corporation is organized under AS 10.06 (Alaska Corporations Code) and this title.

* **Sec. 20.** AS 06.05.350(d) is amended to read:

(d) Except as authorized under this section, a person may not

(1) engage in the business of receiving deposits, discounting evidences of indebtedness, or receiving money for transmission;

(2) represent that the person is [, OR ACTS FOR,] a bank; or

(3) use **any form of the word "bank" in the person's name unless the person is a state bank formed under this title or a bank formed under the authority of another state or an agency of the federal government, or unless it is clear that the use does not represent that the person is a bank; the prohibition in this paragraph does not apply to a food bank, blood bank, or similar organization that cannot readily be confused with a bank** [AN ARTIFICIAL OR CORPORATE NAME THAT PURPORTS TO BE OR SUGGESTS THAT IT IS THE NAME OF A BANK].

* **Sec. 21.** AS 06.05.350 is amended by adding a new subsection to read:

(e) A person prohibited by (d)(3) of this section from using any form of the word "bank" in its name may apply to the commissioner for authority to use a form of the word "bank" in its name.

* **Sec. 22.** AS 06.05.426(b) is amended to read:

(b) A state bank may establish, maintain, and operate an automated teller machine at a location other than bank premises **by notifying the department 30 days before the date of establishment** [WITH THE PRIOR APPROVAL OF THE DEPARTMENT]. An automated teller machine operated off bank premises shall be made available on a nondiscriminatory basis for use by **depositors of** other **depository institutions** [BANKS] authorized to do business in the state [AND THEIR CUSTOMERS], upon the agreement of the other **depository institutions** [BANKS] to pay a fair and equitable amount for the use of the machine.

* **Sec. 23.** AS 06.05.426(c) is repealed and reenacted to read:

(c) The notice required in (b) of this section must include

(1) the location and general description of the surrounding area, including a description of the business establishment, if any, in which the machine will

be located;

(2) the manner of operation and the kinds of transactions that the machine will perform;

(3) the names of the other depository institutions that will share the machine's services; and

(4) other information required by the department.

* **Sec. 24.** AS 06.05.426(d) is amended to read:

(d) A state bank may invest in a corporation organized to operate machines that perform automated teller services for two or more **depository institutions** [BANKS, IF EACH BANK OWNS PART OF THE CAPITAL STOCK OF THE CORPORATION].

* **Sec. 25.** AS 06.05.426 is amended by adding a new subsection to read:

(e) A person may not establish or operate an automated teller machine that accepts deposits unless those deposits are insured by the Federal Deposit Insurance Corporation or another agency of the United States that insures deposits.

* **Sec. 26.** AS 06.05.435(c) is amended to read:

(c) Unless otherwise approved by the department, each director of a **state** bank shall own, in the director's own right or jointly with the director's spouse, free of any encumbrance, **common or preferred stock of the state bank or of an entity that controls the state bank that has an aggregate par value of at least $1,000, an aggregate shareholder's equity of at least $1,000, or an aggregate fair market value of at least $1,000** [CAPITAL STOCK OF THE BANK IN AN AMOUNT EQUAL TO AT LEAST $1,000 IN PAR VALUE].

* **Sec. 27.** AS 06.05.435 is amended by adding new subsections to read:

(h) In the case of an entity that owns more than one bank, a director may use the director's equity interest in the controlling entity to satisfy, in whole or in part, the equity interest requirement for one or all of the controlled banks.

(i) The value of the common or preferred stock held by a director of a state bank or of an entity that controls the state bank is valued as of the date purchased, or as of the date on which the individual became a director, whichever value is greater.

* **Sec. 28.** AS 06.05.550 is amended to read:

Sec. 06.05.550. Authority of international bank, [OR] interstate state bank, or interstate national bank to branch. (a) An international bank, [OR] an interstate **state** bank, **or an interstate national bank** whose deposits are insured by the Federal Deposit Insurance Corporation [,] may acquire a branch bank as the result of a merger or consolidation of the international **bank,** [OR] interstate **state** bank, **or interstate national bank** with, or the purchase of all or substantially all of the assets of, a state bank, a national bank with its principal office in this state, or a branch of the state bank or national bank, unless the state bank or national bank is a recently formed bank.

(b) An international bank may establish a new branch bank in this state or acquire a recently formed bank [,] if the department approves the establishment or acquisition before the establishment or acquisition occurs. An interstate **state** bank **or interstate national bank** may not establish a branch bank in this state unless the establishment occurs through an acquisition under (a) of this section of a bank located in the state. An interstate **state** bank **or interstate national bank** may not establish a new branch bank in this state.

(c) An interstate **state bank, interstate national bank,** or international bank that opens, occupies, or maintains a branch bank in the state has the same powers under the laws of the state as a state or national bank of the same type.

*** Sec. 29.** AS 06.05.555(a) is amended to read:

(a) Before acquiring a branch bank under AS 06.05.550(a) or establishing a branch bank under AS 06.05.550(b), an interstate **state bank** or international bank shall file an application with the department for and receive a certificate of authority to operate a branch bank. The application must include

(1) all information and fees required under AS 06.05.399;

(2) the name of the bank and the address of its principal office;

(3) if an international bank, the country under whose laws it is organized;

(4) the amount of the bank's capital actually paid in cash and the amount subscribed for and unpaid;

(5) a complete and detailed statement of the bank's financial condition;

(6) the names of all other states and countries in which the bank is admitted or qualified to do business;

(7) a copy of the bank's charter, articles of incorporation, and bylaws, as applicable;

(8) if an international bank, evidence satisfactory to the department that the bank is authorized to conduct a banking business under the laws of the country of its organization, and the nature of the bank's business;

(9) a properly executed designation of the department as the bank's agent for service of process in an action or proceeding arising out of a transaction involving the branch bank; the designation must include the name and address of the officer, agent, or other person to whom the department is to forward the process; and

(10) other information necessary or appropriate for the department to determine whether the bank is entitled to a certificate of authority from the department.

* **Sec. 30.** AS 06.05.555(b) is amended to read:

(b) The department shall notify the interstate **state bank** or international bank of its action on the application. If the application and the accompanying documents do not comply with the requirements of (a) of this section, the department shall return them with an explanation of the noncompliance. If the department does not respond within 30 days of its receipt of the application, the application is considered to be accepted.

* **Sec. 31.** AS 06.05.555(c) is amended to read:

(c) The interstate **state bank** or international bank shall publish notice of the application in the manner provided in AS 06.05.344(d) - (e). The notice must state the proposed location of the branch bank.

* **Sec. 32.** AS 06.05.555(d) is amended to read:

(d) Upon acceptance of the application, the department shall conduct an investigation to determine that

(1) if an interstate **state** bank,

(A) the laws of the home state of the bank authorize a state bank of this state to acquire a branch bank in the home state without conditions

or restrictions on the operations of the branch bank; and

(B) the bank supervisor of the home state of the bank has agreed to provide to the department the examination reports that the department determines sufficient to permit the department to determine on a current basis the financial condition of the bank;

(2) the proposal is consistent with a sound and competitive banking system;

(3) the capital structure of the bank is adequate in relation to the anticipated business and costs of operating the branch bank;

(4) the name of the bank is not deceptively similar to the name of another branch bank or state bank and is not otherwise misleading; and

(5) the other requirements of this chapter have been met.

* **Sec. 33.** AS 06.05.555(e) is amended to read:

(e) Not later than 150 days after the department accepts an application by an interstate **state bank** or international bank for a certificate of authority to operate a branch bank, the department shall make a determination whether to approve the application. Within 30 days after the second publication of the notice referred to in (c) of this section, a person opposing the pending application may file written objections with the department. When it approves or denies the application, the department shall notify the bank and any other person who requested in writing to be notified, and, if the application is denied, the department shall state the reasons for its decision.

* **Sec. 34.** AS 06.05.555(f) is amended to read:

(f) The department shall issue a certificate of authority to an interstate **state bank** or international bank to operate a branch bank if

(1) the conditions imposed by the department in granting the certificate have been fulfilled; and

(2) the requirements of this chapter are satisfied.

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

Sec. 06.05.557. Notice filing for interstate national banks. An interstate national bank acquiring a branch in this state under AS 06.05.550 shall file a notice of the acquisition with the department along with a copy of the application filed with the

agency that primarily regulates the interstate national bank. The notice and copy of the application shall be filed with the department at the same time the application is filed with the agency that primarily regulates the interstate national bank.

*** Sec. 36.** AS 06.05.565(a) is amended to read:

(a) An interstate **state bank** or international bank operating a branch bank in the state is subject to the provisions of this title [,] and the regulations adopted and orders issued under this title, except for the residency requirements in AS 06.05.435(a).

*** Sec. 37.** AS 06.05.565(c) is amended to read:

(c) A branch bank of an interstate **state bank** or international bank operating in the state is subject to examination under AS 06.01.015 and assessments under AS 06.01.010. Assessments under AS 06.01.010(d) are based on the branch bank's total deposits in the state.

*** Sec. 38.** AS 06.05.565(d) is amended to read:

(d) When the department considers it necessary to protect the public interest, the department or a competent person designated by the department may examine an interstate **state bank** or international bank with a branch in the state. The interstate **state bank** or international bank shall pay an examination fee established under AS 06.01.010.

*** Sec. 39.** AS 06.05.565(e) is amended to read:

(e) The department may require periodic reports from an **interstate state bank or an interstate national bank** [OUT-OF-STATE DEPOSITORY INSTITUTION] that maintains a branch in this state and from a bank holding company that controls the **interstate state bank or interstate national bank** [OUT-OF-STATE DEPOSITORY INSTITUTION]. The reports shall be made under oath and filed as frequently as required by the department. The reports must contain the information and detail that the department determines to be appropriate to assure continuing compliance of the **interstate state bank or interstate national bank** [OUT-OF-STATE DEPOSITORY INSTITUTION] with the **provisions** [PROVISION] of this title.

*** Sec. 40.** AS 06.05.565 is amended by adding a new subsection to read:

(g) An interstate national bank operating a branch bank in this state is subject to the provisions of AS 06.05.548 and 06.05.550 and the regulations adopted and orders issued under those sections.

* **Sec. 41.** AS 06.05.570(a) is amended to read:

(a) An out-of-state bank holding company may acquire and own all or a portion of the voting securities or other capital stock of, or all or substantially all of the assets of, one or more state banks, domestic bank holding companies, or national banks conducting a banking business in the state, unless the state bank or national bank is a recently formed bank. Before an out-of-state bank holding company may acquire a **state** bank or bank holding company **of a state bank** doing business in this state, the out-of-state bank holding company shall apply for and obtain a permit from the department. In considering whether to issue a permit, the department shall consider the benefits to the public, the preservation of a competitive banking industry, and the maintenance of a safe and sound bank industry. To assure full protection of the public, the department may require an out-of-state bank holding company that directly or indirectly owns, holds, or controls stock in a state bank or domestic bank holding company to post a bond with the department under conditions established by the department. The amount of the bond may not be more than the product obtained by multiplying the amount of paid-in capital and paid-in surplus of the state bank or domestic bank holding company by the percentage of state bank or domestic bank holding company stock directly or indirectly owned, held, or controlled by the out-of-state bank holding company.

* **Sec. 42.** AS 06.05.990(13) is amended to read:

(13) "financial institution" means an institution subject to the regulation of the department under this title; **in this paragraph, "institution" includes a commercial bank, savings bank, credit union, premium finance company, small loan company, bank holding company, financial holding company, trust company, and savings and loan association;**

* **Sec. 43.** AS 06.05.990(19) is repealed and reenacted to read:

(19) "loan" includes an extension of credit resulting from direct or indirect negotiations between a lender and a debtor;

* **Sec. 44.** AS 06.05.990(22) is amended to read:

(22) "recently formed bank" means a state bank or national bank that conducts a banking business in the state and that commenced the banking business in the state on or after July 1, 1982, and that has not been in existence and continuously operating in the state for a period of three years or more; "recently formed bank" does not include

(A) a bank organized solely for the purpose of facilitating acquisition of a bank that either has been in existence and continuously operating in the state as a bank for a three-year period, or was conducting a banking business in the state on or before June 30, 1982;

(B) a state bank that the department determines was not created directly or indirectly by an acquiring interstate **state** bank, **interstate national bank,** international bank, or out-of-state bank holding company, and that does not have the capacity to continue to conduct its business independently in a manner consistent with the public interest and the interest of depositors, creditors, and shareholders; or

(C) a national bank that the board of governors of the Federal Reserve System, or their designee, determines is not chartered directly or indirectly by an acquiring out-of-state bank holding company, and that does not have the capacity to conduct its business independently in a manner consistent with the public interest of depositors, creditors, and shareholders;

* **Sec. 45.** AS 06.05.990(24) is amended to read:

(24) "state financial institution" means a financial institution **that is** organized under this title **or that is subject to examination by the department under this title**;

* **Sec. 46.** AS 06.05.990 is amended by adding new paragraphs to read:

(29) "extension of credit" means a negotiable instrument, and includes promissory notes, acknowledgments of advance, due bills, invoices, overdrafts, acceptances, and similar written or oral obligations or evidence of debt whether secured or unsecured; in this paragraph, "negotiable instrument" has the meaning given in AS 45.03.104;

(30) "financial holding company" means an existing, or newly formed, domestic bank holding company that has been approved as a financial holding company by the Federal Reserve System and not denied that status by the department under AS 06.05.237;

(31) "interstate national bank" means a national bank whose principal office, as designated in its articles of incorporation, is not located in this state;

(32) "interstate state bank" means a person organized under the laws of another state and holding a charter, license, or certificate of authority from another state to engage in a banking business.

* **Sec. 47.** AS 06.15.100 is repealed and reenacted to read:

Sec. 06.15.100. Prohibited conduct of trustees. A trustee may not

(1) receive remuneration as trustee except reasonable fees for attendance at meetings of trustees or for services as a member of a committee of trustees;

(2) use the position as trustee, or knowingly allow it to be used, to obtain preferential terms in dealings with the mutual bank for which the person is trustee;

(3) use the position as trustee, or knowingly allow it to be used, to induce an actual or prospective borrower from the mutual bank for which the person is trustee to purchase goods or services at a direct or indirect profit to the trustee.

* **Sec. 48.** AS 06.15 is amended by adding a new section to read:

Sec. 06.15.105. Trustee borrowing. A person may borrow money from the mutual bank for which the person is trustee to the same extent that a director may borrow money under AS 06.05.210.

* **Sec. 49.** AS 06.20.010 is amended by adding a new subsection to read:

(b) A person who is doing business under and as permitted by any law of the state or of the United States relating to banks, savings banks, trust companies, building and loan associations, or credit unions and who is exempt from the licensing requirement in (a) of this section shall comply with all other provisions of this chapter.

