

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

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3) real estate for future expansion, subject to prior department approval.

As for the reference to bank building corporations, these are now covered under the section relating to subsidiaries, AS 06.05.272.

Section 36. Conforming amendment only.

Section 37. Conforming amendment, since provisions relating to out-of-state bank holding companies (BHC's) have been moved to new AS 06.05.570.

Section 38. We have added a permitting system for all bank holding companies that wish to purchase a bank or bank holding company doing business in Alaska.

Section 39. Conforming amendment.

Section 40. New subsection, taken from current 3 AAC 02.910(b). This provides for an exemption to the normal rules applicable to BHC's, and it is more appropriate for the exemption to be in statute, rather than regulation.

Section 41. Technical changes to make it clearly consistent with AS 06.05.205.

Section 42. Technical changes to make the language consistent with AS 06.05.230.

Section 43. There are several proposed changes to this section. The amendments add an exemption from borrowing limits for repurchase agreements; raise borrowing limits without necessary department approval from 100% of capital and 50% of surplus to 15% of assets -- this will be an approximately 50% increase in the limit for most banks (this new standard, 15% of assets, is currently used in the Mutual Savings Bank Act, AS 06.15.180(2)); remove a redundancy regarding borrowings approved by the department; and finally, the adjective "unimpaired" is meaningless and confusing, and is therefore removed.

Section 44. In (2), the change clarifies that when a bank pledges property for a mortgage, the pledged property must be the subject of the purchase transaction. Also adds a new paragraph (3), as suggested by several banks, to permit a bank to pledge assets to a federal reserve bank or a federal home loan bank. This language was taken from WY, sec. 13-3-203. (However, such borrowings will still be subject to limitations of AS 06.05.255.)

Section 45. This is current AS 06.05.485. The second sentence was added to clarify that this section does not prohibit a bank from issuing warranty deeds.

Section 46. This bill repeals the list of specific permissible bank investments in statute. These specific investments, as well as others that may be appropriate, will now be set out in the regulations. This is important, because new investment opportunities seem to come up frequently, and requiring the department to get legislation passed each time has proven burdensome and unpredictable.

Section 47. (a). Adds a provision to permit banks to have subsidiaries, in most cases subject to department approval. The department intends to approve limited underwriting activities, probably on a case-by-case basis. "Subsidiary" is defined in AS 06.05.540 to be corporation more than 50% owned by the bank.

(b). Sets a limit on the amount a bank may invest in subsidiaries, and clarifies that a bank may not use its lending authority to avoid the investment limits.

(c). Makes it clear that subsidiaries are subject to examination.

Section 48. Clarifies that these are alternative requirements.

Section 49. (a). Makes the Alaska Corporations Code applicable to banks.

(b). Sections of the Corporations Code that are inapplicable to banks are as follows:

AS 10.06.010(4-8). General corporate powers, specifically limited here and elsewhere for banks.

AS 10.06.105(a). Requires a corporation to have "inc.," ltd." etc. in its name.

AS 10.06.325, 10.06.385 - 10.06.388, & 10.06.420(i). Deal with redemption of shares; This revised banking code sets up specific provisions for stock redemption in AS 06.05.320.

AS 10.06.356. Permits shares to be held by nominees. This is inconsistent with the philosophy behind AS 06.05.450, that all shareholders and the department have a right to know all shareholders of a bank.

AS 10.06.358 - 10.06.360. Dividends; covered by AS 06.05.440 - 06.05.445.

AS 10.06.370. Specifically applies only to regulated investment companies.

AS 10.06.430. Provides that the "books and records of account" of a corporation must be available for inspection by shareholders. To avoid anyone misinterpreting the code to allow a shareholder to see a bank examination, this was excluded.

AS 10.06.453. Provides that the number of directors may be one or more, and if not designated, three. Current banking code (AS 06.05.435) requires at least five directors, and we have retained that in this recodification.

AS 10.06.460(b). Restricts reasons a director may be removed. We have provided for removal of bank directors by the department.

AS 10.06.485. Loans to directors, officers and employees; already covered in AS 06.05.210.

AS 10.06.522 - 10.06.526. Reorganization of corporations in bankruptcy; this is covered for banks under liquidation provisions.

Article 8 (AS 10.06.530 - 10.06.582). Organic change (mergers, etc). These are covered under AS 06.05.462.

Article 9 (AS 10.06.605 - 10.06.678). Dissolution; covered under the liquidation article.

Article 10 (AS 10.06.705 - 10.06.786). Foreign corporations; covered under new article on interstate and international banking.

Article 11 (AS 10.06.805 - 10.06.868). Biennial reports and corporate tax. Banks pay an assessment under AS 06.01.010 and are subject to annual examination and frequent reporting requirements.

AS 10.06.863. Appeal of foreign corporation to Superior Court for revocation of certificate of authority; all appeal processes for banks will be handled under AS 06.01.

AS 10.06.865 & 10.06.915. Appeal to commissioner for refusal or cancellation of certificate of authority; all appeal processes for banks will be handled under AS 06.01.

AS 10.06.960. Applies only to native corps.

AS 10.06.990(30) & (36). Definitions for "paid in capital" and "retained earnings"; we have provided definitions for all aspects of a bank's capital accounts in AS 06.05.540.

Section 50. (a). Raises minimum capital requirements to \$2 million for banks in Anchorage and Fairbanks, \$1 million for other communities (to allow possible formation of small community banks). However, this clarifies that these are absolute minimums, and that the actual requirements will be set in each case by the department. (At present, all Alaska banks have capital amounts far greater than these minimums.)

(b). To the extent this may be interpreted as inconsistent with AS 06.05.320, we have amended that section to allow stock redemptions if approved by the department. Otherwise, technical amendments only.

(c). Technical amendments only.

Section 51. Present AS 06.05.310 provides for an assessment of shareholders procedure that the department may purportedly order when a bank's capital is impaired. Since this process is essentially unenforceable and, in our experience, unreasonable, this assessment procedure is repealed here and replaced with a simple process for the department to order a bank to increase capital, in whatever manner the bank chooses. This new section is taken from Indiana (sec. 28-13-4-7).

Section 52. Changed to permit bank stock redemptions with departmental approval.

Section 53. Changed to require prior department approval before any significant change in bank ownership or before a change in bank control.

Section 54. Clarified to ensure that all stock sales are subject to

this requirement, not just those at the corporate formation stage.
[Note to Revisor: Please amend section title accordingly.]

Section 55. Present AS 06.05.345 is split; new AS 06.05.344 deals with the application for approval process, while AS 06.05.345 retains the provisions relating to articles of incorporation.

(a). Current AS 06.05.345(c). Clarifies that prior approval of director for bank plan is required before articles of incorporation will be issued. Also eliminates requirement for triplicate filing of articles (also changed in (h)).

