penalty may  
20 not exceed \$1,000 for each violation, or in the case of a continuing  
21 violation, \$1,000 for each day the violation continues.

22 (b) The money collected for the civil penalty under (a) of this  
23 section shall be accounted for by the department and paid into the  
24 general fund.

25 (c) This section does not apply to an act committed or omitted  
26 in good faith in conformity with an order, regulation, declaratory  
27 ruling, or written interpretative opinion of the department, even if  
28 the order, regulation, declaratory ruling, or written interpretative  
29 opinion is later amended, rescinded, or repealed, or determined by

1 judicial or other authority to be invalid.

2 (d) The provisions of (a) of this section are in addition to,  
3 and not alternative to, the other provisions of this chapter that  
4 authorize the department to issue orders or to take other action on  
5 account of a violation of this chapter.

6 (e) A person who is convicted under AS 06.50.710 of a violation  
7 of AS 60.50.620 - 06.50.700 is not liable for the civil penalty under  
8 (a) of this section for the violation.

9 (f) A person who pays a civil penalty under (a) of this section  
10 for a violation of AS 06.50.620 - 06.50.700 is not liable to prosecu-  
11 tion under AS 06.50.710 for the violation.

12 ARTICLE 8. GENERAL PROVISIONS.

13 Sec. 06.50.870. CONSTRUCTION OF CHAPTER. This chapter shall be  
14 liberally construed to accomplish its purposes.

15 Sec. 06.50.880. APPLICATION OF ADMINISTRATIVE PROCEDURES ACT TO  
16 PROCEEDINGS. A proceeding under AS 06.50.860 is subject to the Admin-  
17 istrative Procedure Act (AS 44.62). Except as otherwise provided in  
18 this chapter, other proceedings and actions under this chapter are  
19 exempt from AS 44.62.

20 Sec. 06.50.885. APPEALS. A final order of an administrative  
21 proceeding under AS 06.50.740 - 06.50.790, 06.50.830, 06.50.840, or  
22 06.50.860 may be appealed to the superior court.

23 Sec. 06.50.890. PROVISIONS OF LICENSEE'S INCORPORATION. Except  
24 as otherwise provided in this section, the provisions of the law under  
25 which a licensee is incorporated apply to the licensee. If a provi-  
26 sion of the licensee's incorporating law conflicts with a provision of  
27 this chapter, this chapter controls.

28 Sec. 06.50.900. ASSOCIATES. (a) In AS 06.50.350 - 06.50.370  
29 and 06.50.660 - 06.50.690, a person who is an associate within six

1 months before or after a licensee provides financing assistance shall  
2 be considered to be an associate as of the date the licensee provides  
3 the assistance.

4 (b) If a licensee, in order to protect the licensee's interests,  
5 designates a person to serve as a director of, officer of, or in a  
6 management capacity of a business to which the licensee provides  
7 financial assistance, the person may not, on that account, be consid-  
8 ered to be an associate under AS 06.50.350 - 06.50.370 or 06.50.660 -  
9 06.50.690. This subsection does not apply if the person has, directly  
10 or indirectly, another financial interest in the business or if the  
11 person, at any time before the licensee provides the financing assis-  
12 tance, served as a director of, officer of, or in another capacity in  
13 the management of the business for a period of 30 days or more.

14 Sec. 06.50.910. OTHER LICENSES. A state corporation that is  
15 licensed under this chapter may apply for and be issued a license  
16 under another law of the state, federal government, or of another  
17 state in the United States unless the transaction of business by the  
18 corporation as a licensee under the other license would violate this  
19 chapter or would be contrary to the purposes of this chapter.

20 Sec. 06.50.920. EXEMPTION. A licensee is not subject to the  
21 other provisions of this title.

22 Sec. 06.50.990. DEFINITIONS. In this chapter,

23 (1) "affiliate" means, if used with respect to a nonnatural  
24 person, a person who controls the nonnatural person, who is controlled  
25 by the nonnatural person, or who is controlled by a person who also  
26 controls the nonnatural person;

27 (2) "associate" means, if used with respect to a licensee,

28 (A) a controlling person, director, officer, agent, or  
29 advisor of the licensee; in this paragraph, "advisor" means a

1 person who regularly provides legal, accounting, or management  
2 services, including management advice, to a licensee;

3 (B) a director, officer, or partner of a person re-  
4 ferred to in (A) of this paragraph;

5 (C) a person who controls, is controlled by, or is  
6 under common control with a person referred to in (A) of this  
7 paragraph, directly or indirectly through an intermediary;

8 (D) a close relative of a person referred to in (A) of  
9 this paragraph; in this subparagraph, "close relative" means a  
10 parent, child, sibling, or spouse, or a relative of the same  
11 degree through marriage;

12 (E) a person of which a person referred to in (A) -  
13 (D) of this paragraph is a director or officer;

14 (F) a person in which a person referred to in (A) -  
15 (D) of this paragraph, or a combination of the persons acting in  
16 concert, owns or controls, directly or indirectly, a 20 percent  
17 or greater equity interest;

18 (3) "BIDCO" means a business and industrial development  
19 corporation;

20 (4) "business" means a person who transacts or proposes to  
21 transact business on a regular and continuous basis;