* **Sec. 50.** AS 06.45.020(a) is amended to read:

(a) Seven or more natural persons who desire to form a credit union shall

subscribe before an officer competent to administer oaths, articles of incorporation in duplicate that must state

(1) the name of the credit union;

(2) the location of the credit union and the territory in which it will operate;

(3) the names and addresses of the subscribers to the certificate and the number of shares each subscribed;

(4) the par value of the shares, which **must** [SHALL] be **a minimum of** $5 each;

(5) the proposed field of membership specified in detail;

(6) the term of the existence of the credit union, which may be perpetual; and

(7) the fact that the articles of incorporation are adopted to enable the persons to avail themselves of the advantages of this chapter.

*** Sec. 51.** AS 06.45.060(5) is amended to read:

(5) make loans, the maturities of which may not exceed **20** [12] years except as provided in this chapter, and extend lines of credit to its members, to other credit unions, and to credit union organizations and participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) loans to members shall be made in conformity with regulations adopted by the commissioner, except that

(i) a residential real estate loan **that** [WHICH] is made to finance the acquisition of a one- to four-family dwelling for the principal residence of a credit union member **that** [WHICH] is secured by a first lien on the dwelling may have a maturity not exceeding 30 years;

(ii) a loan to finance the purchase of a mobile home **that** [, WHICH] is secured by a first lien on the mobile home, to be used as the residence of a credit union member, or for the repair, alteration, or improvement of a residential dwelling that is the residence

of a credit union member **must** [SHALL] have a maturity not to exceed **20** [15] years unless the loan is insured or guaranteed under (iii) of this subparagraph;

(iii) a loan secured by the insurance or guarantee of the federal government, of a state government, or an agency of either may be made for the maturity and under the terms and conditions specified in the law under which the insurance or guarantee is provided;

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan **that** [WHICH] exceeds **$20,000** [$5,000] plus pledged shares shall be approved by the board of directors;

(v) loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser shall be approved by the board of directors when the loans standing alone or when added to an outstanding loan or loans of the guarantor or endorser exceed **$20,000** [$5,000];

(vi) the rate of interest may not exceed the greater of 15 percent a year or the rate specified in AS 45.45.010(b);

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this paragraph, when knowingly done, is considered a forfeiture of the entire interest that the note, bill, or other evidence of debt carries with it, or that has been agreed to be paid on the note, bill, or other evidence of debt; if a greater rate of interest has been paid, the person by whom it has been paid or the person's legal representatives may recover back from the credit union taking or receiving it the entire amount of interest paid, but the action must be commenced within two years from the time the usurious collection was made;

(viii) a borrower may repay a loan before maturity in whole or in part on any business day without penalty;

(ix) loans shall be paid or amortized under regulations

adopted by the commissioner that consider the needs or conditions of the borrowers, the amounts and duration of the loans, the interests of the members and the credit union, and other factors established in regulations adopted by the commissioner;

(x) the total dollar amount of real estate loans and mobile home loans outstanding may not exceed 25 percent of the assets of the credit union without the written approval of the commissioner;

(xi) a credit union with assets of less than $3,000,000 may make real estate loans with maturities in excess of 15 years only with the approval of the commissioner;

(B) a self-replenishing line of credit to a borrower may be established to a stated maximum amount on terms and conditions that may be different from terms and conditions established for another borrower;

(C) loans to other credit unions require the approval of the board of directors of the loaning credit union;

(D) loans to credit union associations require the approval of the board of directors of the credit union and may not exceed one percent of the paid-in and unimpaired capital and surplus of the credit union;

(E) participation loans with other credit unions, credit union associations, or financial organizations shall be made in accordance with written policies of the board of directors of the credit union, except that a credit union that originates a loan for which participation arrangements are made in accordance with this section shall retain an interest not less than 10 percent of the face amount of the loan;

* **Sec. 52.** AS 06.45.060(7) is amended by adding new subparagraphs to read:

(L) in bankers' acceptances issued by a financial institution whose accounts are insured by an agency of the federal government;

(M) in stock of a federal home loan bank; the investment must be limited to the minimum amount of stock required for membership in the federal home loan bank, plus any additional stock purchase required to obtain an advance of funds from a federal home loan bank;

(N) in obligations of, or issued by, a state or political subdivision of the state, except that a credit union may not invest more than 10 percent of its unimpaired capital and surplus in the obligations of any one issuer, exclusive of general obligations of the issuer; in this subparagraph, "political subdivision of the state" includes an agency, corporation, or instrumentality of a state or political subdivision;

* **Sec. 53.** AS 06.45.060 is amended by adding a new paragraph to read:

(16) issue solicited or unsolicited credit cards or other similar credit granting devices to a member for obtaining money, goods, services or anything else of value; notwithstanding (5)(A)(vi) of this section and AS 45.45.010, when credit is extended under this section, the credit union may impose a service charge at a monthly rate as agreed upon by contract between the credit union and the member receiving the credit granting device, but the credit union may not hold the member liable for charges made on a credit card or other credit granting device before its acceptance by the member; before an unsolicited card is considered accepted by the member, the member shall execute and furnish to the credit union a written statement of acceptance; in addition, a credit union may charge fees for credit cards or other similar credit granting devices.

* **Sec. 54.** AS 06.45 is amended by adding a new section to read:

Sec. 06.45.295. Automated teller machines. (a) A state credit union may establish, maintain, and operate an automated teller machine on the premises of the main office or a branch office of the state credit union.

(b) A state credit union may establish, maintain, and operate an automated teller machine at a location other than credit union premises by notifying the department 30 days before the date of establishment. An automated teller machine operated off credit union premises shall be made available on a nondiscriminatory basis for use by depositors of other depository institutions authorized to do business in the state, upon the agreement of the other depository institutions to pay a fair and equitable amount for the use of the machine.

(c) The notice required by (b) of this section must include

(1) the location and general description of the surrounding area,

including a description of the business establishment, if any, in which the machine will be located;

(2) the manner of operation and the kinds of transactions that the machine will perform;

(3) the names of the other depository institutions that will share the machine's services; and

(4) other information required by the department.

(d) A state credit union may invest in a corporation organized to operate machines that perform automated teller services for two or more depository institutions.

(e) A person may not establish or operate an automated teller machine that accepts deposits unless those deposits are insured by the National Credit Union Share Insurance Fund or another agency of the United States that insures deposits.

* **Sec. 55.** AS 06.05.005(b)(3), 06.05.175, 06.05.272(d), 06.05.990(18); and AS 06.20.330(a) are repealed.

* **Sec. 56.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENTS. AS 06.01.028(b), added by sec. 4 of this Act, has the effect of changing Rule 45, Alaska Rules of Civil Procedure, Rules 17 and 37, Alaska Rules of Criminal Procedure, and Rule 24, Alaska Bar Rules, because AS 06.01.028(b) requires certain court orders compelling disclosure to provide for reimbursement of a financial institution's reasonable costs of complying with the order.

* **Sec. 57.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. Notwithstanding sec. 60 of this Act, the Department of Community and Economic Development may immediately proceed to adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the statutory changes.

* **Sec. 58.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INSTRUCTION TO REVISOR. The revisor of statutes is instructed to change the catchline of

(1) AS 06.05.555 from "Certificate of authority for interstate and international branching" to "Certificate of authority for interstate state bank and international bank branching"; and

(2) AS 06.05.565 from "Applicability of title to interstate or international banks, to out-of-state depository institutions, and to bank holding companies" to "Applicability of title to interstate state banks, interstate national banks, international banks, and bank holding companies."

* **Sec. 59.** Section 57 of this Act takes effect immediately under AS 01.10.070(c).

* **Sec. 60.** Except as provided in sec. 59 of this Act, this Act takes effect July 1, 2002.

NOT ADOPTED

22-GH1026\B
Bannister
2/27/02

SENATE CS FOR CS FOR HOUSE BILL NO. 106( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to the authorizations for certain state financial institutions of certain powers and limitations; relating to confidential records of depositors and customers of certain financial institutions; relating to the examination of certain institutions subject to AS 06; relating to the Alaska Banking Code, Mutual Savings Bank Act, Alaska Small Loans Act, and Alaska Credit Union Act; amending Rule 45, Alaska Rules of Civil Procedure, Rules 17 and 37, Alaska Rules of Criminal Procedure, and Rule 24, Alaska Bar Rules; and providing for an effective date."

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

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PURPOSE. The primary purpose of this Act is to implement banking and other financial institution reforms in AS 06 in response to P.L. 106-102 (Gramm-Leach-Bliley Act) in order to further this state as an attractive place for investment and other commerce

involving banking and other financial institutions.

*** Sec. 2.** AS 06.01.015(a) is amended to read:

(a) Financial institutions regulated under this title are subject to at least one examination **every 18 months** [EACH YEAR]. The department may conduct additional examinations at its discretion.

*** Sec. 3.** AS 06.01.020(a) is amended to read:

(a) Notwithstanding other provisions of this title, the department may by **order** [REGULATION] authorize **state** financial institutions, except licensees subject to AS 06.20 or AS 06.40, to exercise any of the powers conferred upon, or to be subject to any of the limitations imposed upon, a federally chartered financial institution doing business in this state with deposits insured by an agency of the federal government [,] if the department finds that the exercise of the power or imposition of the limitation both

(1) serves the public convenience and advantage; and

(2) equalizes and maintains the quality of competition between state financial institutions and federally chartered financial institutions.

*** Sec. 4.** AS 06.01 is amended by adding a new section to read:

Sec. 06.01.028. Depositor and customer records confidential. (a) The records of financial institutions relating to their depositors and customers and the information in the records are confidential. A financial institution may not disclose the records and information to another person except when, and only to the extent that, the disclosure is

(1) authorized in writing by the depositor or customer;

(2) required by federal or state statute or regulation or by an order directed to the financial institution and issued by a court or administrative agency of competent jurisdiction;

(3) made to the holder of a negotiable instrument drawn on the financial institution as to whether the drawer has sufficient funds in the financial institution to cover the instrument;

(4) made to a consumer reporting agency regulated under 15 U.S.C. 1681 - 1681u (Fair Credit Reporting Act);

(5) not prohibited by 15 U.S.C. 6801 - 6827 or the regulations adopted under those sections; or

(6) made in connection with the maintenance or servicing of the depositor's or customer's account with the financial institution, or with another entity as part of a private label credit card or other extension of credit on behalf of the entity.

(b) When disclosure of financial institution records is compelled by a subpoena, a search warrant, or another court or administrative agency order under (a)(2) of this section, the court or administrative agency shall provide in the order for the reimbursement of the financial institution for the reasonable costs incurred in complying with the order. Nothing in this subsection imposes a reimbursement obligation on a government agency, or abrogates an otherwise established reimbursement obligation of a government agency, when the financial institution is the subject of an audit, examination, or investigation and disclosure is sought under a federal or state law or regulation.

(c) Unless otherwise provided in this subsection, when disclosure of financial institution records is required under a court or administrative agency order under (a)(2) of this section, the financial institution shall notify the depositor or customer of the disclosure before the disclosure is made. If notification before disclosure is not possible, the financial institution shall notify the customer or depositor of the disclosure as soon as practicable after the disclosure is made. However, notification either before or after disclosure may not be made if disclosure is made under a court or administrative agency order under (a)(2) of this section and the document requiring disclosure requires on its face that the financial institution not notify or inform the depositor or customer, or the document requiring disclosure is, or is accompanied by, a court order that expressly directs the financial institution not to notify or inform the depositor or customer.

(d) Nothing in (a) - (c) of this section prohibits a financial institution from disclosing information to a person if

(1) the disclosure is necessary to

(A) provide the services of the financial institution to a depositor or customer; or

(B) market financially related products or services of the financial institution and its marketing partners; and

(2) the person receiving the information has a written agreement with the financial institution to be bound by the requirements of (a) - (c) of this section.

(e) A financial institution or any other person who violates this section is liable to a depositor or customer for damages caused by the disclosure of the confidential records or information of the financial institution pertaining to the depositor or customer. A financial institution or other person who takes an action under this section while relying in good faith on any provision of this section is not liable under this section to any person for the action.

(f) In this section, "financial institution" means a person subject to the regulation of the department under this title, including a BIDCO licensed under AS 10.13 (Alaska BIDCO Act).

* **Sec. 5.** AS 06.01.040 is amended to read:

Sec. 06.01.040. Examination policy. It shall be the policy of the department to conduct, whenever reasonably possible, joint examinations with the Federal Deposit Insurance Corporation **or with the National Credit Union Administration** of those institutions subject to this title whose accounts are insured through **those agencies** [THAT CORPORATION].

* **Sec. 6.** AS 06.01.050(3) is amended to read:

(3) "financial institution" means an institution subject to the regulation of the department under this title**; in this paragraph, "institution" includes a commercial bank, savings bank, credit union, premium finance company, small loan company, bank holding company, financial holding company, trust company and savings and loan association**.

* **Sec. 7.** AS 06.01.050 is amended by adding a new paragraph to read:

(4) "state financial institution" means a financial institution that is organized under this title or that is subject to examination by the department under this title.

* **Sec. 8.** AS 06.05.005(a) is amended to read:

(a) The department shall

(1) exercise general supervision over all state financial institutions and their subsidiaries and affiliated corporations;

(2) adopt regulations necessary to implement this chapter, including regulations providing for the retention and preservation of **state** bank records;

(3) review and approve or disapprove applications for new state banks under AS 06.05.344, new bank branches under AS 06.05.399, and international **bank branches** or interstate **state bank branches** [BRANCH BANKS] under AS 06.05.555;

(4) issue permits authorizing **certain acquisitions by** bank holding companies [TO DO BUSINESS IN THIS STATE] under AS 06.05.235 and 06.05.570;

(5) determine for each state bank the amount of paid-in capital necessary to operate under AS 06.05.305(a);

(6) review and approve transfers of **state** bank ownership under AS 06.05.327;

(7) perform examinations of state banks, branch banks, and subsidiaries under AS 06.01.015.

* **Sec. 9.** AS 06.05.050 is repealed and reenacted to read:

Sec. 06.05.050. Publication of reports. (a) Condensed forms of all reports of condition required by AS 06.05.045(a) shall be immediately

(1) published by the state bank in a newspaper of general circulation published in the place where the state bank is located; if a newspaper of general circulation is not published in that place, the report shall be published in the newspaper of general circulation published nearest to that place; or

(2) posted

(A) at the primary Internet website of the state bank; and

(B) in the lobby of the principal office and all branches of the state bank.

(b) Notice of the publication or posting of the reports of condition under (a) of this section shall be posted in the lobby of the principal office and all branches of the state bank. Upon request, a copy of a report of condition shall be supplied to any

person at no cost.

*** Sec. 10.** AS 06.05.065(a) is amended to read:

(a) A bank examiner of the department who deals with the regulation of financial institutions, a special agent selected by the department to do work relating to financial institutions, the commissioner or deputy commissioner, or the director of banking may not be an officer, employee, director, trustee, attorney, shareholder, or partner of a financial institution, or receive, directly or indirectly, a payment or gratuity from a financial institution. A person subject to this section may not borrow money from a **state** financial institution [THAT HAS A CERTIFICATE OF AUTHORITY UNDER THIS TITLE], except as provided in this section.