(b). Current AS 06.05.345(d). The amount that an applicant must submit to the department has been doubled to \$2000; this will afford the department a bit more protection, assuring a better chance of repayment of its costs. Current amounts charged have been in statute at least since 1978 and need raising. By way of comparison, OR charges a non-refundable \$2500 (sec. 707.070).

(c). Current AS 06.05.345(e).

(d). Current AS 06.05.345(f).

(e). Current AS 06.05.345(g).

(f). Current AS 06.05.345(h). Change to (4) is designed to clarify that the capital requirements are those set by the department. Otherwise, one technical change, and one other change to not duplicate the Corporations Code.

(g). Current AS 06.05.345(i).

(h). Current AS 06.05.345(j).

Section 56. Changed to incorporate the Corporations Code, and then eliminates requirements already covered by that code. Also, (2) is clarified to make sure that no-par stock is not allowed, and (3) is clarified to allow articles to say "5 to 25" directors, instead of giving a specific number.

Section 57. Allows amendment of articles by a majority of shareholders, or more -- this is consistent with the Corporations Code, AS 10.06.504 - 10.06.508. As for filing amendments to articles, these will be done in the manner provided in the Corporations Code.

Section 58. Amended to clarify that certificate of incorporation comes first, certificate of authority later. Incorporation allows a bank corporation to set up a facility and get subscriptions paid in, but not to do any banking business. AS 06.05.395 has been merged with this subsection.

Section 59. (b)(1). This is the same as AS 06.05.380(b); the latter has been repealed. Also, the department does not require a bank to carry a specific amount for undivided profits, so that has been removed.

Current (b)(4). This is repealed because we will no longer be requiring FDIC insurance in all cases. See Section 61.

Section 60. Current AS 06.05.480.

Section 61. Changed to make FDIC insurance optional, at the department's discretion. This is primarily designed to allow for the formation of small community banks, and to allow other banks to use alternative insurance if it becomes available. [Note to Revisor: Please correct title to this section.]

Section 62. Conforming amendment.

Section 63. (a). Most of the requirements of this section that are deleted are covered in the Corporations Code, particularly AS 10.06.223.

(b). Provides that the executive offices of the bank must be designated in the articles or bylaws, and a current copy of the bylaws must be kept on file with the department. We are eliminating any definition of executive or managing officers from the code.

Section 64. These are almost all technical changes, except for (f)(3), which is eliminated because we are eliminating the requirement for FDIC insurance. As for (a), the amounts have been raised for processing an application -- see comments to new AS 06.05.344 in section 55 of the bill. The definition for "mobile facility branch bank" is taken from 3 AAC 02.910(a)(5).

Section 65. ATM's will no longer be subject to general branching laws; there is no reason that the lengthy application process for a branch should apply to a bank's opening of an ATM.

(a). Permits banks to set up wholly-owned ATM's in bank offices without department approval; these machines may be exclusively for use of the bank's customers.

(b). Permits a bank to establish a wholly-owned ATM outside the bank with prior approval of the department; these machines must be made available to other banks.

(c). Simplified application process for ATM's that are off bank premises, generally taken from Arkansas sec. 23-32-1304.

(d). Permits bank to invest in an ATM corporation (like Options). These operations will not be directly regulated by the department, although the investments themselves will still be subject to safety and soundness considerations upon examination.

Section 66. Repealed language will permit staggered terms for bank directors like that provided in the Corporations Code, AS 10.06.455.

Section 67. Added language will allow the qualifying minimum amount of stock that a director must own to be jointly held, and will allow the department to approve other situations when a director need not meet the minimum ownership requirements, such as where the bank is wholly owned by a bank holding company.

Section 68. (f). From current AS 06.05.437(b).

(g). New, to give department authority to remove or object to

certain persons as directors. Taken generally from FL and GA.

Section 69. (a). Repealed language is covered by AS 10.06.483(b). Second sentence is amended to allow the board to pick the best possible person for CEO of the bank, even if that person is not on the board; if the bank chooses a non-board member as CEO, that person becomes an ex officio member of the board, to make sure he/she is kept aware of what the board is thinking and doing.

(b). We moved the requirement to report changes in directors to the previous section, which deals specifically with directors.

Section 70. Although the department cannot actually order that an employee of a bank be fired -- that is the sole responsibility of the board -- this subsection will allow the department to essentially recommend an employee's removal, if necessary; if the board refuses, the directors risk personal liability should damages occur thereafter due to the fault of the employee. This change was recommended by the Conference of State Bank Supervisors (CSBS).

Section 71. Minor change to clarify that board meetings are held for many purposes, not just to investigate the affairs of the bank.

Section 72. (e). Allows teleconference board meetings; taken from the Corporations Code, AS 10.06.475(a).

(f). Present AS 06.05.233.

Section 73. Clarifies that dividend distributions are subject to possible restrictions under AS 06.05.307(c).

Section 74. Generally just technical changes; clarifies that requirements of this section are in addition to those in AS 06.05.442.

Section 75. Changed to allow a bank, with department approval, to carry a negative balance in the undivided profits (U.P.) account, and prohibits dividends until this negative U.P. account balance is replaced and the surplus account is fully restored.

Section 76. This section has been combined with AS 06.05.443.

(a). Currently the first part of sec. 443.

(b) (1). Current sec. 443(1) and (2); there was no reason for a one-year provision for judgments, so this was eliminated. This is consistent with departmental powers in AS 06.05.005(b)(8)(K).

(2). Current sec. 445(1); the reference to "debt" is changed to make it clear that this refers to money owed to the bank, not by the bank.

(3). Current sec. 445(2).

(4). Current sec. 443(3).

(5). Current sec. 445(3); under this proposal, stock may also be carried at market value, rather than par.

(6). Current sec. 443(4).

Section 77. Modernized to allow for the maintenance of this record of shareholders in a form other than a book. Also, clarifies that inspection of the record is available for the department, while shareholders will have access to a list of current shareholders. Before each annual meeting, the bank will also need to comply with AS 10.06.413, which requires preparation of a list of shareholders, including names, addresses and numbers of shares owned.

Section 78 - 80. Technical amendments only.

Section 81. AS 06.05.466 currently set out a procedure for dissolution of a bank before issuing a certificate of authority. The proposed revisions to this section retain the same grounds for dissolution in these situations, but permit such a dissolution to be effected as with any other corporation under the Corporations Code.

Section 82. (a). This is generally taken from current AS 06.05.470(a), although it has been expanded to clarify that the department may close and take possession of a bank for violations of the banking laws or orders of the department.