22 (5) "control" means, if used with respect to a specific  
23 person, the power to direct or cause the direction of, directly or  
24 indirectly through an intermediary, the management and policies of the  
25 person, through the ownership of voting interests, by contract other  
26 than a commercial contract for goods or nonmanagement services, or by  
27 other means; a natural person is not considered to control another  
28 person solely because the natural person is a director, officer, or  
29 employee of the other person; a person is rebuttably presumed to

1 control a corporation if the person directly or indirectly owns of  
2 record, holds beneficially with power to vote, or holds proxies with  
3 discretionary authority to vote, 20 percent or more of the then out-  
4 standing voting securities issued by a corporation;

5 (6) "controlling person" means, if used with respect to a  
6 specific person, a person who controls the specific person, directly  
7 or indirectly through an intermediary;

8 (7) "corporate name" means the name of a corporation in its  
9 articles of incorporation;

10 (8) "department" means the Department of Commerce and  
11 Economic Development;

12 (9) "financial institution" means a bank regulated under  
13 AS 06.05, a mutual savings bank established under AS 06.15, a savings  
14 association established under AS 06.30, a credit union established  
15 under AS 06.45, a national bank established under 12 U.S.C. 21 - 213,  
16 a federal home loan bank established under 12 U.S.C. 1421 - 1449, or a  
17 federal credit union established under as U.S.C. 1751 - 1795k;

18 (10) "insolvent" means not paying debts in the ordinary  
19 course of business, not paying debts as they become due, or exceeding  
20 liabilities assets;

21 (11) "interests of the licensee" includes the interests of  
22 the shareholders of the licensee;

23 (12) "license" means a license issued under this chapter  
24 authorizing a state corporation to transact business as a BIDCO;

25 (13) "licensee" means a state corporation that is licensed  
26 under this chapter to transact business as a BIDCO;

27 (14) "officer" means

28 (A) with respect to a corporation, a person appointed  
29 or designated as an officer of the corporation by or under appli-

1 cable law or the corporation's articles of incorporation or  
2 bylaws, or a person who performs with respect to the corporation  
3 the functions usually performed by an officer of a corporation;

4 (B) with respect to a specific person other than a  
5 natural person or a corporation, a person who performs for the  
6 specific person the functions usually performed by an officer of  
7 a corporation for a corporation;

8 (15) "order" means an approval, consent, authorization,  
9 exemption, denial, prohibition, or requirement applicable to a specif-  
10 ic case and issued by the department, including a license condition  
11 and an agreement made by a person with the department under this  
12 chapter;

13 (16) "person" includes a government and an agency of a  
14 government; when used with respect to acquiring control of or control-  
15 ling a specific person, "person" includes a combination of two or more  
16 persons acting in concert;

17 (17) "principal shareholder" means a person who owns, di-  
18 rectly or indirectly, of record or beneficially, securities repre-  
19 senting 10 percent or more of the outstanding voting securities of a  
20 corporation;

21 (18) "state corporation" means a corporation that is incor-  
22 porated under AS 10.06 or AS 10.20 or a foreign corporation that has  
23 been issued a certificate of authority under AS 10.06 or AS 10.20 to  
24 transact business in the state;

25 (19) "subject person" means

26 (A) a controlling person, subsidiary, or affiliate of  
27 a licensee;

28 (B) a director, officer, or employee of a licensee or  
29 of a controlling person, subsidiary, or affiliate of a licensee;

1 (C) another person who participates in the conduct of  
2 the business of a licensee; or

3 (D) if used with respect to a licensee, a company or  
4 business of which the licensee holds control under AS 06.50.280 -  
5 06.50.320.

6 Sec. 06.50.995. SHORT TITLE. This chapter may be cited as the  
7 Alaska BIDCO Act.

8 \* Sec. 3. AS 10.10 is repealed.

9 \* Sec. 4. APPLICATION OF PROVISIONS TO EXISTING CORPORATIONS. (a)  
10 Except as otherwise expressly provided in this Act, the provisions of this  
11 Act apply on and after January 1, 1991, to

12 (1) a corporation organized under the former Business and Indus-  
13 trial Development Act (AS 10.10) and in existence on January 1, 1991;

14 (2) actions taken on or after January 1, 1991, by a director,  
15 officer, shareholder, affiliate, subsidiary, subject person, or controlling  
16 person of a corporation described in (1) of this subsection.

17 (b) Except as otherwise expressly provided, a section of this Act  
18 governing acts, contracts, or other transactions by a corporation or its  
19 directors, officers, shareholders, affiliates, subsidiaries, subject per-  
20 sons, or controlling persons applies only to acts, contracts, or trans-  
21 actions occurring on or after January 1, 1991, and the provisions of former  
22 AS 10.10 govern acts, contracts, or transactions occurring before  
23 January 1, 1991.

24 (c) In AS 06.50.120(a), enacted by sec. 1 of this Act, the require-  
25 ment to include "BIDCO" in the name of a person licensed under AS 06.50  
26 does not apply to a corporation that has been incorporated under AS 10.10  
27 before January 1, 1991, that is in existence on January 1, 1991, and whose  
28 name includes the words "Industrial Development Corporation of the State of  
29 Alaska."

- 1     \* Sec. 5. EXISTING ACTIONS. This Act does not affect a cause of action
- 2     that has accrued before January 1, 1991.
- 3     \* Sec. 6. This Act takes effect January 1, 1991.