*** Sec. 11.** AS 06.05.065(b) is amended to read:

(b) A person subject to this section may

(1) be a depositor in a financial institution;

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

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

(4) be indebted to a state financial institution upon an installment debt incurred by the employee in the purchase of goods for personal use only and transferred to the financial institution in the regular course of business, including debts for household goods, mobile homes, motor vehicles, or boats; or

(5) **retain a preexisting extension of credit that was incurred before commencement of the employment that subjected the person to this section; any renegotiation of a preexisting extension of credit shall be treated as a new extension of credit that is subject to the prohibitions of this section** [BE INDEBTED TO A STATE FINANCIAL INSTITUTION FOR A MORTGAGE LOAN SECURED BY THE PERSON'S PRIMARY RESIDENCE, IF THE LOAN CLOSED BEFORE THE PERSON BECAME AN EMPLOYEE SUBJECT TO THIS SECTION].

*** Sec. 12.** AS 06.05.205 is repealed and reenacted to read:

Sec. 06.05.205. Loans and extensions of credit. (a) The total loans and extensions of credit by a state bank to a person outstanding at one time and not fully

secured, as determined in a manner consistent with (b) of this section, by collateral having a market value at least equal to the amount of the loan or extension of credit may not exceed 15 percent of the unimpaired capital and unimpaired surplus of the state bank.

(b) The total loans and extensions of credit by a state bank to a person outstanding at one time and fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the money outstanding, may not exceed 10 percent of the unimpaired capital and unimpaired surplus of the state bank. The limitation in this subsection is separate from and in addition to the limitation contained in (a) of this section.

(c) The limitations contained in (a) and (b) of this section are subject to the following exceptions:

(1) loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse are not subject to a limitation based on unimpaired capital and unimpaired surplus;

(2) the purchase of bankers' acceptances described in AS 06.05.275 and issued by other banks are not subject to a limitation based on unimpaired capital and unimpaired surplus;

(3) loans or extensions of credit secured by bills of lading, warehouse receipts, or similar documents transferring or securing title to readily marketable staples are subject to a limitation of 35 percent of unimpaired capital and unimpaired surplus in addition to the general limitations if the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 percent of the outstanding amount of the loan or extension of credit; in order to be considered under this paragraph, the staples must be fully covered by insurance whenever it is customary to insure those staples;

(4) loans or extensions of credit secured by bonds, notes, certificates of indebtedness, or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States are not subject to a

limitation based on unimpaired capital and unimpaired surplus;

(5) loans or extensions of credit to, or secured by unconditional takeout commitments or guarantees of, any department, agency, bureau, board, commission, or establishment of the United States or a corporation wholly owned directly or indirectly by the United States are not subject to a limitation based on unimpaired capital and unimpaired surplus;

(6) loans or extensions of credit secured by a segregated deposit account in the lending state bank are not subject to a limitation based on unimpaired capital and unimpaired surplus;

(7) loans or extensions of credit to a bank or to a receiver, conservator, superintendent of banks, or other agent in charge of the business and property of that bank, if approved by the department, are not subject to a limitation based on unimpaired capital and unimpaired surplus;

(8) loans or extensions of credit arising from the discount of negotiable or non-negotiable installment consumer paper that carries a full recourse endorsement or unconditional guarantee by the person transferring the paper are subject under this section to a maximum limitation equal to 25 percent of unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set out in (b) of this section; however, if the state bank's files or the knowledge of its officers of the financial condition of each maker of that consumer paper is reasonably adequate, and an officer of the state bank designated for that purpose by the board of directors of the state bank certifies in writing that the state bank is relying primarily upon the responsibility of each maker for payment of the loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of (a) and (b) of this section as to the loans or extensions of credit of each such maker are the sole applicable loan limitations;

(9) loans or extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 percent of the face amount of the note covered are subject under this section, notwithstanding the collateral requirements set out in (b) of this section,

to a maximum limitation equal to 25 percent of unimpaired capital and unimpaired surplus;

(10) loans or extensions of credit, arising from the discount by dealers in dairy cattle of paper given in payment for dairy cattle and carrying a full recourse endorsement or unconditional guarantee of the seller, that are secured by the cattle being sold are subject under this section, notwithstanding the collateral requirements set out in (b) of this section, to a maximum limitation equal to 25 percent of unimpaired capital and unimpaired surplus.

(d) Except with the written prior approval of the department for an acquisition or merger with another financial institution, or except with the written prior approval of the department in order to prevent loss upon an indebtedness previously contracted in good faith, a state bank may not

(1) accept as security for a loan the capital stock of the state bank;

(2) accept as security for a loan the capital stock of the state bank's parent holding companies, unless the stock of the holding companies is publicly traded on a nationally recognized exchange; or

(3) loan money that is to be used to purchase the capital stock of the state bank or a parent holding company of the state bank.

(e) The department may adopt regulations to administer and carry out the purposes of this section, including, notwithstanding any contrary provision of this section, regulations to define or further define terms used in this section in order to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit.

(f) For purposes of this section, the department may determine when a loan putatively made to a person shall be attributed to another person.

(g) In this section, "person" means an individual, sole proprietorship, partnership, joint venture, association, trust, estate, business trust, corporation, or any similar entity or organization.

*** Sec. 13.** AS 06.05.209(b) is amended to read:

(b) A <u>state</u> bank may issue a credit card or other similar credit granting device to a customer for obtaining money, goods, services, or anything else of value, and,

notwithstanding AS 45.45.010, the **state** bank, when credit is extended under this section, may impose a service charge at a monthly rate **as agreed upon by contract between the state bank and the customer receiving the credit granting device** [THAT RESULTS IN AN ANNUAL RATE NOT IN EXCESS OF 17 PERCENT ON THE OUTSTANDING BALANCE. HOWEVER, IN ADDITION, WHEN CASH IS ADVANCED UNDER THIS SECTION, THE BANK MAY IMPOSE A SETUP CHARGE THAT DOES NOT EXCEED THREE PERCENT OF THE FUNDS ADVANCED, OR $12, WHICHEVER IS LESS, EXCEPT THAT ON LOANS OF UNDER $100 A MINIMUM NOT EXCEEDING $3 MAY BE CHARGED].

* **Sec. 14.** AS 06.05.210(a) is amended to read:

(a) Subject to the same terms and conditions applicable to other loans, a director **or executive** [,] officer [, OR EMPLOYEE] of a state bank may borrow up to $100,000, or up to $250,000 for the director's **or executive** [,] officer's [, OR EMPLOYEE'S] primary residence, from the **state** bank at the discretion of the chief executive or managing officer of the **state** bank. A loan to a director **or executive** [,] officer [, OR EMPLOYEE] that makes the total amount owed to the **state** bank by the director **or executive** [,] officer [, OR EMPLOYEE] in excess of the limits in this subsection, or loans of any amount to the chief executive or managing officer of the **state** bank, shall have the prior approval of the board of directors, shall be reported to the department within 30 days, and shall be secured by adequate collateral.

* **Sec. 15.** AS 06.05.210 is amended by adding a new subsection to read:

(c) Notwithstanding (a) of this section, loans to directors, executive officers, and other officers and employees of a state bank are subject to the lending limits imposed by AS 06.05.205 and the regulations adopted under that section.

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

Sec. 06.05.237. Financial holding companies. Notwithstanding the provisions of AS 06.05.235 and regulations adopted under that section, a holding company formed under this title may apply to the Federal Reserve System for status as a financial holding company. If the status is granted, the financial holding company has powers as a financial holding company authorized by the Federal Reserve System if

(1) at the time of application, the holding company provides the department with a complete copy of the application;

(2) the holding company provides the department with copies of all correspondence concerning the application;

(3) the holding company provides the department with a copy of the approval by the Federal Reserve System within 10 days after the holding company receives the approval; and

(4) the department does not issue a letter denying financial holding company status within 30 days after the approval by the Federal Reserve System.

* **Sec. 17.** AS 06.05.245 is amended to read:

Sec. 06.05.245. Disposition of property not needed in the conduct of a banking business. All **investments in** real and personal prope , **regardless of how acquired,** not **permitted** [NECESSARY FOR THE CONVENIENT TRANSACTION OR PROMOTION OF A BANKING BUSINESS] under AS 06.05.230 that **come** [COMES] into the possession of a state bank shall be disposed of as soon as possible. If the real or personal property is not sold within the time limit **set** [PRESCRIBED] by the department in regulations, it shall be written off and may not be carried as an asset of the **state** bank.

* **Sec. 18.** AS 06.05.272(b) is amended to read:

(b) Under this section, a **state bank's total investment in its subsidiaries may not exceed that which is permissible for a federally chartered bank's total investment in all subsidiaries as set out in 12 U.S.C. 24a, as amended** [BANK MAY INVEST IN SUBSIDIARIES AN AMOUNT EQUAL TO THE LESSER OF 20 PERCENT OF ITS TOTAL ASSETS OR 50 PERCENT OF ITS TOTAL CAPITAL ACCOUNTS]. Loans to subsidiaries are considered investments subject to the limitations of this subsection.

* **Sec. 19.** AS 06.05.301(a) is amended to read:

(a) Except for national banks with a principal place of business in the state, and interstate **state banks** and international banks with a certificate of authority under AS 06.05.555, a corporation may not engage in the banking business unless the corporation is organized under AS 10.06 (Alaska Corporations Code) and this title.

* **Sec. 20.** AS 06.05.350(d) is amended to read:

(d) Except as authorized under this section, a person may not

(1) engage in the business of receiving deposits, discounting evidences of indebtedness, or receiving money for transmission;

(2) represent that the person is [, OR ACTS FOR,] a bank; or

(3) use **any form of the word "bank" in the person's name unless the person is a state bank formed under this title or a bank formed under the authority of another state or an agency of the federal government, or unless it is clear that the use does not represent that the person is a bank; the prohibition in this paragraph does not apply to a food bank, blood bank, or similar organization that cannot readily be confused with a bank** [AN ARTIFICIAL OR CORPORATE NAME THAT PURPORTS TO BE OR SUGGESTS THAT IT IS THE NAME OF A BANK].

* **Sec. 21.** AS 06.05.350 is amended by adding a new subsection to read:

(e) A person prohibited by (d)(3) of this section from using any form of the word "bank" in its name may apply to the commissioner for authority to use a form of the word "bank" in its name.

* **Sec. 22.** AS 06.05.426(b) is amended to read:

(b) A state bank may establish, maintain, and operate an automated teller machine at a location other than bank premises **by notifying the department 30 days before the date of establishment** [WITH THE PRIOR APPROVAL OF THE DEPARTMENT]. An automated teller machine operated off bank premises shall be made available on a nondiscriminatory basis for use by **depositors of** other **depository institutions** [BANKS] authorized to do business in the state [AND THEIR CUSTOMERS], upon the agreement of the other **depository institutions** [BANKS] to pay a fair and equitable amount for the use of the machine.

* **Sec. 23.** AS 06.05.426(c) is repealed and reenacted to read:

(c) The notice required in (b) of this section must include

(1) the location and general description of the surrounding area, including a description of the business establishment, if any, in which the machine will be located;

(2) the manner of operation and the kinds of transactions that the machine will perform;

(3) the names of the other depository institutions that will share the machine's services; and

(4) other information required by the department.

* **Sec. 24.** AS 06.05.426(d) is amended to read:

(d) A state bank may invest in a corporation organized to operate machines that perform automated teller services for two or more **depository institutions** [BANKS, IF EACH BANK OWNS PART OF THE CAPITAL STOCK OF THE CORPORATION].

* **Sec. 25.** AS 06.05.426 is amended by adding a new subsection to read:

(e) A person may not establish or operate an automated teller machine that accepts deposits unless those deposits are insured by the Federal Deposit Insurance Corporation or another agency of the United States that insures deposits.

* **Sec. 26.** AS 06.05.435(c) is amended to read:

(c) Unless otherwise approved by the department, each director of a **state** bank shall own, in the director's own right or jointly with the director's spouse, free of any encumbrance, **common or preferred stock of the state bank or of an entity that controls the state bank that has an aggregate par value of at least $1,000, an aggregate shareholder's equity of at least $1,000, or an aggregate fair market value of at least $1,000** [CAPITAL STOCK OF THE BANK IN AN AMOUNT EQUAL TO AT LEAST $1,000 IN PAR VALUE].

* **Sec. 27.** AS 06.05.435 is amended by adding new subsections to read:

(h) In the case of an entity that owns more than one bank, a director may use the director's equity interest in the controlling entity to satisfy, in whole or in part, the equity interest requirement for one or all of the controlled banks.

(i) The value of the common or preferred stock held by a director of a state bank or of an entity that controls the state bank is valued as of the date purchased, or as of the date on which the individual became a director, whichever value is greater.

* **Sec. 28.** AS 06.05.550 is amended to read:

Sec. 06.05.550. Authority of international bank, [OR] interstate state

bank, or interstate national bank to branch. (a) An international bank, [OR] an interstate **state** bank, **or an interstate national bank** whose deposits are insured by the Federal Deposit Insurance Corporation [,] may acquire a branch bank as the result of a merger or consolidation of the international **bank,** [OR] interstate **state** bank, **or interstate national bank** with, or the purchase of all or substantially all of the assets of, a state bank, a national bank with its principal office in this state, or a branch of the state bank or national bank, unless the state bank or national bank is a recently formed bank.

(b) An international bank may establish a new branch bank in this state or acquire a recently formed bank [,] if the department approves the establishment or acquisition before the establishment or acquisition occurs. An interstate **state** bank **or interstate national bank** may not establish a branch bank in this state unless the establishment occurs through an acquisition under (a) of this section of a bank located in the state. An interstate **state** bank **or interstate national bank** may not establish a new branch bank in this state.

(c) An interstate **state bank, interstate national bank,** or international bank that opens, occupies, or maintains a branch bank in the state has the same powers under the laws of the state as a state or national bank of the same type.

* **Sec. 29.** AS 06.05.555(a) is amended to read:

(a) Before acquiring a branch bank under AS 06.05.550(a) or establishing a branch bank under AS 06.05.550(b), an interstate **state bank** or international bank shall file an application with the department for and receive a certificate of authority to operate a branch bank. The application must include

(1) all information and fees required under AS 06.05.399;

(2) the name of the bank and the address of its principal office;

(3) if an international bank, the country under whose laws it is organized;

(4) the amount of the bank's capital actually paid in cash and the amount subscribed for and unpaid;

(5) a complete and detailed statement of the bank's financial condition;

(6) the names of all other states and countries in which the bank is

admitted or qualified to do business;

(7) a copy of the bank's charter, articles of incorporation, and bylaws, as applicable;

(8) if an international bank, evidence satisfactory to the department that the bank is authorized to conduct a banking business under the laws of the country of its organization, and the nature of the bank's business;

(9) a properly executed designation of the department as the bank's agent for service of process in an action or proceeding arising out of a transaction involving the branch bank; the designation must include the name and address of the officer, agent, or other person to whom the department is to forward the process; and

(10) other information necessary or appropriate for the department to determine whether the bank is entitled to a certificate of authority from the department.