(b) - (c). This clarifies the process for bank takeovers by the department. Under the Supreme Court's decision in Hoffman v. State, ___ P.2d ___, No. 3845 (Alaska May 29, 1992), an opportunity for hearing must be provided to interested parties before a bank may be liquidated by state or federal authorities. Since, as a general rule, it is in the best interest of the public and depositors to minimize the time a bank is closed when it is being liquidated/transferred, the procedure set out in these subsections provides for hearing at the time the department first identifies the bank's problems and confronts the board with them.

(d). This is present AS 06.05.470(d); however, we have reduced the time allowed to request a hearing to two days, to expedite the process and enhance the chances that the bank will be reopened.

Section 83. Repealed language is now contained in sec. 468(c).

Section 84. Clarifies that transfers in anticipation of department takeover for whatever reason, not just due to insolvency, are voidable. New language is taken from current AS 06.05.495, which is repealed.

Section 85.

AS 06.05.471. This section is essentially just a recodification of current AS 06.05.470(f), (j) and (k).

AS 06.05.472. Recodification of current sec. 470(l) - (n). In (a)(1) and (2), the values were raised from \$10,000 to \$100,000, because the FDIC has complained that the lower amount requires frequent, unnecessary court appearances. In (a)(3), also at the request of the FDIC, the provision was changed to allow a receiver to make partial distributions before a final accounting is prepared.

AS 06.05.473. Existing sec. 470(j) - (y), generally with only technical amendments.

(c). Present sec. 470(p) and 465(f), but modified to allow the department to turn over unclaimed property and safe deposit box contents to the Department of Revenue under the Unclaimed Property Act at the conclusion of the liquidation, rather than having to hold the property for five years.

(g). Clarifies that secured claims based on pledged assets under sec. 260 fall behind the general depositor preference.

AS 06.05.474. Current sec. 470(z).

Section 86. Many of these definitions are taken from the existing code. Ones that have been changed, or are new, are

(1). Taken from 3 AAC 910(a)(1).

(3). Changed to make the definition primarily focus on accepting deposits (the first part of the definition was generally taken from OR and ID); the rest of the section was updated to remove archaic language.

(4). Changed to take out internal references to "branch" that make the existing definition circuitous, and exempts ATM's from the definition.

(5). All aspects of a bank's capital are defined in this section, to remove the ambiguities that exist in current law. This definition of "capital" is generally taken from IN.

(6). From 3 AAC 02.910(a)(9).

(10). From current AS 06.05.235(h)(1).

(12). From AS 06.01.050(3).

(14). From OR, sec. 711.305 and AS 06.05.305(a).

(15). Loosely adapted from OR, sec. 711.405; (A) and (C) are the two traditional definitions for insolvency - see Annot. 81 ALR 1160.

(16). Defines "international bank" as a bank that is from outside the United States.

(17). Defines "interstate bank" to include any bank chartered in a state other than Alaska and national banks operating outside Alaska.

(18). From IN, sec. 28-1-13-1.2, with some modifications; note that it includes guarantees, overdrafts, letters of credit and loan commitments.

(19). From WY, sec. 13-1-101(a)(xii).

(20). Current AS 06.05.235(h)(2), amended to exclude international bank holding companies from the requirement that they be registered with the federal government.

(21). Current AS 06.05.235(h)(3).

(22). Changed to remove the reference to charters, which no longer exist in Alaska.

(24). In conjunction with new AS 06.05.272, proposed in this bill, this will allow banks to operate subsidiaries that are not directly in the banking business. This definition is taken from the Alaska Corporations Code and is the same as that used by the FDIC.

(25). Current law does not define the essential elements of

capital, which has caused some confusion in the past. This bill simplifies the terminology and makes it consistent throughout, and then all terms used are defined here.

(27). Defines when a bank will be deemed to be in trouble.

Section 87.

The new article on interstate and international banking is loosely inspired by NY, IL and GA law. However, we have tried to think of what is specifically needed and desired in Alaska.

AS 06.05.550. (a). Authorizes international and insured non-Alaska banks to branch by purchasing existing Alaska institutions. "Interstate," "international," and "recently formed" banks are defined in AS 06.05.540. Note the FDIC requirement for non-Alaska US banks; OR has a similar requirement. For international banks, there is provided an in-state asset requirement -- see next section. Much of this is taken from IL and NY.

(b). Authorizes international banks, but not interstate banks, to de novo branch.

(c). Guarantees that interstate and international bank branches enjoy the same rights as other Alaska financial institutions; taken from NY.

AS 06.05.555. Application process for interstate and international banks. These provisions are generally taken from AS 06.05.399, the department's procedure for branch bank applications. Thus, these applications would be handled in the same general manner as other branch applications.

(d). Requires reciprocity for banks from other states, but not for international banks (taken from NY).

AS 06.05.560. (a) and (b). Requires an international bank operating a branch in Alaska to maintain assets in this state sufficient to cover all depositors. This section is taken from OR sec. 713.025.

(c). Provides that if the department takes over one of these branches, the in-state assets will be liquidated under the general liquidation statutes; inspired by IL law.

AS 06.05.565. (a). Essentially same as current AS 06.05.367, which is repealed.

(b). Requires branch to meet general reserve requirements applicable to state banks under AS 06.05.200, but allows appropriate assets held for purposes of the minimum asset requirements of preceding section to be applied to this requirement as well.

(c). Provides that these branches will be subject to normal assessments for exams, but the assessment will be based on the branch's deposits, rather than its assets (since it is impossible to determine how much of the assets of a multi-state or multi-national bank are attributable to the Alaska branch).

(d). Provides that the parent interstate or international bank may be examined to protect Alaska's interests, in much the same manner as an out-of-state BHC can be examined.

AS 06.05.570. This is presently part of AS 06.05.235.

(a). Currently sec. 235(e). We have added a permitting system

for all bank holding companies that wish to purchase a bank or bank holding company doing business in Alaska.

(b). Currently sec. 235(f).

(c). Taken from 3 AAC 02.910(b).

Section 88. This amends the exemption from the small loan act for pawnbrokers from \$200 to \$500. The current figure dates back at least to 1981, and inflation makes a higher limit now appropriate.

Section 89. This has been changed to clarify that the provisions of the banking code apply to trust companies engaged in the business of banking.

Section 90. Technical amendment.

Section 91. Allows credit unions to designate executive offices in bylaws. (Added in Finance Committee.)

Section 92. Allows board of directors to appoint credit committee, instead of requiring the committee to be elected at annual meeting. (Added in Finance Committee.)

Section 93. Allows credit union to designate titles and offices of the executive officers. (Added in Finance Committee.)

Section 94. Requires board of credit union to appoint a CEO, called the president, to be in charge of operations. (Added in Finance Committee.)

Section 95. Technical amendments, consistent with Section 92. (Added in Finance Committee.)

Section 96. Allows more than one loan officer to serve on the credit committee. (Added in Finance Committee.)

Sections 97 and 98. Makes the Corporation Code applicable to banks.

Section 99. Conforming amendment.

Section 100. Clarifies that the Consumer Protection Act, while exempting transactions regulated under AS 06.05, applies to all other bank transactions, and in particular those between banks and their customers.

Section 101. Technical amendment.

Section 102. Repealers:

AS 06.01.010(c). Now covered by AS 06.01.035(h).

AS 06.05.015. Included in new AS 06.05.005(b)(7).

AS 06.05.020. (a). All covered elsewhere in the code.

(b). The first sentence is already covered by AS 06.01.030 (in this bill, subsection (f)). The rest duplicates common law, except

for the last sentence, which is a labor law issue and should not be in the code.

AS 06.05.025. All provisions relating to examinations are now in AS 06.01. This section is contained in AS 06.01.015.

AS 06.05.030. Moved to AS 06.05.005(b)(1); see notes to that provision.

AS 06.05.035. Already covered by AS 06.01.010.

AS 06.05.040. Moved to AS 06.01.015(a).

AS 06.05.055. Some of the information ((1) and (2)) is already essentially done, through the governor's legislative requests, and the rest either is unnecessary for legislators or is public information. This is an expensive annual exercise for the division (estimate is 30 person-days) that is unnecessary.

AS 06.05.060. (a) and (b). Moved to AS 06.01.025, to apply to all financial institutions.

(c). Already covered in AS 09.25.110.

AS 06.05.065. (d) and (e). Included in comprehensive penalties section, AS 06.01.035.

(f). Definition no longer used in the code.

AS 06.05.070. Most of this section is obsolete. We have repealed it and simply provided in AS 06.05.005 that the department will adopt regulations for records retention (which it has already done in current 3 AAC 02.010).

AS 06.05.080. Already established in Alaska case law.

AS 06.05.085. Already covered by Alaska case law.

AS 06.05.090(c). This is included in comprehensive penalties section, AS 06.01.035.

AS 06.05.130. This section is essentially superseded in substance by the UCC, AS 45.04.406.

AS 06.05.175(c). This is already covered; any violation of the code is subject to discipline and/or enforcement action under AS 06.01.

AS 06.05.185. The sections relating to trust companies (AS 06.05.185 - 06.05.195) are obsolete and are therefore repealed. These provisions are already covered in the trust company act, specifically AS 06.25.085.

AS 06.05.190. See note to previous section.

AS 06.05.195. See note to repeal of AS 06.05.185.

AS 06.05.200(b) and (c). These are procedural matters that will be put in regulations. Also, the permissible list of deposits will be expanded to include deposits held by the Federal Reserve Bank and the Federal Home Loan Bank, to make the regulations consistent with current practice.

AS 06.05.205. (a). By regulation adopted under AS 06.05.438(c), a requirement will be inserted that when lending reports are made to the board, all loans over a specified amount (higher than \$25,000 - probably \$100,000) will be specifically identified.

(e). Already covered under sound lending practices.

(f). Obsolete.

AS 06.05.206. All special statutory restrictions on real estate loans are repealed in this draft of the code, except those

still remaining in AS 06.05.207. Leasehold and development loans are now covered by that section.

AS 06.05.208. This section is covered by AS 45.10.120(c).

AS 06.05.210(b). This is repealed and the substance moved to the comprehensive penalties section, AS 06.01.035.

AS 06.05.220. Already covered by federal law.

AS 06.05.232. The code has been drafted to provide that only a bank's subsidiary can enter into these types of leases. Thus, the section is repealed here, and a broad authority to enter into leases is included in new AS 06.05.272.

AS 06.05.235. (c). Already covered in powers of the department to adopt regulations.

(d). Covered by comprehensive penalties section.

(e) and (f). We have split this section in half, moving the provisions relating to out-of-state bank holding companies to new AS 06.05.521, in the article on interstate banking.

(h). Definitions have been moved to the general definitions section, AS 06.05.540.

AS 06.05.238. This section belongs with the provisions relating to meetings of the board. Thus, it has been moved to AS 06.05.438(f).

AS 06.05.255(c). This subsection was ambiguous and unnecessary.

AS 06.05.260(b). This subsection was probably unenforceable, definitely unclear and ambiguous, and arguably inconsistent with the state's depositor preference.

AS 06.05.270(b). Specific permissible investments for banks have been repealed and will now be set out in regulations. See comments to bill section 46.

AS 06.05.275. (a). Deleted as unnecessary and obvious.

(c). Deleted as unnecessary. For clarity, if desired, we will put it into regulation.

AS 06.05.280(a) and (b). These are sufficiently handled by market forces, and they are unnecessary.

AS 06.05.300. Covered by AS 10.06.010.

AS 06.05.307. (d). Already covered by AS 06.05.205(b).

(e). Repealed as obsolete.

AS 06.05.325. Covered by the Corporations Code.

AS 06.05.330. Covered by AS 10.06.205. However, the Corporation Code provides that there can be only one incorporator, and this will now be allowed for banks as well.

AS 06.05.345. (b). Covered by the Corporations Code.

(c) - (j). Moved to new AS 06.05.344.

(k). Beginning of corporate existence is already covered in the Corporations Code.

AS 06.05.360. Foreign banks are permitted to engage in banking under new article 9.

AS 06.05.367. Most of this section is incorporated into new AS 06.05.565. Paragraph (2) is removed because we are no longer going to require FDIC insurance.

AS 06.05.300. (a) and (b). are the same as 350(b)(1).

(c). This is included in the comprehensive penalties section.

- AS 06.05.390. Covered, with minor variations, by AS 10.06.490.
- AS 06.05.395. Substance moved to and incorporated in AS 06.05.350(a).
- AS 06.05.430. Covered by AS 10.06.405 and 10.06.415.
- AS 06.05.435. (b). Covered by AS 10.06.223.
- (e). Covered by AS 10.06.465.
- AS 06.05.443. Combined with AS 06.05.445.
- AS 06.05.455. Voluntary liquidations will now be covered under the same procedure as involuntary ones, i.e. under the control of the department. See AS 06.05.468(a) in Section 82 of the bill. Of course, if a bank wishes to voluntarily dissolve and there is no reason for the department to get significantly involved, the department can appoint the existing board as receiver.
- AS 06.05.470. This section has been split up to make it more manageable. The substance of this section remains essentially unchanged.
- (a). Substance moved to sec. 468(a).
- (d). Now sec. 468(d).
- (f). Now sec. 471(a).
- (j) and (k). Now sec. 471(b) and (c).
- (l) - (n). Now sec. 472.
- (o) - (y). Now sec. 473.
- (z). Now sec. 474.
- AS 06.05.480. Moved to sec. 350(d).
- AS 06.05.485. Moved to new sec. 262.
- AS 06.05.490. Included in comprehensive penalties section, AS 06.01.035.
- AS 06.05.495. Duplicative; same as sec. 470(g)(2).
- AS 06.05.500 - 06.05.520. Covered by comprehensive penalties section.
- AS 06.05.525. Covered by AS 06.01.030.
- AS 06.05.530. Obsolete.
- AS 06.20.320(b). Covered by new comprehensive penalties section, AS 06.01.035.
- AS 06.25.060. Covered by comprehensive penalties section.
- AS 06.25.070. Also covered by comprehensive penalties section.
- AS 06.25.320. Also covered by comprehensive penalties section.
- AS 06.30. Repeals state Savings Association Act.
- AS 06.40.160(b). Covered by comprehensive penalties section.
- AS 06.45.320. Covered by comprehensive penalties section.
- AS 06.45.330. Also covered by comprehensive penalties section.