*** Sec. 30.** AS 06.05.555(b) is amended to read:

(b) The department shall notify the interstate **state bank** or international bank of its action on the application. If the application and the accompanying documents do not comply with the requirements of (a) of this section, the department shall return them with an explanation of the noncompliance. If the department does not respond within 30 days of its receipt of the application, the application is considered to be accepted.

*** Sec. 31.** AS 06.05.555(c) is amended to read:

(c) The interstate **state bank** or international bank shall publish notice of the application in the manner provided in AS 06.05.344(d) - (e). The notice must state the proposed location of the branch bank.

*** Sec. 32.** AS 06.05.555(d) is amended to read:

(d) Upon acceptance of the application, the department shall conduct an investigation to determine that

(1) if an interstate **state** bank,

(A) the laws of the home state of the bank authorize a state bank of this state to acquire a branch bank in the home state without conditions or restrictions on the operations of the branch bank; and

(B) the bank supervisor of the home state of the bank has agreed to provide to the department the examination reports that the department determines sufficient to permit the department to determine on a current basis the financial condition of the bank;

(2) the proposal is consistent with a sound and competitive banking system;

(3) the capital structure of the bank is adequate in relation to the anticipated business and costs of operating the branch bank;

(4) the name of the bank is not deceptively similar to the name of another branch bank or state bank and is not otherwise misleading; and

(5) the other requirements of this chapter have been met.

*** Sec. 33.** AS 06.05.555(e) is amended to read:

(e) Not later than 150 days after the department accepts an application by an interstate **state bank** or international bank for a certificate of authority to operate a branch bank, the department shall make a determination whether to approve the application. Within 30 days after the second publication of the notice referred to in (c) of this section, a person opposing the pending application may file written objections with the department. When it approves or denies the application, the department shall notify the bank and any other person who requested in writing to be notified, and, if the application is denied, the department shall state the reasons for its decision

*** Sec. 34.** AS 06.05.555(f) is amended to read:

(f) The department shall issue a certificate of authority to an interstate **state bank** or international bank to operate a branch bank if

(1) the conditions imposed by the department in granting the certificate have been fulfilled; and

(2) the requirements of this chapter are satisfied.

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

Sec. 06.05.557. Notice filing for interstate national banks. An interstate national bank acquiring a branch in this state under AS 06.05.550 shall file a notice of the acquisition with the department along with a copy of the application filed with the agency that primarily regulates the interstate national bank. The notice and copy of

the application shall be filed with the department at the same time the application is filed with the agency that primarily regulates the interstate national bank.

* **Sec. 36.** AS 06.05.565(a) is amended to read:

(a) An interstate **state bank** or international bank operating a branch bank in the state is subject to the provisions of this title [,] and the regulations adopted and orders issued under this title, except for the residency requirements in AS 06.05.435(a).

* **Sec. 37.** AS 06.05.565(c) is amended to read:

(c) A branch bank of an interstate **state bank** or international bank operating in the state is subject to examination under AS 06.01.015 and assessments under AS 06.01.010. Assessments under AS 06.01.010(d) are based on the branch bank's total deposits in the state.

* **Sec. 38.** AS 06.05.565(d) is amended to read:

(d) When the department considers it necessary to protect the public interest, the department or a competent person designated by the department may examine an interstate **state bank** or international bank with a branch in the state. The interstate **state bank** or international bank shall pay an examination fee established under AS 06.01.010.

* **Sec. 39.** AS 06.05.565(e) is amended to read:

(e) The department may require periodic reports from an **interstate state bank or an interstate national bank** [OUT-OF-STATE DEPOSITORY INSTITUTION] that maintains a branch in this state and from a bank holding company that controls the **interstate state bank or interstate national bank** [OUT-OF-STATE DEPOSITORY INSTITUTION]. The reports shall be made under oath and filed as frequently as required by the department. The reports must contain the information and detail that the department determines to be appropriate to assure continuing compliance of the **interstate state bank or interstate national bank** [OUT-OF-STATE DEPOSITORY INSTITUTION] with the **provisions** [PROVISION] of this title.

* **Sec. 40.** AS 06.05.565 is amended by adding a new subsection to read:

(g) An interstate national bank operating a branch bank in this state is subject

to the provisions of AS 06.05.548 and 06.05.550 and the regulations adopted and orders issued under those sections.

*** Sec. 41.** AS 06.05.570(a) is amended to read:

(a) An out-of-state bank holding company may acquire and own all or a portion of the voting securities or other capital stock of, or all or substantially all of the assets of, one or more state banks, domestic bank holding companies, or national banks conducting a banking business in the state, unless the state bank or national bank is a recently formed bank. Before an out-of-state bank holding company may acquire a **state** bank or bank holding company **of a state bank** doing business in this state, the out-of-state bank holding company shall apply for and obtain a permit from the department. In considering whether to issue a permit, the department shall consider the benefits to the public, the preservation of a competitive banking industry, and the maintenance of a safe and sound bank industry. To assure full protection of the public, the department may require an out-of-state bank holding company that directly or indirectly owns, holds, or controls stock in a state bank or domestic bank holding company to post a bond with the department under conditions established by the department. The amount of the bond may not be more than the product obtained by multiplying the amount of paid-in capital and paid-in surplus of the state bank or domestic bank holding company by the percentage of state bank or domestic bank holding company stock directly or indirectly owned, held, or controlled by the out-of-state bank holding company.

*** Sec. 42.** AS 06.05.990(13) is amended to read:

(13) "financial institution" means an institution subject to the regulation of the department under this title; **in this paragraph, "institution" includes a commercial bank, savings bank, credit union, premium finance company, small loan company, bank holding company, financial holding company, trust company, and savings and loan association;**

*** Sec. 43.** AS 06.05.990(19) is repealed and reenacted to read:

(19) "loan" includes an extension of credit resulting from direct or indirect negotiations between a lender and a debtor;

*** Sec. 44.** AS 06.05.990(22) is amended to read:

(22) "recently formed bank" means a state bank or national bank that conducts a banking business in the state and that commenced the banking business in the state on or after July 1, 1982, and that has not been in existence and continuously operating in the state for a period of three years or more; "recently formed bank" does not include

(A) a bank organized solely for the purpose of facilitating acquisition of a bank that either has been in existence and continuously operating in the state as a bank for a three-year period, or was conducting a banking business in the state on or before June 30, 1982;

(B) a state bank that the department determines was not created directly or indirectly by an acquiring interstate **state** bank, **interstate national bank,** international bank, or out-of-state bank holding company, and that does not have the capacity to continue to conduct its business independently in a manner consistent with the public interest and the interest of depositors, creditors, and shareholders; or

(C) a national bank that the board of governors of the Federal Reserve System, or their designee, determines is not chartered directly or indirectly by an acquiring out-of-state bank holding company, and that does not have the capacity to conduct its business independently in a manner consistent with the public interest of depositors, creditors, and shareholders;

*** Sec. 45.** AS 06.05.990(24) is amended to read:

(24) "state financial institution" means a financial institution **that is** organized under this title **or that is subject to examination by the department under this title**;

*** Sec. 46.** AS 06.05.990 is amended by adding new paragraphs to read:

(29) "extension of credit" means a negotiable instrument, and includes promissory notes, acknowledgments of advance, due bills, invoices, overdrafts, acceptances, and similar written or oral obligations or evidence of debt whether secured or unsecured; in this paragraph, "negotiable instrument" has the meaning given in AS 45.03.104;

(30) "financial holding company" means an existing, or newly formed,

domestic bank holding company that has been approved as a financial holding company by the Federal Reserve System and not denied that status by the department under AS 06.05.237;

(31) "interstate national bank" means a national bank whose principal office, as designated in its articles of incorporation, is not located in this state;

(32) "interstate state bank" means a person organized under the laws of another state and holding a charter, license, or certificate of authority from another state to engage in a banking business.

* **Sec. 47.** AS 06.15.100 is repealed and reenacted to read:

Sec. 06.15.100. Prohibited conduct of trustees. A trustee may not

(1) receive remuneration as trustee except reasonable fees for attendance at meetings of trustees or for services as a member of a committee of trustees;

(2) use the position as trustee, or knowingly allow it to be used, to obtain preferential terms in dealings with the mutual bank for which the person is trustee;

(3) use the position as trustee, or knowingly allow it to be used, to induce an actual or prospective borrower from the mutual bank for which the person is trustee to purchase goods or services at a direct or indirect profit to the trustee.

* **Sec. 48.** AS 06.15 is amended by adding a new section to read:

Sec. 06.15.105. Trustee borrowing. A person may borrow money from the mutual bank for which the person is trustee to the same extent that a director may borrow money under AS 06.05.210.

* **Sec. 49.** AS 06.20.010 is amended by adding a new subsection to read:

(b) A person who is doing business under and as permitted by any law of the state or of the United States relating to banks, savings banks, trust companies, building and loan associations, or credit unions and who is exempt from the licensing requirement in (a) of this section shall comply with all other provisions of this chapter.

* **Sec. 50.** AS 06.45.020(a) is amended to read:

(a) Seven or more natural persons who desire to form a credit union shall subscribe before an officer competent to administer oaths, articles of incorporation in

duplicate that must state

(1) the name of the credit union;

(2) the location of the credit union and the territory in which it will operate;

(3) the names and addresses of the subscribers to the certificate and the number of shares each subscribed;

(4) the par value of the shares, which **must** [SHALL] be **a minimum of** $5 each;

(5) the proposed field of membership specified in detail;

(6) the term of the existence of the credit union, which may be perpetual; and

(7) the fact that the articles of incorporation are adopted to enable the persons to avail themselves of the advantages of this chapter.

*** Sec. 51.** AS 06.45.060(5) is amended to read:

(5) make loans, the maturities of which may not exceed **20** [12] years except as provided in this chapter, and extend lines of credit to its members, to other credit unions, and to credit union organizations and participate with other credit unions, credit union organizations, or financial organizations in making loans to credit union members in accordance with the following:

(A) loans to members shall be made in conformity with regulations adopted by the commissioner, except that

(i) a residential real estate loan **that** [WHICH] is made to finance the acquisition of a one- to four-family dwelling for the principal residence of a credit union member **that** [WHICH] is secured by a first lien on the dwelling may have a maturity not exceeding 30 years;

(ii) a loan to finance the purchase of a mobile home **that** [, WHICH] is secured by a first lien on the mobile home, to be used as the residence of a credit union member, or for the repair, alteration, or improvement of a residential dwelling that is the residence of a credit union member **must** [SHALL] have a maturity not to exceed

20 [15] years unless the loan is insured or guaranteed under (iii) of this subparagraph;

(iii) a loan secured by the insurance or guarantee of the federal government, of a state government, or an agency of either may be made for the maturity and under the terms and conditions specified in the law under which the insurance or guarantee is provided;

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan **that** [WHICH] exceeds **$20,000** [$5,000] plus pledged shares shall be approved by the board of directors;

(v) loans to other members for which directors or members of the supervisory or credit committee act as guarantor or endorser shall be approved by the board of directors when the loans standing alone or when added to an outstanding loan or loans of the guarantor or endorser exceed **$20,000** [$5,000];

(vi) the rate of interest may not exceed the greater of 15 percent a year or the rate specified in AS 45.45.010(b);

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this paragraph, when knowingly done, is considered a forfeiture of the entire interest that the note, bill, or other evidence of debt carries with it, or that has been agreed to be paid on the note, bill, or other evidence of debt; if a greater rate of interest has been paid, the person by whom it has been paid or the person's legal representatives may recover back from the credit union taking or receiving it the entire amount of interest paid, but the action must be commenced within two years from the time the usurious collection was made;

(viii) a borrower may repay a loan before maturity in whole or in part on any business day without penalty;

(ix) loans shall be paid or amortized under regulations adopted by the commissioner that consider the needs or conditions of

the borrowers, the amounts and duration of the loans, the interests of the members and the credit union, and other factors established in regulations adopted by the commissioner;

(x) the total dollar amount of real estate loans and mobile home loans outstanding may not exceed 25 percent of the assets of the credit union without the written approval of the commissioner;

(xi) a credit union with assets of less than $3,000,000 may make real estate loans with maturities in excess of 15 years only with the approval of the commissioner;

(B) a self-replenishing line of credit to a borrower may be established to a stated maximum amount on terms and conditions that may be different from terms and conditions established for another borrower;

(C) loans to other credit unions require the approval of the board of directors of the loaning credit union;

(D) loans to credit union associations require the approval of the board of directors of the credit union and may not exceed one percent of the paid-in and unimpaired capital and surplus of the credit union;

(E) participation loans with other credit unions, credit union associations, or financial organizations shall be made in accordance with written policies of the board of directors of the credit union, except that a credit union that originates a loan for which participation arrangements are made in accordance with this section shall retain an interest not less than 10 percent of the face amount of the loan;

*** Sec. 52.** AS 06.45.060(7) is amended by adding new subparagraphs to read:

(L) in bankers' acceptances issued by a financial institution whose accounts are insured by an agency of the federal government;

(M) in stock of a federal home loan bank; the investment must be limited to the minimum amount of stock required for membership in the federal home loan bank, plus any additional stock purchase required to obtain an advance of funds from a federal home loan bank;

(N) in obligations of, or issued by, a state or political

subdivision of the state, except that a credit union may not invest more than 10 percent of its unimpaired capital and surplus in the obligations of any one issuer, exclusive of general obligations of the issuer; in this subparagraph, "political subdivision of the state" includes an agency, corporation, or instrumentality of a state or political subdivision;

* **Sec. 53.** AS 06.45.060 is amended by adding a new paragraph to read:

(16) issue solicited or unsolicited credit cards or other similar credit granting devices to a member for obtaining money, goods, services or anything else of value; notwithstanding (5)(A)(vi) of this section and AS 45.45.010, when credit is extended under this section, the credit union may impose a service charge at a monthly rate as agreed upon by contract between the credit union and the member receiving the credit granting device, but the credit union may not hold the member liable for charges made on a credit card or other credit granting device before its acceptance by the member; before an unsolicited card is considered accepted by the member, the member shall execute and furnish to the credit union a written statement of acceptance; in addition, a credit union may charge fees for credit cards or other similar credit granting devices.

* **Sec. 54.** AS 06.45 is amended by adding a new section to read:

Sec. 06.45.295. Automated teller machines. (a) A state credit union may establish, maintain, and operate an automated teller machine on the premises of the main office or a branch office of the state credit union.

(b) A state credit union may establish, maintain, and operate an automated teller machine at a location other than credit union premises by notifying the department 30 days before the date of establishment. An automated teller machine operated off credit union premises shall be made available on a nondiscriminatory basis for use by depositors of other depository institutions authorized to do business in the state, upon the agreement of the other depository institutions to pay a fair and equitable amount for the use of the machine.