Section 103. Transitional provisions.

(a) Makes sure that the new Corporations Code applies to all banks.

(b) Requires existing banks to amend their articles to conform to the new code at the next regular annual meeting, and then file the amended articles with the department.

Section 104. Notes possible Court Rule change.

Section 105. Effective date 1/1/94.

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April 5, 1993

The Honorable Bill Hudson
Chair, House Labor and Commerce Committee
Alaska State Legislature
Room 108, State Capitol
Juneau, AK 99801-1182

HAND-DELIVERED

Re: SB 86 -- Uniform Commercial Code, Article 4A (Funds Transfers)


Dear Bill:

SB 86 passed the Senate, and is now in your committee. Like CSSB 112 (Jud), this bill is essential in Alaska's effort to keep its Uniform Commercial Code up to date and to facilitate doing business in Alaska by using modern technology and business practices. Therefore, I urge your committee to schedule it for an early hearing, to catch up with the 44 other states that have already enacted it.

You will find attached a two-page explanatory statement that I prepared for this bill. In addition, I have prepared a fairly detailed section-by-section description that I would be happy to furnish you if you wish. (Perhaps you already have it.)

Thank you.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

AHP/sh
Enclosure

cc w/encl: Deborah E. Behr, Assistant Attorney General
Legislation/Regulations Section
Alaska Department of Law

sh/art/hudson.lt3

3/25/93
(short version)
AHP

STATEMENT ON SB 86

UNIFORM COMMERCIAL CODE, ARTICLE 4A
(FUNDS TRANSFERS)

THIS BILL, ADDRESSING THE ELECTRONIC TECHNOLOGY REVOLUTION AND MODERN BUSINESS PRACTICES, WILL ENACT THE NEW ARTICLE 4A OF THE UNIFORM COMMERCIAL CODE (UCC). IT IS AN ESSENTIAL PIECE OF THE CURRENT COMMERCIAL LAW OF THIS COUNTRY, WITH 44 ENACTMENTS AS OF DECEMBER 1992 (INCLUDING NEW YORK, ILLINOIS, AND CALIFORNIA -- THE MAJOR FINANCIAL CENTERS). IT PROVIDES STATE LEGISLATIVE ANSWERS TO THE MANY ISSUES INVOLVED IN FUNDS TRANSFERS (THE BULK OF WHICH ARE CALLED "WHOLESALE WIRE TRANSFERS").

THE UCC IS A COMPREHENSIVE CODIFICATION OF COMMERCIAL LAW. HOWEVER, UNTIL PROMULGATION OF ARTICLE 4A IN 1989, IT DID NOT DEAL WITH FUNDS TRANSFERS BETWEEN COMMERCIAL ENTITIES. AS BUSINESS PRACTICE HAS COME TO RELY MORE HEAVILY ON THE SPEED, EFFICIENCY, RELIABILITY, AND COMPARATIVELY LOW COST OF ELECTRONIC TECHNOLOGY, THE MANY QUESTIONS THAT ARISE FROM THAT RELIANCE DEMAND ANSWERS.

IN 1989, A RECORD THREE TRILLION DOLLARS WERE TRANSFERRED ON A SINGLE DAY -- MORE MONEY THAN THE 1989 GROSS NATIONAL PRODUCT OF THE UNITED STATES -- AND THE 1989 AVERAGE WAS ONE TRILLION DOLLARS A DAY. IN THE AVERAGE SINGLE "FUNDS TRANSFER," \$5,000,000 CHANGE HANDS.

THE NEW ARTICLE WILL NOT CHANGE THE RULES IN ARTICLES 3 AND 4 DEALING WITH SIGNATURES AND ENDORSEMENTS ON PIECES OF PAPER (CHECKS) AS THE BASIS FOR DETERMINING LIABILITY.

UNLESS THE PARTIES TO A TRANSACTION USE THE SAME BANK, A FUNDS TRANSFER INVOLVES AT LEAST FOUR ENTITIES: THE ORIGINATOR OF THE PAYMENT; THE BANK TO WHICH THE ORIGINATOR COMMUNICATES THE FIRST PAYMENT ORDER; THE BENEFICIARY'S BANK THAT RECEIVES THE FINAL PAYMENT ORDER; AND THE BENEFICIARY. NUMEROUS PROBLEMS AND QUESTIONS CAN ARISE.

WHAT HAPPENS IF THE FIRST BANK MAKES A MISTAKE AS TO THE AMOUNT TO BE PAID? WHAT HAPPENS IF THE SECOND BANK DOESN'T NOTIFY THE BENEFICIARY? WHAT HAPPENS IF THE PAYMENT ORDER IS FRAUDULENT AND NOT ACTUALLY ISSUED BY THE ORIGINATOR? WHAT HAPPENS IF THERE IS A BANK FAILURE? WHAT ARE THE REMEDIES IF SOMEONE TAKES A LOSS? WHO BEARS THE RISK OF LOSS AT A GIVEN TIME IN THE TRANSACTIONAL PROCESS? WHAT CONSTITUTES ACCEPTANCE AND REJECTION (BOTH RIGHTFUL AND WRONGFUL) OF A PAYMENT ORDER, AND WHAT MUST BE DONE TO AMEND A PAYMENT ORDER? THESE ARE SOME OF THE QUESTIONS ANSWERED IN ARTICLE 4A.

THIS BILL PROVIDES FOR A SIGNIFICANT IMPROVEMENT IN ALASKA LAW. IT WILL HELP KEEP ALASKA'S UNIFORM COMMERCIAL CODE UP TO DATE, THUS TENDING TO ASSURE A FAVORABLE COMMERCIAL CLIMATE HERE -- ONE THAT IS IN LINE WITH THE REST OF THE COUNTRY.

#

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April 5, 1993

The Honorable Bill Hudson
Chair, House Labor and Commerce Committee
Alaska State Legislature
Room 108, State Capitol
Juneau, AK 99801-1182

HAND-DELIVERED

Re: CSSB 112(Jud) -- Uniform Commercial Code, misc. changes

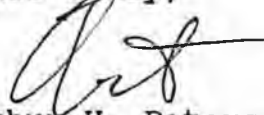
Dear Bill:

CSSB 112(Jud) passed the Senate, and is now in your committee. Like SB 86, this bill is a vital part of the effort to keep Alaska's Uniform Commercial Code (UCC) up to date. To promote a favorable business climate here, we need to keep our law -- especially the UCC -- moving in line with the rest of the country. Please schedule this bill for an early committee hearing.

You will find attached a two-page description that I prepared for this bill. You will note that it deals with three aspects of the UCC: (1) the new art. 2A (AS 45.12), on personal property leasing; (2) the revised art. 3 (AS 45.03), on negotiable instruments (with compatibility amendments in art. 4 [AS 45.04], on bank deposits and collections, and art. 1 [AS 45.01], on general provisions); and (3) the repeal of art. 6 [AS 45.06], on bulk sales.

If you have any questions, please let me know. Thank you.

Yours truly,



Arthur H. Peterson
Uniform Law Commissioner
for Alaska

AHP/sh
Enclosure

cc w/encl: Deborah E. Behr, Assistant Attorney General
Legislation/Regulations Section
Alaska Department of Law

SB 112

2/4/93
RHP

DESCRIPTION OF BILL ON
UNIFORM COMMERCIAL CODE CHANGES:
PERSONAL PROPERTY LEASING, NEGOTIABLE INSTRUMENTS,
AND BULK SALES

With all other U.S. jurisdictions (except Louisiana, which has enacted parts of it), Alaska enacted the Uniform Commercial Code (UCC), promulgated by the National Conference of Commissioners on Uniform State Laws (NCCUSL). This bill reflects a major effort to update the UCC. The bill has three basic parts: (1) a new art. 2A on personal property leasing (sec. 125 of the bill), (2) amendments to the UCC's arts. 3 and 4, regarding negotiable instruments and bank deposits and collections (secs. 14 through 117 and 127 of the bill); (3) repeal of UCC art. 6, on bulk sales (sec. 127 of the bill). (The other bill sections contain changes to accommodate those basic parts of the bill.) Benefits to Alaska of keeping its UCC up to date are enormous. These proposed changes, promulgated by the NCCUSL, are essential to business and consumers involved in commercial transactions; they will encourage a predictable and favorable business climate here.

Personal Property Leasing

UCC art. 2 (AS 45.02) deals with sales. Article 9 (AS 45.09) deals with secured transactions. But nothing currently deals with leasing of personal property, a multi-billion dollar industry. The new art. 2A (proposed AS 45.12) fills the gap.

Personal property being leased ranges from horses, cars, and moving vans, to heavy construction equipment and oil rigs. The new article deals with what are called "true" leases and "finance" leases. It tailors some concepts from the current art. 2. It provides statutory answers to a broad range of legal issues, covering such matters as offer and acceptance, warranties, mistake, failure to perform, risk of loss, and remedies. The current absence of these rules promotes litigation.

Negotiable Instruments and Bank Deposits and Collections

In the UCC, arts. 3 and 4 (AS 45.03 and 45.04, respectively) are companion articles. Article 3 provides for all negotiable instruments, including checks and certificates of deposit. Most checks are drawn upon bank accounts, and certificates of deposits are banking instruments. Amendments in this bill pertaining to these two articles are made primarily to recognize modern electronic technology and banking practices. In revising art. 3, some companion amendments to art. 4 (bank deposits and collections) and to art. 1 (general provisions) have been necessary. It has been said that "Negotiable instruments make the

economy go around." That is why it is important for Alaska to keep its law on the subject up to date.

Much of the language in present art. 3 is unnecessarily technical and archaic. This bill's revision reorganizes the material into a more logical sequence and significantly clarifies and modernizes the law, thus fixing numerous problems that have arisen over the past 40 years of experience with the UCC and negotiable instruments. One especially important feature is that the revision recognizes that there are two types of instruments -- notes and drafts -- which usually perform different functions and merit different treatment.

The revised art. 3 (with conforming amendments in arts. 1 and 4) provide numerous benefits to the public interest, to users of negotiable instruments, and to banks. Among the benefits are the following: certainty of the law; speed and reliability, by addressing new technologies; lower costs; reduced litigation, by removing troublesome issues; expansion of the definition of "good faith"; stricter standards for fiduciaries; improvements to the acceptability of bank obligations such as cashier checks; and a variety of other improvements of the law.

Bulk Sales

A "bulk sale" is one in which a business sells all or a large part of its inventory to a single buyer outside the ordinary course of business. Such a sale has also been called a "bulk transfer." One goal of the laws on this subject had been to protect creditors of such businesses from the proprietor who absconds with the proceeds of the sale. UCC art. 6 replaced a variety of earlier bulk sales laws in the states. All of them were enacted in a climate of smaller businesses that were localized in scope. But the credit environment has changed, so that the risk of the absconding merchandise is no longer very great. Business creditors can evaluate creditworthiness far better than was the case when the UCC was first promulgated, and they can pursue absconding sellers with much less difficulty. New laws have partially overlapped art. 6, and more sophisticated and wide-spread inventory financing under art. 9 of the UCC has provided even more significant protections for creditors. Therefore, the NCCUSL recommended repeal of art. 6, but, as an alternative for states where this would be appropriate, also offered a thorough revision of art. 6. As of 1991, 14 states had addressed the issue, and 10 of them opted for the repeal approach. A group of 16 Alaska business law attorneys has written to say that they unanimously support the repeal approach offered in this bill.

#####

3/08/93 DRAFT OF BANKING REGULATIONS, TO BE ADOPTED
AFTER THE NEW BANKING CODE TAKES EFFECT

3 AAC 01.010. ADJUDICATORY HEARINGS. (a) Setting Hearings. When the department intends to issue or has issued an order directing a person to stop an act or practice considered by the department to be unsafe or unsound, or in violation of or likely to violate either an order of the department, the provisions of AS 06, or regulations adopted under AS 06, the department will hold a hearing on the order or proposed order, on the department's own motion or upon timely written request by

(1) any person subject to the order or proposed order; or

(2) any person having a contractual relationship with a [THE] person subject to the order and who is directly affected by the order or proposed order, except that a person does not obtain standing to request a hearing solely due to the person's status as a depositor.

(b) Time of Hearing. Upon receipt of written request for a hearing, the department will, within 30 days, schedule a hearing date on the subject matter of the order or proposed order.

(c) Notice of Hearing. Except for an emergency hearing under AS 06.05.468(d), notice [NOTICE] of hearing will be given not less than 10 days before the hearing date [AND MUST BE GIVEN] to those persons named in the department's order or proposed order. The notice of hearing must contain

(1) the name of the person who is the subject of the order or proposed order;

(2) the time and place of the hearing;

(3) a statement of matters to be considered;

(4) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(5) references to the particular statutes [SECTIONS OF THE ACT] and regulations involved.