(c) The notice required by (b) of this section must include

(1) the location and general description of the surrounding area, including a description of the business establishment, if any, in which the machine will

be located;

(2) the manner of operation and the kinds of transactions that the machine will perform;

(3) the names of the other depository institutions that will share the machine's services; and

(4) other information required by the department.

(d) A state credit union may invest in a corporation organized to operate machines that perform automated teller services for two or more depository institutions.

(e) A person may not establish or operate an automated teller machine that accepts deposits unless those deposits are insured by the National Credit Union Share Insurance Fund or another agency of the United States that insures deposits.

* **Sec. 55.** AS 06.05.005(b)(3), 06.05.175, 06.05.272(d), 06.05.990(18); and AS 06.20.330(a) are repealed.

* **Sec. 56.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENTS. AS 06.01.028(b), added by sec. 4 of this Act, has the effect of changing Rule 45, Alaska Rules of Civil Procedure, Rules 17 and 37, Alaska Rules of Criminal Procedure, and Rule 24, Alaska Bar Rules, because AS 06.01.028(b) requires certain court orders compelling disclosure to provide for reimbursement of a financial institution's reasonable costs of complying with the order.

* **Sec. 57.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. Notwithstanding sec. 60 of this Act, the Department of Community and Economic Development may immediately proceed to adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the statutory changes.

* **Sec. 58.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INSTRUCTION TO REVISOR. The revisor of statutes is instructed to change the

catchline of

(1) AS 06.05.555 from "Certificate of authority for interstate and international branching" to "Certificate of authority for interstate state bank and international bank branching"; and

(2) AS 06.05.565 from "Applicability of title to interstate or international banks, to out-of-state depository institutions, and to bank holding companies" to "Applicability of title to interstate state banks, interstate national banks, international banks, and bank holding companies."

*** Sec. 59.** Section 57 of this Act takes effect immediately under AS 01.10.070(c).

*** Sec. 60.** Except as provided in sec. 59 of this Act, this Act takes effect July 1, 2002.

Section Comments for Senate Finance Committee Substitute (Version R) for

SCS CSHB 106(JUD)

Overview

The Gramm-Leach-Bliley Act (GLBA), enacted on November 12, 1999 is the most sweeping legislation affecting banks and other financial institutions since the Depression. Most believe GLBA will have a major impact on cross-industry mergers and affiliations, and customer privacy.

Many areas of GLBA will supercede existing state law. The purpose of this bill is two-fold with respect to GLBA. First, this bill makes changes to ensure there are no conflicts in the state banking code with GLBA. Second, the bill gives state-chartered banks powers comparable to those of national banks as a result of the implementation of GLBA.

Specifically, this bill contains provisions to provide for a new type of financial institution, a financial holding company. GLBA allows for a bank holding company to elect status as a financial holding company, and subsequently engage in activities that are financial in nature, or that are incidental or complementary to a financial activity. The state statute restricting a bank's ability to engage in insurance activities will be repealed, as GLBA authorizes this as a permissible activity. We believe our state statute addressing confidentiality of financial institution records to be stricter than, but not inconsistent with GLBA. However, we are modifying it and relocating it from 06.05 (Alaska Banking Code) to 06.01 (Administration) in order to provide this protection to all customers of financial institutions subject to this provision under Title 6.

Alaska has long had a provision in the Alaska Banking Code (at AS 06.05.175) that protects the privacy of customer information on record at a bank. This bill moves that section of law out of the Alaska Banking Code and into AS 06.01 (Administration). As a result, it extends the protections of the confidentiality provisions beyond banks to include credit unions and other financial entities.

The bill contains improvements to several statutes that were requested by the industry. These improvements include providing alternate methods of publicizing quarterly financial reports, eliminating the large financial requirement placed on bank directors, clarifying the legal lending limits for state banks, removing unnecessary restrictions on directors of mutual savings banks, and providing parity between state and federal credit unions.

The bill helps the department meet its responsibilities more quickly and with more clarity by amending the "wild card statute." The amendment allows the department to react faster to changes in federal law and to maintain parity and competition between state-chartered and national depository institutions. The bill clarifies from which institutions an employee of the department may borrow, and repeals the provisions of state statute that require national banks to file an application to establish an interstate branch.

Section 1 Gives purpose of the bill

Section 2
Section 06.01.015(a)
This section changes the examination cycle frequency requirement to every 18 months.

Old law requirement was "each year."

Section 3
Section 06.01.020(a)
Gives the department authority to respond more quickly to parity discrepancies between state and national banks (with some restrictions).

Old law required department to implement an emergency regulation in order to provide parity, which was more cumbersome and less timely.

Section 4
Section 06.01.028
This new section, as proposed by the division, provides for confidential treatment of customers/depositors records and clarifies when this information can be released and procedures to do so. This section provides for "opt-in" language with an exception for marketing partners of financial institutions for financial services or products only. This is more protective of an institution's customer/depositor information than the "opt-out" provision in GLBA. The "opt-in" language has been in Alaska statute for 30 years.

Old law was located in Chapter 5 (Alaska Banking Code) only. By moving this section to Chapter 1 (Administration), it applies to all institutions subject to Title 6.

Section 5
Section 06.01.040
This section provides for the department to conduct joint examinations with the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA).

Old law did not include NCUA.

Section 6
Section 06.01.050(3)
To provide definition of the term "financial institution."

Old law did not define this term.

Section 7
Section 06.01.050(4)
Provides a definition of the term "state financial institution."

Old law did not define this term.

Section 8
Section 06.05.005(a)
Amended to insert "state" and "state branches" for clarity.

Section 9
Section 06.05.050
To provide alternate, cost effective methods for state banks to make public quarterly reports of condition such as posting the report at the bank's Internet web address, in the bank's lobby, or providing copies upon request.

Old law required costly publication in a local newspaper.

Section 10
Section 06.05.065(a)
Clears up a problem where an examiner, the director and commissioner can borrow money and not get fired.

The way the old law is written, we could get fired if we borrow money even from a national bank, which severely limits our choices of where to get loans.

Section 11
Section 06.05.065(b)
Amended to allow an employee of the department to retain a pre-existing extension of credit from any institution that was incurred prior to employment as long as it is not renewed.

Old law only allowed for a mortgage loan to be retained.

Section 12
Section 06.05.205
Provides state banks parity with national banks with respect to loan limits.

Old law did not provide parity.

Section 13
Section 06.05.209(b)
Permits a state bank to charge a market rate on credit cards it issues and provides an exemption from the legal rate of interest at AS 45.45.010.

Old law imposed a cap of 17% and specific fees for cash advances.

Section 14
Section 06.05.210(a)
Removes bank employees from special restrictions imposed on directors and executive officers, and liberalizes borrowing restrictions. It also clarifies reporting requirements, for executive officers and directors of state banks.

Old law imposed loan limits and reporting requirements on employees who had no influence or decision-making authority regarding management and direction of the bank.

Section 15
Section 06.05.210
Adds a new section that subjects all employees and directors of a state bank to the loan limits imposed at AS 06.05.205.

Old law did not impose this requirement.

Section 16
Section 06.05.237
New section provides for a bank holding company to elect to become, and have the powers of, a financial holding company.

Old law did not address financial holding companies, a newly created entity as defined in GLBA.

Section 17
Section 06.05.245
Amended to correspond with a change made to AS 06.05.230 in a prior year, which allows a bank to take title to property when extending a negatively amortizing loan.

Old law conflicted with AS 06.05.230.

Section 18
Section 06.05.272(b)
Provides parity with national banks on a state bank's investment in subsidiaries.

Old law imposed limits that did not provide parity once GLBA became effective.

Section 19
Section 06.05.301(a)
Inserted "state banks" for clarity.

Section 20
Section 06.05.350(d)
Prohibits use of the word "bank" in a business name unless the business is a bank formed under Title 6 or another state or federal agency, unless it is clear the business does not represent a bank (example Food Bank, Blood Bank).

Old law did not allow for use of the word "bank" in a business name where it is clear the business does not represent a bank (example Food Bank, Blood Bank).

Section 21
Section 06.05.350
Authorizes the department to determine when a person may use other forms of the word "bank" in its name.

Old law did not address other forms of the word "bank" such as banc, or banque.

Section 22 - 25
Section 06.05.426
Removes application requirement for a state bank to establish an off-premises ATM by giving 30 days prior notice to department.

Old law required approval from the department.

Section 26
Section 06.05.435(c)
Requires a director to own $1,000 in par value or market value of stock that controls the bank.

Old law was based strictly on par value of stock.

Section 27
Section 06.05.435
New section permits a director to use his/her equity interest in a bank holding company to satisfy the required investment in AS 06.05.435(c) and provides effective dates to determine value of investment

Old law required approval by the department.

Section 28
Section 06.05.550
Differentiates between an interstate **state** bank and an interstate **national** bank with respect the authority to branch.

Old law used one term, interstate bank, to refer to both.

Section 29 - 34
Section 06.05.555
Replace the term "interstate bank" with "interstate state bank" with respect to obtaining a certificate of authority to branch in the state

Old law required both an interstate state bank, and an interstate national bank to obtain a certificate of authority from the department.

Section 35
Section 06.05.557
New section requires an interstate national bank that is branching into the state to file a notice with the department

Old law required the department to issue a certificate of authority.

Section 36 - 40
Section 06.05.565
An interstate state bank is subject to Title 6 and corresponding regulations. An interstate national bank is subject to reporting requirements. Also adds a new section, which clarifies that an interstate national bank is subject to AS 06.05.548 (limitation on concentration of deposits in the state) and AS 06.05.550 (branching requirements in the state).

Old law provided that an interstate national bank is subject to all of Title 6.

Section 41
Section 06.05.570(a)
Requires application to the department if an out of state bank holding company acquires a state bank or bank holding company of a state bank.

Old law required application if an out of state bank holding company acquired any bank, including national banks, or bank holding company in the state.

Section 42-46
Section 06.05.990
Clarifies several definitions and adds some new definitions.

Old law was not clear in some cases and did not provide for some of the definitions.

Section 47
Section 06.15.100
Removes the prohibition against trustees of a mutual savings bank from borrowing from the bank, and gives them authority to provide services to the bank and to profit for providing services to the bank.

Old law prohibited both practices.

Section 48
Section 06.15.105
Permits trustees of a mutual savings bank to borrow from the bank to the same extent directors of a commercial bank can borrower under AS 06.05.210.

Old law prohibited borrowing.

Section 49
Section 06.20.010
New subsection, which clarifies that although some entities are exempt from licensing under the Alaska Small Loans Act, they will otherwise remain subject to the act.

Old law exempted these institutions from the entire Act.

Section 50
Section 06.45.020
Provides for a minimum par value of credit union shares.

Old law provided for a fixed dollar amount for the par value of credit union shares.

Section 51 - 53
Section 06.45.060
Provides state credit unions parity with federal credit union powers for loan terms, allowable investments, and the issuance of credit cards.

Old law did not provide parity.

Section 54
Section 06.45.295
Authorizes state credit unions to establish, maintain and operate automated teller machines.

Old law did not address automated teller machines.

Section 55
Repeals 06.05.005(b)(3), 06.05.175, 06.05.272(d), 06.05.990(18) and 06.20.330(a).

Section 56
Explains that AS 06.01.028(b) indirectly changes Rule 45 of Alaska Rules of Civil Procedure, Rules 17 and 37 of Alaska Rules of Criminal Procedure, and Rule 24 of Alaska Bar Rules.

Section 57
Adds a new section to provide for transition regulations, giving the department authority to immediately proceed to adopt regulations necessary to implement the changes made by this Act. Regulations would take effect on the date of the statutory changes.

Section 58
Provides instructions for the revisor to change the catchline of 2 sections of the banking code.

Section 59
States that Section 57 of this Act takes effect immediately under AS 01.10.070(c).

Section 60
States the act takes effect July 1, 2002 except for section 59 of this act.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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MEMORANDUM February 28, 2002

SUBJECT: SCS CSHB 106( ) (Work Order No. 22-GH1026/R)

TO: Senator Pete Kelly
Attn: Laura

FROM: Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

Consideration in sec. 06.01.028. As discussed in my earlier memo, sec. 06.01.028 must meet certain standards set by the Gramm-Leach-Bliley Act ("Act"). The changes that are made in this version appear to increase the likelihood that sec. 06.01.028 will be considered to provide more protection for customers than the Act and, thus, not to be considered to violate the Act.

If I may be of further assistance, please advise.

TLB:pjc
02-027.pjc

Enclosure

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MEMORANDUM February 27, 2002

SUBJECT: SCS CSHB 106( ) (Work Order No. 22-GH1026/B)

TO: Senator Pete Kelly
Attn: Laura

FROM: Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

1. Title. The title in this bill draft returns to the title that came out of the House. So this draft does not require passage of SCR 16, the Senate concurrent resolution introduced in the Senate to authorize a title change in the Senate.

2. Consideration in sec. 06.01.028. There is an issue in sec. 06.01.028 that you should be aware of, although it may not present a problem in this version. The Gramm-Leach-Bliley Act (15 U.S.C. 6801 - 6809, "Act") provides at 15 U.S.C. 6807 that a state confidentiality provision that provides more protection than the Act for the records of financial institution customers is not inconsistent with the Act, and is, therefore, not prohibited by the Act. The version of sec. 06.01.028(a) in this draft bill may provide more protection for the customer than the Act, because it includes sec. 06.01.028(a)(1) as well as sec. 06.01.028(a)(5). However, I cannot say for sure that the federal government would reach that conclusion. The Division of Banking has indicated that the federal government has suggested to another state that it would consider a provision with some similar features in that other state to provide more protection and, therefore, not to violate the Act.

If I may be of further assistance, please advise.

TLB:med
02-224.med

Enclosure

The New Federal Financial Privacy Law

A Comprehensive Approach That Should be Given Time to Work

provided by:
Senator Pete Kelly
FOR HB 106 packet

Financial Services Coordinating Council
Representing America's Diversified Financial Services Community

FSCC Financial Services Coordinating Council

Representing America's Diversified Financial Services Community

This booklet provides an overview of the comprehensive new federal financial privacy law that was enacted as part of the Gramm-Leach-Bliley Act of 1999. It discusses the reasons these rigorous new privacy provisions, which will not be implemented until November 2000, should be given time to work before any additional, and possibly counter-productive, rules are considered.

The booklet was developed by the Financial Services Coordinating Council, which is made up of the principal national trade associations from each of the five sectors of the financial services industry. The Council's members are the American Bankers Association, the American Council of Life Insurance, the American Insurance Association, the Investment Company Institute, and the Securities Industry Association. Each of these associations has made consumer privacy a top priority.

The Council wishes to express its appreciation to the author of this booklet—John Dugan, a partner in the law firm of Covington and Burling and an expert in the laws governing financial institutions.

The New Federal Financial Privacy Law

A Comprehensive Approach That Should be Given Time to Work

With the new financial services modernization legislation signed into law, a comprehensive and carefully constructed set of federal privacy protections is now in place for financial institution consumers. These rigorous new federal privacy protections, which are described below, are now being implemented by regulatory agencies and should be given time to work. States should not rush to change existing laws or adopt new laws that impose additional layers of privacy regulation. Such laws are likely to complicate implementation of federal privacy protections, and, at worst, will undermine consumer benefits that are built into the new federal privacy law. Instead of acting hastily, states should carefully evaluate the fast-track implementation of the new federal privacy provisions during the next year. Only then should states even consider whether additional steps might be appropriate.