(d) All hearings on orders under this section shall be private unless the department, in its sole discretion after considering the views of the party afforded the hearing, determines that a public hearing is necessary to protect the public interest.

(e) Witnesses. Any party who is subject to the order or proposed order of the department has the right to have subpoenas issued by the department on the party's behalf to any witness [ON HIS BEHALF].

(f) [(e)] Right to Counsel. Any party named in the order or proposed order has the right to appear in person and by counsel; counsel may be present during the presentation [GIVING] of evidence and must be given a reasonable opportunity to examine and inspect all documentary evidence made a part of the record.

(g) [(f)] Rules of Evidence. The following rules of evidence apply in hearings held under this section:

(1) oral evidence may be taken only on oath or affirmation;

(2) each party or party's counsel, but not both, may call and examine witnesses, introduce exhibits, cross-examine

opposing witnesses on matter [MATTERS] relevant to the issues even though that matter was not covered in the direct examination, impeach a witness regardless of which party first called the witness to testify, and rebut [THE] adverse evidence [AGAINST HIMSELF];

(3) any party [IF A PARTY DOES NOT TESTIFY IN HIS OWN BEHALF, HE] may be called by any other party and examined as if under cross-examination;

(4) the hearing need not be conducted according to technical judicial rules relating to evidence and witnesses; however, relevant evidence shall [MUST] be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of a common law, statutory [PROVISION], or court rule which makes improper the admission of the evidence over objection in a civil action; hearsay evidence may be used to supplement or explain direct evidence but is not sufficient by itself to support a finding unless it would be admissible over objection in a civil action; the rules of privilege are effective to the same extent that they are recognized in a civil action; irrelevant and unduly repetitious evidence shall [MUST] be excluded;

(5) nothing in this section alters the ordinary rules of burden of proof of judicial proceedings in the state.

(h) [(g)] Transcript of Hearing. All [A RECORD OF ALL] hearings will be recorded [MADE]. Upon written request by a party and at the party's [HIS] expense, a full stenographic record of the hearing will be made by the department.

(i) [(h)] Contents of Record. The record in any hearing will include the following:

(1) all pleadings, motions and intermediate rulings considered by the hearing officer;

(2) arguments of parties or their representatives and all evidence received and considered including a statement of matters of which official notice is taken by the hearing officer;

(3) questions or offers of proof, objections, and rulings on them by the hearing officer;

(4) proposed findings of fact and conclusions of law prepared by the parties if requested by the hearing officer;

(5) the decision, opinion, and order of the hearing officer.

(j) [(i)] Final Orders. A final order must be in writing and stated in the record. A final order must include findings of fact and conclusions of law. All findings of fact must be based exclusively on the evidence presented at the hearing and on matters officially noticed. Findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A copy of a final order must be delivered or mailed to all parties and to their counsel of record, if any, within 10 days after the termination of the hearing.

(k) [(j)] Rehearings.

(1) At the discretion of the department, a rehearing will be granted to any aggrieved party if a written request is made for it within 10 days after the final order is mailed to the person entitled to receive it. In requesting a rehearing, the party shall set out one or more of the following grounds:

(A) newly discovered evidence or newly available evidence relevant to the issues;

(B) need for additional evidence to develop the facts essential to proper decision;

(C) probable error committed in the proceeding or in the hearing officer's decision which would be grounds for reversal on judicial review of the order; or

(D) need for further consideration of the issues and the evidence in the public interest.

(2) Nothing in this section prohibits the department from rehearing, reopening, or reconsidering any matter in accordance with other applicable statutory provisions or on the ground of fraud by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

(3) All rehearings shall [MUST] be confined to those grounds upon which the rehearing was requested or granted. The decision on [ALL DECISIONS, OPINIONS, AND ORDERS RESULTING FROM A] rehearing shall [MUST] be delivered or mailed to each party and to each party's attorney of record, if any, within 10 days of the termination of the rehearing. (Eff. 4/4/79, Register 70; am / / , Register __)

AUTHORITY

AS 06.01.030

AS 06.05.005(a)(2)

NOTES:

(a) Made consistent with new AS 06.01.030. The exclusion of standing for depositors is to avoid a rash of hearing requests by people who have no real interest in the proceeding.

(d) New subsection. This is adopted from the former FDIC statute, 12 USC 1818(h)(1).

(g) This is taken directly from the APA, AS 44.62.460. The changes are technical and make the section closer to its APA counterpart.

[*REPEALED & REENACTED*] 3 AAC 01.020. FACT-FINDING HEARINGS. (a) The department will, in its discretion, hold a fact-finding hearing, if the department receives timely written opposition to

(1) an application for a proposed financial institution or branch under AS 06.05.344(g), 06.05.399(e) or 06.05.491(e);

(2) to a financial institution merger, consolidation or conversion; or

(3) to a licensure under AS 06.20 or AS 06.40.

(b) A hearing conducted under this section will generally [MUST] follow the procedures set out in 3 AAC 01.010(c)-(i) [(h)],

and a written determination will be issued by the department taking into consideration evidence in the department's records and evidence submitted at the hearing. (Eff. 4/4/79, Register 70; am / / ; Register __)

AUTHORITY

AS 06.01.030

NOTE: Amended to clarify that these hearings apply only to applications and licensures, and are always subject to the dept's discretion.

3 AAC 01.030. NOTICE OF FACT-FINDING ACTION BY THE DEPARTMENT.
Repeal.

NOTES: This section was arguably in conflict with the procedures set out in the preceding section and applicable statutes, and was certainly unnecessary.

3 AAC 01.905. RECORDS; DISCLOSURE AND LIMITATION ON DISCLOSURE. (a) The records, reports, and correspondence files of the division with respect to financial institutions are not public documents, are not subject to subpoena, and are not open for inspection by the public. Neither the commissioner, the director, nor any member of their respective staffs may disclose any information obtained in the discharge of official duties to any person not connected with the division, except that the commissioner will, in his discretion, disclose that information

(1) to representatives of federal agencies insuring accounts in the financial institution;

(2) to representatives of federal agencies, other states, and foreign countries having supervisory authority over the activities of the financial institution or enterprises or similar financial institutions or enterprises if those representatives are permitted to and do, upon request of the commissioner, disclose similar information respecting those financial institutions under their supervision;

(3) to the attorney general of this state; and

(4) for records, reports or correspondence that apply to a particular person or financial institution, to that person or financial institution.