Title V of the recently-enacted financial services modernization legislation, the Gramm-Leach-Bliley Act (the "Act"), subjects financial institutions to one of the most extensive regimes of privacy regulation that has ever been imposed in the United States. As a result of the Act and other federal privacy statutes, including the Fair Credit Reporting Act ("FCRA"), financial institution consumers now have clear, comprehensive, and rigorous privacy protections.

For example, unlike virtually any other types of consumers, financial institution consumers *must* receive detailed annual disclosures regarding a financial institution's policies for collecting and disclosing their personal information. They must also receive prior notice and the right to "opt out" of the institution's transfer of their personal information to unaffiliated third parties (with limited exceptions). They are

fully protected from the institution disclosing their account access information to third parties for marketing purposes. And the confidentiality and security of their personal information will be subject to extensive new standards that financial regulators are required to impose on financial institutions.

At the same time, these comprehensive new privacy protections expressly recognize that consumers benefit from financial institutions using consumer information for certain limited purposes. For example, the Act permits a financial institution to disclose a consumer's information to carry out a transaction initiated by the consumer; to provide a consolidated statement of the customer's balances held in different business units of a financial organization; and to provide discounts to a consumer reflecting the consumer's overall relationship with the financial organization.

In short, the new federal privacy law is a carefully constructed balance between the need to protect the privacy of a consumer's financial information, and the need to protect the consumer's benefits that result from certain uses of that information. During the next five months, federal and state financial institution regulatory agencies—the federal banking agencies, Treasury Department, Securities and Exchange Commission, Federal Trade Commission, and state insurance commissioners[1]—will issue "fast track" regulations that implement in detail this carefully constructed balance. (In fact, the regulators have declared that privacy regulations are their number one priority among the many new actions they must take to implement the broad new financial services modernization law.)

As the implementation of this new federal privacy law plays out, individual states should not rush to adopt privacy restrictions that go beyond those in the Act. As discussed in more detail below, the complexity of this new area of consumer regulation means that even the best-intentioned privacy law can cause significant and unintended consumer harm. A multiplicity of different laws in different states would also lead inevitably to tremendous customer confusion and increased consumer costs. Both states and the federal government will gain much experience and information from the implementation of the new law—and it would be helpful to have the benefit of that experience and information before taking additional action.

Set forth below is a detailed discussion of (1) the new privacy protections in the Gramm-Leach-Bliley Act; (2) the existing privacy protections of the FCRA and other federal statutes; and (3) the reasons why states should refrain from taking additional actions now.

[1] State insurance commissioners, which enforce the Act's new privacy restrictions as they apply to insurance companies, are encouraged but not required to adopt implementing regulations that are similar to those adopted by the federal regulatory agencies.

Privacy Protections Mandated By Gramm-Leach-Bliley

The Gramm-Leach-Bliley Act provides four fundamental privacy protections to financial institution consumers. Each financial institution must:

1. Clearly and conspicuously disclose to consumers—at least once each year—its policies for collecting and sharing the consumers' nonpublic personal information.
2. Afford consumers the right to "opt out" of disclosures of their nonpublic personal information to non-affiliated third parties, with limited exceptions.
3. *Not* disclose account access information of consumers to third party marketers.
4. Abide by new regulatory standards to protect the security and confidentiality of its consumers' nonpublic personal information.[2]

These four new privacy protections apply broadly to a wide range of consumers because of the expansive definitions of three of the Act's key terms. First, the term "financial institution" extends to any kind of *regulated* financial company, including banks, bank holding companies, financial holding companies, securities firms, insurance companies, insurance agencies, thrifts, and credit unions. But it also includes any other institution "the business of which is engaging in financial activities" as defined by the Act, *even if the institution is not itself regulated* (or is subject to less extensive regulation). As a result, the Act's new privacy protections will extend to consumers of such financial institutions as mortgage brokers, finance companies, and check cashers. And, because of the particular way in which the Act defines "financial activities," these new protections will even extend to customers of travel agencies, and possibly to customers of real estate brokers as well.

Second, the term "nonpublic personal information" means *any* personally identifiable financial information of a consumer that is obtained by the financial institution by *any* means, except for information that is otherwise publicly available. The definition expressly extends to any list, description, or grouping of consumers—*including* publicly available information about those consumers—that is *derived* using nonpublic personal information.

Finally, the term financial institution "consumer" means *any* individual who obtains financial products or services from the financial institution primarily for "personal, family, or household purposes."

In sum, these three definitions ensure that the Act's new privacy protections will

[2] In addition to these four protections, the Act prohibits the abuse of "pretext calling": No person may obtain or cause the disclosure of customer information from a financial institution by fraudulent or deceptive means.

apply to a broad range of personal financial information of consumers at both regulated and unregulated "financial" institutions.

Establishment and Disclosure of Privacy Policy

The Act's most basic new privacy protection—and perhaps its most important—is its fundamental disclosure requirement: Each financial institution must clearly, conspicuously, and regularly disclose to its consumers its policies for collecting and sharing the consumers' nonpublic personal information. This privacy policy disclosure requirement is far-reaching in three respects.

First, the required contents of the privacy policy sweep in a wide range of information that is important to consumers. In general, these contents must include the financial institution's policies and procedures with respect to:

- The categories of nonpublic personal information that the institution collects;
- The disclosure of nonpublic personal information to affiliates and third parties, including the categories of information disclosed and the categories of persons that receive the information (with limited exceptions);
- The disclosure of nonpublic personal information of persons who are no longer customers of the institution; and
- The protection of the security and confidentiality of nonpublic personal information.

Second, a financial institution must make this privacy policy disclosure to *all* of its customers, without exception. The institution's first disclosure of the policy must be made at the time the customer relationship is established, so that the customer can understand the institution's privacy policy at the time that relationship is begun. Thereafter, the policy must be disclosed once each year to the customer so long as the customer relationship continues—thus ensuring timely notice to the customer regarding any changes to the institution's policy.

Third, the institution's privacy policy disclosure must be "clear and conspicuous." This term is a widely-accepted regulatory standard, with a substantial body of precedent, that will ensure that the privacy policy disclosures will be made in a manner that an ordinary consumer will clearly notice and understand.

In sum, Congress plainly intended this broad new privacy policy disclosure requirement—which has not been imposed on any other industry—to make financial institution customers the most informed "privacy consumers" in the nation. The new disclosures will allow consumers to take privacy policies expressly into account in deciding whether to establish or maintain a customer relationship with a financial institution—or whether to avoid or termi-

nate that relationship altogether. Such choices will also enable consumers to effectively exert their own market pressures to demand features of a privacy policy that are not already mandated by the Act—and companies that do not respond to the growing consumer concern over privacy will be punished in the marketplace.

Consumer "Opt-Out" of Disclosures to Third Parties

In addition to generally mandating full disclosure of a financial institution's privacy policies, the Act recognizes that one type of transfer of nonpublic personal information—*i.e.*, to non-affiliated third parties—raises heightened concerns that warrant an additional layer of consumer protection. Thus, the Act's second basic privacy protection is this: a financial institution consumer must be given the means to prevent the institution from transferring the consumer's nonpublic personal information to a non-affiliated third party—commonly referred to as the right to "opt out."

Specifically, a financial institution is prohibited from disclosing nonpublic personal information to a non-affiliated third party unless—

- The financial institution provides the consumer the privacy policy disclosure described above;
- The financial institution *clearly and conspicuously* discloses to the consumer that nonpublic personal information may be disclosed to the third party;
- The consumer is given the opportunity, *before* any of his or her information is disclosed to the third party, to direct that the information *not* be so disclosed (the right to "opt out"); and
- The consumer is given an explanation of how to exercise the opt-out.

As a result of this protection, a consumer will be able to establish and maintain a customer relationship with a financial institution, yet prevent that institution from, among other things, selling or otherwise disclosing his or her personal information to unrelated third parties for marketing purposes.

Congress recognized that establishing this additional layer of consumer protection would generally provide clear benefits to the consumer. Yet it also expressly recognized that exceptions should apply in limited circumstances where consumers would benefit even more from particular types of disclosures to third parties, or where other important public policies required such disclosure.

For example, a financial institution need not provide an opt-out where the institution transfers customer information to third-party processors to service the customer's account (such as to prepare account statements). The consumer's information is protected, however, because the third party becomes subject to the same confidentiality requirements that apply to the financial institution.

Similarly, no opt-out is required for information that must be transferred to carry out a transaction that is authorized by a customer, such as a payment, debit, or credit card transaction. And no opt-out must be provided in order to: disclose customer information to a credit bureau; comply with a regulatory investigation by state or federal authorities; or protect against fraud or other unauthorized transactions.

Congress also expressly provided in the Act that an opt-out is not required in order for a financial institution to share information with a company within the same corporate family—an *affiliate*—as opposed to a non-affiliated third party. In doing so, Congress reaffirmed the general rule it had laid down in 1996 legislation (discussed below) that applies to *all* types of corporations (not just financial institutions): there generally should be *no* restrictions placed on the exchange of information among affiliated companies. The rationale for this conclusion, as explained below, is straightforward: consumers do not expect such restrictions, and the costs to consumers of imposing an affiliate opt-out far outweigh any potential consumer benefits.

With respect to consumer expectations, privacy concerns are simply not as great when information stays strictly within the affiliated business units of a single corporate organization with which the consumer has chosen to do business, rather than being sold to an unrelated third party with which the consumer has had no connection. The fact is that branching laws and other peculiarities of financial law have encouraged financial institutions to do business through separately incorporated affiliates rather than through separate departments within a single entity—to the point where some financial institutions operate through well over a hundred different affiliates. The Act effectively recognizes that consumers do not distinguish between these separate affiliates of a corporation any more than they do between separate departments or divisions of a corporation. Such technical legal distinctions simply do not warrant arbitrary restrictions such as an opt-out requirement.

Moreover, customers demand, and even take for granted, that information will be shared among affiliates for their benefit. For example, customers expect consolidated account statements; "relationship" discounts on products and services; fast credit approvals; and custom-designed products that are tailored to their individual needs. Congress recognized in the new privacy law that the government should not encourage consumers to "opt out" of these benefits, when the result would be costly dual information systems that would only result in increased costs for these very same consumers. Similarly, Congress did not want to hinder the fraud detection programs that also rely on information exchanges within a corporate organization.

In sum, Congress recognized that the fundamental premise of the financial services legislation is to permit diversified financial companies to provide value to consumers through integrated products and services; that integration can only occur

through affiliate exchanges of information: and that consumers of diversified financial companies benefit from and expect that integration. As a result, the opt-out was not extended to affiliate information exchanges.

Prohibition on Disclosure of Account Information

The Act's third privacy protection for financial institution consumers is a straight prohibition: A financial institution may not disclose an account number "or similar form of access number or access code" for a credit card account, deposit account, or transaction account of a consumer to any non-affiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

This strict prohibition was enacted in response to the limited but controversial practice in which some financial institutions reportedly provided third party telemarketers with direct access to account numbers of the financial institutions' customers. This practice allowed the telemarketers to access the customer's account directly to receive payment for a product offered by the telemarketers, even in circumstances in which the customer's consent to the transaction was unclear. The Act's third consumer protection provision makes such third party access to account numbers flatly illegal.

Regulatory Standards to Protect Security and Confidentiality

The Act's fourth consumer privacy protection derives from the straightforward declaration at the beginning of the privacy title that "it is the policy of the Congress that each financial institution has an affirmative and continuing obligation to respect the privacy of its customers and to protect the security and confidentiality of those customers' nonpublic personal information." This broad declaration is not merely a statement of intent, because a later provision in the law expressly requires the financial institution regulators, "in furtherance of the policy," to establish safeguard standards for financial institutions that—

- Ensure the security and confidentiality of customer records and information;
- Protect against any anticipated threats or hazards to the security or integrity of such records; and
- Protect against unauthorized access to such records that could result in substantial harm or inconvenience to the customer.

Thus, these broad new safeguard standards will help ensure the physical security and integrity of customer records.

Rulemaking and Enforcement

The Act imposes a comprehensive rulemaking and enforcement regime regarding the new customer privacy protections. The relevant financial institution regulators consist of the federal banking agencies (the Federal Reserve, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, and Office of Thrift Supervision); the National Credit Union Administration; the Securities and Exchange Commission; the Treasury Department; the state insurance commissioners; and the Federal Trade Commission. (The FTC will have jurisdiction over any institution or person that is subject to the privacy provisions but is not otherwise regulated as a "financial institution.")

The regulators are expected to issue final regulations implementing the Act by May 12, 2000. The regulations become effective six months after they are issued, which means the effective date will be in November of 2000. The regulators have already committed to meet this exceptionally short schedule, and have also committed, as the statute requires, to coordinate their efforts so as to produce similarly worded regulations.[3]

The result should be a comprehensive set of privacy regulations that will apply equally to every type of financial institution in the country. These regulations, like the statutory provisions they implement, will be enforced by the regulators using the full enforcement authority of their operating statutes. This means, for example, that regulators will be able to impose substantial fines and injunctive relief in order to remedy violations of the regulations and deter future violations.

FCRA and Other Privacy Protections

The Act's new privacy provisions will not displace in any way the many different privacy protections that are already in place under existing federal laws. Instead, the new privacy provisions will be layered on to the privacy protections that currently apply to financial institution customers.

Perhaps the most important of these existing privacy protection laws is the Fair Credit Reporting Act, which establishes two fundamental principles with respect to financial institution consumer privacy. Under the first principle, strict consumer privacy protections have been put in place for an especially sensitive category of personal information gathered by institutions. This sensitive category—sometimes referred to as "application" information—is information relating to a consumer's creditworthiness, credit capacity, or certain other characteristics used in making credit, insurance, employment, or certain other "eligibility" decisions about a consumer.

[3] The federal regulatory agencies are required to consult with representatives of state insurance authorities in order to ensure that rules are consistent and coordinated at both the state and federal level.

Thus, information gathered from a consumer by a financial institution in a credit application—*e.g.*, the consumer's statement of total assets—falls into this category. At the same time, however, the category does not include information gathered from the institution's direct experiences or interactions with a consumer—so-called "experience" information, such as the consumer's payment history with that institution.

Under the FCRA, an institution generally may not share application information with *any* unrelated third party—even if an opt-out is provided—without subjecting itself to extensive regulation as a "consumer reporting agency." In 1996, Congress amended the law to permit sharing of application information with an affiliate without triggering consumer reporting agency regulation, but only if the customer is provided the right to opt out of such sharing.

These two consumer protections in the FCRA for the sharing of application information with third parties and affiliates were not reduced in any manner by the new privacy provisions added by the Gramm-Leach-Bliley Act.

Under the second FCRA principle, the sharing of information with *affiliates* (other than application information) is not subject to *any* restrictions—and contrary state law is expressly preempted. Until 2004, "[n]o requirement or prohibition may be imposed under the laws of any State . . . with respect to the exchange of information among persons affiliated by common ownership or common corporate control . . ."[4]

Again, this express federal preemption of state restrictions on information exchanges among affiliates is not limited or reduced in any way by the privacy provisions of the Gramm-Leach Bliley Act.

Finally, the many other federal statutes that establish privacy protections for consumers, listed below, are also not supplanted or limited by the Gramm-Leach-Bliley privacy provisions:

The Electronic Fund Transfer Act
(EFTA) 15 U.S.C. 1693 et seq.

The Truth-in-Lending Act
(TILA) 15 U.S.C. 1601 et seq.

The Fair Credit Billing Act
(FCBA) 15 U.S.C. 1666 et seq.

The Truth-in-Savings Act
(TISA) 12 U.S.C. 4301 et seq.

The Expedited Funds Availability Act
(EFAA) 12 U.S.C. 4001 et seq.

The Equal Credit Opportunity Act
(ECOA) 15 U.S.C. 1691

The Electronic Communications Privacy Act
(ECPA) 18 U.S.C. 2510 et seq.

The Right to Financial Privacy Act
(RFPA) 12 U.S.C. 3401 et seq.

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[4] 15 U.S.C. 1681t(b)(2).

The Federal Trade Commission Act (FTCA) 15 U.S.C. 41 et seq.

The Telemarketing and Consumer Fraud and Abuse Prevention Act 15 U.S.C. 6101

The Telephone Consumer Protection Act (TCPA) 47 U.S.C. 227

The Insurance Information and Privacy Protection Model Act

The Identity Theft and Assumption Deterrence Act of 1998 18 U.S.C. 1028 et seq.

No Need for Additional State Action

In summary, with the new privacy provisions of the Gramm-Leach-Bliley Act added to the privacy provisions of the FCRA and other federal statutes, financial institution customers will be subject to a rigorous and comprehensive set of privacy protections that simply does not apply to virtually any other class of consumers. This is true even though other types of companies have privacy issues that are just as great, if not greater, than those of financial institutions (*e.g.*, grocery stores and other retailers tracking customer spending habits in databases that are sold to third parties; Internet providers tracking an individual's web-surfing habits, such as an on-line bookseller that monitors a consumer's book browsing preferences for the benefit of advertisers; etc.).

States should give these comprehensive new protections for financial institutions time to work. Their privacy efforts should be focused, while the new law is being implemented, on other types of consumers that enjoy fewer privacy protections. And these efforts should also be focused on the careful implementation of the protections in the new federal privacy law as they apply to insurance company customers, which is a role that the federal law expressly reserves for state action. Moreover, in carrying out that role, states need to consult with one another and with the federal financial regulatory agencies in order to produce a consistent set of rules.

The new privacy law does not preempt states from ever passing additional financial privacy laws that go beyond the privacy restrictions of the Gramm-Leach-Bliley Act. In fact, a provision in the Act makes clear that the Act will not preempt state laws that afford greater privacy protections to consumers than the Act's provisions. However, this provision clearly was not intended to serve as an invitation to the states to rush to pass new financial privacy laws—especially when the Act's new privacy protections have yet to be implemented. Instead, the provision was merely intended to clarify that the Act's new privacy provisions, unlike the FCRA provision that continues to preempt state restrictions on affiliate information sharing, are not intended to preempt most state laws.

Most importantly, it would be costly and counterproductive for individual states to impose new financial privacy restrictions now. The privacy issue is simply much

more complex than it first appears. Given consumers' legitimate concerns about privacy, it may be possible for a state to pass more restrictive privacy provisions than are included in the new federal privacy law. But that approach would also risk choking off legitimate flows of information that produce real consumer benefits.

For example, excessive privacy restrictions could: significantly raise the cost of credit by making material credit information harder to obtain; increase fraud by allowing bad actors to prevent the disclosure of negative information about themselves; reduce innovation by making it harder to design new products to meet consumer needs; and decrease consumer convenience. While everyone wants their privacy protected, no one wants to needlessly incur these costs.

The rigorous new federal privacy law strikes a balance between these competing interests. As the law's implementation plays out, both the states and the federal government will gain much-needed experience as to whether the balance needs to be adjusted. In the meantime, without the benefit of that experience, it would be rash and unwise for states to risk adding well-intended new privacy laws that could result in real consumer harm.

One final point. A patchwork of *different* state laws will inevitably impose great expenses on what is increasingly an interstate financial system. Numerous and conflicting state approaches to financial privacy protection will also cause tremendous customer confusion about which rules apply. As the character of the market for financial services moves away from strictly local providers, the need for the uniform approach to privacy protection provided by federal action makes more sense. The new privacy protections in the Gramm-Leach-Bliley Act provide just such an approach.

* * *

In sum, Congress has acted to provide strong new privacy protections to financial institution customers. Federal and state regulators are now acting to implement those protections. States should refrain from taking additional actions now and instead allow the Act's new privacy protections to work.

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provided by: DCED
• Banking •

Section Comments for SCS CSHB 106(JUD)

Overview

The Gramm-Leach-Bliley Act (GLBA), enacted on November 12, 1999 is the most sweeping legislation affecting banks and other financial institutions since the Depression. Most believe GLBA will have a major impact on cross-industry mergers and affiliations, and customer privacy.

Many areas of GLBA will supercede existing state law. The purpose of this bill is two-fold with respect to GLBA. First, this bill makes changes to ensure there are no conflicts in the state banking code with GLBA. Second, the bill gives state-chartered banks powers comparable to those of national banks as a result of the implementation of GLBA.

Specifically, this bill contains provisions to provide for a new type of financial institution, a financial holding company. GLBA allows for a bank holding company to elect status as a financial holding company, and subsequently engage in activities that are financial in nature, or that are incidental or complementary to a financial activity. The state statute restricting a bank's ability to engage in insurance activities will be repealed, as GLBA authorizes this as a permissible activity. We believe our state statute addressing confidentiality of financial institution records to be stricter than, but not inconsistent with GLBA. However, we are modifying it and relocating it from 06.05 (Alaska Banking Code) to 06.01 (Administration) in order to provide this protection to all customers of financial institutions subject to this provision under Title 6.

Alaska has long had a provision in the Alaska Banking Code (at AS 06.05.175) that protects the privacy of customer information on record at a bank. This bill moves that section of law out of the Alaska Banking Code and into AS 06.01 (Administration). As a result, it extends the protections of the confidentiality provisions beyond banks to include credit unions and other financial entities.

The bill contains improvements to several statutes that were requested by the industry. These improvements include providing alternate methods of publicizing quarterly financial reports, eliminating the large financial requirement placed on bank directors, clarifying the legal lending limits for state banks, removing unnecessary restrictions on directors of mutual savings banks, and providing parity between state and federal credit unions.

The bill helps the department meet its responsibilities more quickly and with more clarity by amending the "wild card statute." The amendment allows the department to react faster to changes in federal law and to maintain parity and competition between state-chartered and national depository institutions. The bill clarifies from which institutions an employee of the department may borrow, and repeals the provisions of state statute that require national banks to file an application to establish an interstate branch.

Section 1 Gives purpose of the bill

Section 2
Section 06.01.015(a)
This section changes the examination cycle frequency requirement to every 18 months.

Old law requirement was "each year."

Section 3
Section 06.01.020(a)
Gives the department authority to respond more quickly to parity discrepancies between state and national banks (with some restrictions).

Old law required department to implement an emergency regulation in order to provide parity, which was more cumbersome and less timely.

Section 4
Section 06.01.028
This new section, as proposed by the division, provides for confidential treatment of customers/depositors records and clarifies when this information can be released and procedures to do so. This section provides for "opt-in" language with an exception for financial institutions without affiliates, which is more protective of customer/depositor information than the "opt-out" provision in GLBA. The "opt-in" language has been in Alaska

statute for 30 years. An amendment was made at the end of session, which changes it back, to "opt-out." BSC's proposed amendment restores the compromise opt-in language BSC worked out with the Alaska Bankers Association.

Old law was located in Chapter 5 (Alaska Banking Code) only. By moving this section to Chapter 1 (Administration), it applies to all institutions subject in Title 6.

Section 5
Section 06.01.040
This section provides for the department to conduct joint examinations with the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA).

Old law did not include NCUA.

Section 6
Section 06.01.050(3)
To provide definition of the term "financial institution."

Old law did not define this term.

Section 7
Section 06.01.050(4)
Provides a definition of the term "state financial institution."

Old law did not define this term.

Section 8
Section 06.05.005(a)
Amended to insert "state" and "state branches" for clarity.

Section 9
Section 06.05.050
To provide alternate, cost effective methods for state banks to make public quarterly reports of condition such as posting the report at the bank's Internet web address, in the bank's lobby, or providing copies upon request.

Old law required costly publication in a local newspaper.

Section 10
Section 06.05.065(a)
Clears up a problem where an examiner, the director and commissioner can borrow money and not get fired.

The way the old law is written, we could get fired if we borrow money even from a national bank, which severely limits our choices of where to get loans.

Section 11
Section 06.05.065(b)
Amended to allow an employee of the department to retain a pre-existing extension of credit from any institution that was incurred prior to employment as long as it is not renewed.

Old law only allowed for a mortgage loan to be retained.

Section 12
Section 06.05.205
Provides state banks parity with national banks with respect to loan limits.

Old law did not provide parity.

Section 13 and 14
Section 06.05.209(b)
Permits a state bank to charge a market rate on credit cards it issues and provides an exemption from the legal rate of interest at AS 45.45.010 and subjects banks to AS 45.45.920, a new section dealing with restrictions on what credit card companies and banks can charge their services fees to merchant. Limit the fee to be charged only on the sale, excluding taxes. Our proposed amendments delete section 14 and other sections related to credit card limitations imposed in the previous committee.

Old law imposed a cap of 17% and specific fees for cash advances.

Section 15
Section 06.05.210(a)
Removes bank employees from special restrictions imposed on directors and executive officers, and liberalizes borrowing restrictions. It also clarifies reporting requirements, for executive officers and directors of state banks.

Old law imposed loan limits and reporting requirements on employees who had no influence or decision-making authority regarding management and direction of the bank.

Section 16
Section 06.05.210
Adds a new section that subjects all employees and directors of a state bank to the loan limits imposed at AS 06.05.205.

Old law did not impose this requirement.

Section 17
Section 06.05.237
New section provides for a bank holding company to elect to become, and have the powers of, a financial holding company.

Old law did not address financial holding companies, a newly created entity as defined in GLBA.

Section 18
Section 06.05.245
Amended to correspond with a change made to AS 06.05.230 in a prior year, which allows a bank to take title to property when extending a negatively amortizing loan.

Old law conflicted with AS 06.05.230.

Section 19
Section 06.05.272(b)
Provides parity with national banks on a state bank's investment in subsidiaries.

Old law imposed limits that did not provide parity once GLBA became effective.

Section 20
Section 06.05.301(a)
Inserted "state banks" for clarity.

Section 21
Section 06.05.350(d)
Prohibits use of the word "bank" in a business name unless the business is a bank formed under Title 6 or another state or federal agency, unless it is clear the business does not represent a bank (example Food Bank, Blood Bank).

Old law did not allow for use of the word "bank" in a business name where it is clear the business does not represent a bank (example Food Bank, Blood Bank).

Section 22
Section 06.05.350
Authorizes the department to determine when a person may use other forms of the word "bank" in its name.

Old law did not address other forms of the word "bank" such as banc, or banque.

Section 23 - 26
Section 06.05.426
Removes application requirement for a state bank to establish an off-premises ATM by giving 30 days prior notice to department.

Old law required approval from the department.

Section 27
Section 06.05.435(c)
Requires a director to own $1,000 in par value or market value of stock that controls the bank.

Old law was based strictly on par value of stock.

Section 28
Section 06.05.435
New section permits a director to use his/her equity interest in a bank holding company to satisfy the required investment in AS 06.05.435(c) and provides effective dates to determine value of investment

Old law required approval by the department

Section 29
Section 06.05.550
Differentiates between an interstate **state** bank and an interstate **national** bank with respect the authority to branch.

Old law used one term, interstate bank, to refer to both.

Section 30 - 35
Section 06.05.555
Replace the term "interstate bank" with "interstate state bank" with respect to obtaining a certificate of authority to branch in the state.

Old law required both an interstate state bank, and an interstate national bank to obtain a certificate of authority from the department.

Section 36
Section 06.05.557
New section requires an interstate national bank that is branching into the state to file a notice with the department.

Old law required the department to issue a certificate of authority.

Section 37 - 41
Section 06.05.565
An interstate state bank is subject to Title 6 and corresponding regulations. An interstate national bank is subject to reporting requirements. Also adds a new section, which clarifies that an interstate national bank is subject to AS 06.05.548 (limitation on concentration of deposits in the state) and AS 06.05.550 (branching requirements in the state).

Old law provided that an interstate national bank is subject to all of Title 6.

Section 42
Section 06.05.570(a)
Requires application to the department if an out of state bank holding company acquires a state bank or bank holding company of a state bank.

Old law required application if an out of state bank holding company acquired any bank, including national banks, or bank holding company in the state.

Section 43-47
Section 06.05.990
Clarifies several definitions and adds some new definitions.

Old law was not clear in some cases and did not provide for some of the definitions.

Section 48
Section 06.15.100
Removes the prohibition against trustees of a mutual savings bank from borrowing from the bank, and gives them authority to provide services to the bank and to profit for providing services to the bank.

Old law prohibited both practices.

Section 49
Section 06.15.105
Permits trustees of a mutual savings bank to borrow from the bank to the same extent directors of a commercial bank can borrower under AS 06.05.210.

Old law prohibited borrowing.

Section 50
Section 06.20.010
New subsection, which clarifies that although some entities are exempt from licensing under the Alaska Small Loans Act, they will otherwise remain subject to the act.

Old law exempted these institutions from the entire Act.

Section 51
Section 06.45.020
Provides for a minimum par value of credit union shares.

Old law provided for a fixed dollar amount for the par value of credit union shares.

Section 52 - 54
Section 06.45.060
Provides state credit unions parity with federal credit union powers for loan terms, allowable investments, and the issuance of credit cards.

Old law did not provide parity.

Section 55
Section 06.45.295
Authorizes state credit unions to establish, maintain and operate automated teller machines.

Old law did not address automated teller machines.

Section 56
New section AS 45.45.920 limits the fee charged to a merchant by a credit card company, or by a bank that issues credit cards, to the amount of the charge less any taxes imposed on the transaction. BSC's proposed amendments delete this section.

This is a new section.

Section 57
Repeals 06.05.005(b)(3), 06.05.175, 06.05.272(d), 06.05.990(18) and 06.20.330(a).

Section 58
Explains that AS 06.01.028(b) indirectly changes Rule 45 of Alaska Rules of Civil Procedure, Rules 17 and 37 of Alaska Rules of Criminal Procedure, and Rule 24 of Alaska Bar Rules.

Section 59
Adds a new section to provide for transition regulations, giving the department authority to immediately proceed to adopt regulations necessary to implement the changes made by this Act. Regulations would take effect on the date of the statutory changes. BSC's proposed amendment changes reference to sec. 60 rather than section 63.

Section 60
Provides instructions for the revisor to change the headings of 2 sections of the banking code.

Section 61
States that Section 59 of this Act takes effect immediately under AS 01.10.070(c). BSC's proposed amendment changes reference to sec. 57 rather than section 59.

Section 62
Provides for sections 14 and 56 to take effect July 1, 2002. BSC's proposed amendment will delete this section.

Section 63
Except as provided for in sec. 61 and 62 of this Act, this Act takes effect July 1, 2001. BSC's proposed amendments will delete "61" and "62," insert "59", and change the date to 2002.

Tony Knowles, Governor

Alaska Department of Community and Economic Development

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January 22, 2002

The Honorable Pete Kelly
Co-Chairman, Senate Finance Committee
Alaska Senate
State Capitol Room 518
Juneau, AK 99801-1182

Dear Co-Chairman Kelly:

Re: Request for hearing on SCS CSHB 106(JUD)

SCS CSHB 106(JUD) has been considered by the Senate Labor and Commerce Committee and by the Senate Judiciary Committee, and is now before the Senate Finance Committee. The Division respectfully requests that you schedule the bill for hearing by the Senate Finance Committee at your earliest convenience. The bill has a zero fiscal note attached, and we urge the Committee to adopt the amendments attached to this letter, and to pass the amended bill.

Amendments numbered 2-7 correct what we believe was an inadvertent action in the Judiciary Committee. At the end of last session, that committee inserted at page 3, lines 1-2:

> (5) not prohibited by 15 U.S.C. 6801 - 6827 or the regulations adopted under those sections;

Statements by Committee members suggested this was just a technical amendment, not substantive. After a careful consideration, however, we believe this amendment, which references the federal Gramm-Leach-Bliley Act (GLBA), changes the privacy provision at AS 06.01.028 into opt-out. We believe the intent was to clarify that nothing in state law permits information sharing that is prohibited by GLBA, and our proposed amendments do that.

Amendments numbered 1 and 8-13 remove changes added in the Judiciary Committee that would prohibit a credit card company from charging a use fee on that portion of a bill that is tax. We oppose the current credit card provisions in the bill for several reasons:

> First, we believe it could jeopardize the acceptance and issuance of credit cards to Alaskans.
>
> Second, it is unfair on its face, since the credit card company is extending credit on the total amount, but is being prohibited from charging its normal fee on the total amount.

Third, it would be very complex and costly to implement, since some transactions such as a hotel stay may include several different types and rates of taxes.

Fourth, the argument made for excluding fees on tax could be extended to any number of other types of charges such as a tip on a restaurant bill, and this extension would seriously put the availability of credit at risk.

With those amendments, we encourage the Senate Finance Committee to pass SCS CSHB 106(JUD) for numerous reasons that we will provide to the Committee in a section analysis. For purposes of this letter, we will just mention that this bill will do a number of positive things that will benefit Alaskans and the financial services industry in Alaska. The bill

1. removes barriers to certain activities that are now permitted under the federal GLBA.
2. protects the privacy of Alaskans while allowing financial service companies the ability to offer more financial services as envisioned by the GLBA while leveling the playing field between large and small financial services firms.
3. provides parity between federal chartered institutions and state-chartered institutions.
4. reduces the regulatory burden of depository institutions related to automated teller machines (ATMs), and of national banks that seek to branch into Alaska.
5. puts directors of mutual savings banks on a par with those of commercial banks.
6. levels the playing field for state-chartered credit unions.
7. improves the ability of the financial services industry to provide information using modern technology, including the Internet.
8. closes a loophole that has been used in other states to make loans that otherwise would violate the usury law.

Over the past year, the Division worked closely with state-chartered banks and credit unions and with the Alaska Bankers Association (ABA). We believe that the bill, with the proposed amendments, contains provisions that can be supported by all parties. Unfortunately, the Alaska Credit Union League (ACUL) has not participated actively in this legislation, although their state-chartered members have. The Division recently participated in a teleconference with the ACUL and found the issues they raised were not significantly different from those raised over the past year by the ABA. We hope the ACUL will come to see that the language we developed working with the ABA will be acceptable to the ACUL. In our opinion, this bill provides too many benefits to citizens and to industry for it to fail.

We look forward to working with the Senate Finance Committee on this important legislation, and will use our best efforts to provide whatever information you may require as you consider this bill. Thank you for your consideration.

Sincerely,

Franklin T. Elder
Director

Enclosure

Similar letter to: Co-Chairman Dave Donley

AMENDMENT

OFFERED IN THE SENATE FINANCE COMMITTEE BY _____
TO: SCS CSHB 106(JUD)

1. Page 1, line 5:

Delete "**relating to credit cards;**"

2. Page 2, line 31, following ";":

Insert "or"

3. Page 3, lines 1-2:

Delete all material.

4. Page 3, line 3:

Delete "(6)"

Insert "(5)"

5. Page 4, following line 4:

Insert "(e) Nothing in this section authorizes the disclosure of information prohibited by 15 U.S.C. 6801-6827 or the regulations adopted under those sections."

6. Page 4, line 5:

Delete "(e)"

Insert "(f)"

7. Page 4, line 11:

Delete "(f)"

Insert "(g)"

8. Page 10, lines 10-16:

Delete all material.

Renumber the following bill sections accordingly.

9. Page 25, line 20, through page 26, line 4:

Delete all material.

Renumber the following bill sections accordingly.

10. Page 26, line 16:

Delete "sec. 63"

Insert "sec. 60"

11. Page 27, line 1:

Delete "sec. 59"

Insert "sec. 57"

12. Page 27, line 2:

Delete all material.

Renumber the following bill sections accordingly.

13. Page 27, line 3:

Delete "sec. 61 and 62"

Insert "sec. 59"

14. Page 27, line 4:

Delete "2001"

Insert "2002"

NORTH COUNTRY CREDIT UNION

Fairbanks Community Office
909 First Avenue
P.O. Box 72929 • Fairbanks, Alaska 99707
(907) 456-2613 • Fax (907) 456-8156

Nome Community Office
205 Front Street
P.O. Box 1105 • Nome, Alaska 99762
(907) 443-2737 • Fax (907) 443-5709

February 7, 2002

Senator Pete Kelly
Co-Chair, Senate Finance Committee
State Capital, Room 518
Juneau, AK 99811-1182

Dear Senator Kelly:

I am writing to express North Country Credit Union's support for SCS CSHB 106(JUD) with the amendments that will be (or have been) proposed by the Division of Banking, Securities and Corporations.

The Board of Directors of North Country Credit Union has considered the bill and the amendments that will be (or have been) proposed by the Division of Banking, Securities and Corporations, and believes the bill (as amended) will be of benefit to Alaskan consumers as well as the state chartered credit unions.

We would appreciate your support to move this bill forward and help get it passed.

If you have any questions, please feel free to call me at 907-456-2613.

Sincerely,

Patricia D. Felcyn
CEO/General Manager
North Country Credit Union

cc: NCCU Board of Directors
Terry Lutz, Chief FI Examiner, SOA Div of Banking, Securities & Corporations

Northrim Bank
Customer First Service

December 18, 2001

Senator Dave Donley
Senator Pete Kelly
Senate Finance Co-Chairmen
State Capitol
Juneau, Alaska 99801-1182

Re: SCS CSHB 106(JUD)

Dear Senator Donley and Senator Kelly,

I understand that the Senate Finance Committee will be considering SCS CSHB 106(JUD) for passage during the next session. At that time, Dr. Terry Elder and the State Division of Banking will request several amendments. These amendments include the removal of section 56, which addresses the calculation of credit card business use charges. The removal of this section is vital for passage of the bill, and is supported by the State Division of Banking and the Alaska Bankers Association. A few other changes simply solidify language on information sharing restrictions, and then renumber the sections of the bill based on the above changes. Finally, the effective date of this bill will also be changed to July 1, 2002. I would like to encourage you to adopt the bill with these suggested amendments.

The language in this bill and the proposed amendments will result in benefits for small, local banks such as Northrim, and also for our customers. Passage of this bill will put us on a level playing field with the large bank competitors who have affiliates that offer additional financial products. I encourage you to approve the amendments and to move the bill out of your committee with the language agreed upon by both the State Division of Banking and the Alaska Bankers Association.

Sincerely,

Marc Langland
President and CEO

Cc: Jerry Ward, Vice-Chairman
Alan Austerman
Lyda Green
Loren Leman
Lyman Hoffman
Donny Olson
Gary Wilken

3111 C Street • P.O. Box 241489
Anchorage, Alaska 99524-1489
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PHONE: 907/562-0062
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Alaska Pacific Bank

FAXED

May 3, 2001

The Honorable Pete Kelly
Senate Finance Committee Co-Chair
Alaska State Senate
Juneau, Alaska

RE: House Bill 106

Dear Senator Kelly:

As an executive officer of one of the smallest banks in the state, I would like to voice support for House Bill 106, which modernizes the state banking code in line with the spirit of the Gramm-Leach-Bliley Act, passed by Congress in 1999. House Bill 106 is particularly favorable to small institutions, by providing us with opportunities to market and deliver financially related products and services to our customers on a level currently reserved for the big, nationwide banks.

A great deal of effort and compromise has gone into crafting an important piece of legislation that ensures Alaska is an active participant in the exciting future of financial services.

I appreciate your assistance in moving this bill out of committee in time for it to be heard on the Senate floor this session.

Sincerely,

Lisa C. Bell

LISA C. BELL
SVP & Chief Operating Officer
Alaska Pacific Bank

FAXED

Alaska Bankers Association
P.O. Box 100600 Anchorage, Alaska 99510-0600 (907) 265-2920

May 3, 2001

The Honorable Pete Kelly
Alaska State Senate
Juneau, Alaska

RE: House Bill 106

Dear Senator Kelly:

As President of the Alaska Bankers Association and President and CEO of Alaska Pacific Bank, I offer the following comments in support of HB 106. The Alaska Bankers Association represents all nine banks and savings institutions across the state, including both state and federally chartered institutions.

Our association supports HB 106 and the underlying intent to bring the state banking code into conformity with the Gramm-Leach-Bliley Act, which passed Congress in 1999. The Gramm-Leach-Bliley Act was the result of years of work to modernize the laws governing the banking and insurance industries. House Bill 106 is beneficial to all banks operating within the state, but is particularly advantageous to smaller institutions.

The Alaska Bankers Association is asking for your assistance in passing HB 106 out of Senate Finance as soon as possible so that it may be heard on the Senate floor before the end of session.

Thank you for your assistance and support.

Sincerely,

CRAIG E. DAHL
President
Alaska Bankers Association

FIRST DATA
FIRST DATA MERCHANT SERVICES

May 7, 2001

Senators Donley & Kelly
Co-Chairs, Senate Finance Committee
Alaska State Capitol
Juneau, AK 99801

Re: House Bill 106 - OPPOSE AS AMENDED

Dear Senators,

I am writing on behalf of First Data Merchant Services which provides credit card processing for financial institutions, such as First National Bank of Anchorage and National Bank of Alaska, that acquire credit card transactions from merchants. Respectfully, we must strongly oppose HB 106 as recently amended to prohibit charging fees on the sales tax portion of credit card transactions.

As currently drafted, HB 106 could have the unintended consequence of increasing costs to both merchants and consumers as well as extending the time it takes to use a credit card to pay for goods and services at Alaska merchant locations. Our system has no ability to separate the tax portion of a credit card purchase from the total amount of the charge. Redesigning our system to accomplish this would be extremely time consuming and expensive.

Our bank customers bear the risk of loss on the entire amount of the transaction, not just the purchase amount, so charging the discount fee on the total amount is reasonable and necessary. If fees are eliminated on the tax portion of the charge, banks are likely to simply raise the rates on the remainder of the charge in order to retain a reasonable fee for the services they provide.

Finally, due to the cost and time it would take to redesign our systems, some of our bank customers may choose to discontinue service to merchants in Alaska.

We would therefore request that HB 106 be amended to remove Section 55 from the bill, or that the bill not be sent to the full Senate for passage.

If you would like additional information please feel free to contact me at (720) 332-3778.

Sincerely,

Andrea Brett

Andrea Brett
Senior Counsel

cc: Members of the Senate Finance Committee

Tony Knowles, Governor

Alaska Department of Community and Economic Development

Division of Banking, Securities, and Corporations
P.O. Box 110807, Juneau, AK 99811-0807
Telephone: (907) 465-2521 • Fax: (907) 465-2549 • TDD: (907) 465-5437
Email: dbsc@dced.state.ak.us • Website. www.dced.state.ak.us/bsc/bsc.htm

May 7, 2001

The Honorable Pete Kelly
Co-Chair, Senate Finance Committee
Alaska Senate
State Capitol Room 518
Juneau, AK 99801-1182

Dear Senator Kelly:

RE: SCS CS HB 106(JUD) request fo. amendment

During yesterday's Senate Judiciary hearing, the division of banking, securities and corporations was asked to comment on amendment #2 that eventually was adopted by the Judiciary Committee before passing out the bill. When I provided testimony, I only commented on the first of the three parts of the amendment, when the Committee then accepted it and closed public testimony. We contacted Committee staff afterwards and expressed concern about what the second and third parts really do.

This morning, we are informed that the new subsection (3) is meant to reference 15 U.S.C. 6801 and that new subsection (5) will be totally rewritten to reference PL 106-102. This is extremely troubling, and we believe members of Senate Judiciary will also find it troubling. Both of those references are to the Gramm-Leach-Bliley Act (GLBA), and appear to us to have the effect of changing the opt-in bill back to opt-out. Based on our conversations with Chairman Taylor and other Judiciary Committee members, we believe they are in agreement that it is important to maintain Alaska's opt-in requirement. Therefore, we strongly encourage the Finance Committee to remove the second and third parts of amendment #2 from SCS CS HB 106(JUD). These changes make the bill unacceptable to us.

In previous correspondence we have expressed our opposition to section 55 (of Version O, page 25, lines 10-25), the business use charge for credit cards. This section was added in Senate Judiciary. We maintain our opposition to this provision. It is unfair to the industry to prevent them from charging a fee on the total amount they finance. We believe the software and hardware changes this would require would create substantial added costs that would be paid by every Alaskan, or could even jeopardize the ability of people to use credit cards in Alaska. This section has no place in this bill, and we again ask the Finance Committee to remove that section.

We believe it is critical to pass this bill this year to avoid losing the privacy protection currently enjoyed by Alaskans when the less restrictive federal law takes effect in July. Thank you for your consideration of our request.

Yours truly,

Franklin T. Elder
Director

Similar letter to: The Honorable Dave Donley
The Honorable Robin L. Taylor