(b) The commissioner will, in his discretion

[(1) DISCLOSE THE FACT OF FILING APPLICATIONS BY FINANCIAL INSTITUTIONS AND GIVE NOTICE OF HEARINGS, IF ANY, ON THOSE APPLICATIONS AND OF HIS ACTIONS ON THEM, AS PROVIDED BY LAW;]

(2) prepare and circulate reports reflecting the assets and liabilities of financial institutions in the state as a whole, or other [WHICH INCLUDE INFORMATION CONSIDERED PERTINENT TO THE PURPOSE OF EACH REPORT FOR] general statistical information; and

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

and a written determination will be issued by the department taking into consideration evidence in the department's records and evidence submitted at the hearing. (Eff. 4/4/79, Register 70; am / / ; Register __)

AUTHORITY

AS 06.01.030

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Repeal.

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[(1) DISCLOSE THE FACT OF FILING APPLICATIONS BY FINANCIAL INSTITUTIONS AND GIVE NOTICE OF HEARINGS, IF ANY, ON THOSE APPLICATIONS AND OF HIS ACTIONS ON THEM, AS PROVIDED BY LAW;]

(2) prepare and circulate reports reflecting the assets and liabilities of financial institutions in the state as a whole, or other [WHICH INCLUDE INFORMATION CONSIDERED PERTINENT TO THE PURPOSE OF EACH REPORT FOR] general statistical information; and

(3) prepare and circulate reports as provided by law.

(c) [NOTHING IN THIS SECTION PREVENTS ANY PERSON OR [A] FINANCIAL INSTITUTION COVERED BY THIS CHAPTER FROM HAVING ACCESS TO RECORDS, REPORTS, AND CORRESPONDENCE WHICH APPLY TO HIM OR THE INSTITUTION TO THE EXTENT THAT THE PORTIONS OF THE RECORDS, REPORTS, AND CORRESPONDENCE WHICH DO APPLY MAY BE SEGREGATED FROM THE PORTIONS OF THE RECORDS, REPORTS, AND CORRESPONDENCE WHICH DO NOT APPLY TO HIM OR THE INSTITUTION.

(d)] No records, reports, or correspondence that are prohibited from disclosure under federal law may be disclosed to any person or institution [WHICH ARE NOT SUBJECT TO DISCLOSURE UNDER FEDERAL LAW].

(d) The board of directors of a bank may release a report of examination, prepared by the department, to an independent auditor under contract to produce a report of the bank's condition under AS 06.05.438(d). (Eff. 6/6/82, Register 82; am / / , Register __)

AUTHORITY

AS 06.01.025
AS 06.05.005(a)(2)
AS 06.15.010
AS 06.20.340
AS 06.25.315
[AS 06.30.025]
[AS 06.30.030]
AS 06.40.180
AS 06.45.010

NOTES:

(b)(1) Repealed; this is already covered under sections 010 and 020.

(b)(2) This was poorly written. I have tried to clarify that it authorizes the release of general statistical or cumulative info only, and not specific info on specific institutions.

(b)(4) This, combined with the repeal of former (c), means that records relating to a particular person or institution may be kept confidential and not released to the affected party, if the department desires.

Former (c) Repealed; see comments above.

(d) New subsection, to authorize a bank to release a copy of the department's exam to the bank's auditors.

3 AAC 01.910. DEFINITIONS. In this chapter, unless the context requires otherwise

(1) "communicating" means conveying information regarding a debt, directly or indirectly, to any person through any medium;

(2) "creditor" means a financial institution with a certificate of authority or license issued by the department under AS 06 to conduct business as a financial institution in this state including, but not limited to, commercial and mutual savings banks, savings associations, trust companies,

finance company licensees, and premium finance company licensees;

(3) "debt" means any obligation or alleged obligation to pay money, whether or not the obligation has been reduced to judgment;

(4) "debtor" means any person obligated or allegedly obligated to pay any debt and, in the case where the debtor is a minor, includes the guardian, executor, administrator, or parent of the debtor;

(5) "department" means the Department of Commerce and Economic Development;

(6) "director" means the director of banking, securities [, SMALL LCANS] and corporations or his designee;

(7) "division" means the division of banking, securities [, SMALL LOANS] and corporations. (Eff. 4/4/79, Register 70; am 6/6/82, Register 82; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)
AS 06.15.010
AS 06.20.340
AS 06.25.315
[AS 06.30.025]
AS 06.40.180
AS 06.45.010

NOTES: Technical changes only.

3 AAC 02.010. RETENTION OR DESTRUCTION OF RECORDS. (a) The following is the retention schedule for Alaskan banks:

Key to Abbreviations

P.S. or Opt. - Purpose Served or Optional
D - Destroy
Months - Figure with 'mos.'
Years - Figures
Permanently - P

I. ADMINISTRATIVE

MINUTE BOOKS

Minute books of directors', executive committees', stockholders', and other meetingsP

AUDITING AND ACCOUNTING

Accrual records1
Audit copy of debits & credits to loans and discounts1
Audit work papers3
Bank call reports5 [25]
Bank examiner's reportsP
Budget work sheetsOpt.

Daily reserve computations2
Difference records6
Earnings and dividends report10 [P]
Monthly reports to directorsP
Reports to executive committeesP
Securities vault, in and out tickets3
Tax recordsP.S. [25]

CAPITAL

Capital stock certificates, records or stubsP
Capital stock ledgerP
Capital stock transfer registerP
Dividend checks10
Dividend register10
Proxies2
Register of and cancelled certificatesP [100]

GENERAL LEDGER

Daily statement of condition10 [P]
General journal1
General ledger10 [25]
General ledger tickets10

INSURANCE RECORDS

Bankers' blanket bonds3
Expired policies3
Records of policies in force3
Schedule of fire and other policies, and record of payment of premiums and sums recovered3

INVESTMENTS - BANK'S PORTFOLIO

Bond ledger10 [P]
Brokers' confirmations3
Brokers' statements3
Descriptive literature on securities disposed ofOpt.
Buy and sell orders3

LOANS AND DISCOUNTS

Audit copy of debits and credits to loans and discounts1
Collateral cards10
Collateral receipts10
Collateral register10
Collateral substitution slips (receipts)10
Credit files (closed)Opt.
Daily reportsOpt.
Debit and credit tickets10
Journal10
Liability ledger10
Loan applicationsOpt.
Loan committee minutesP
Margin cardsOpt.
Note or discount register10

Note or discount tickler2
Resolutions (after loan is paid)6
Payment receipts6

PERSONNEL

Attendance record (after leaving service) inc. 'hours worked'
.....5
Salary ledger5
Salary receipts5
Records of employees:
Applications, reference records, reports & results of examinations,
service record, efficiency tests, etc., after leaving service
.....P

II. CASH

DUE FROM BANKS

Advices from correspondents1
Affidavits/bonds of indemnity for duplicate drafts issued10
Bank statements2
Drafts10
Draft register10
Reconcilements:
 Domestic2
 Foreign5
Departmental or teller's proof sheets2

PROOF OF CLEARINGS

Clearinghouse settlement sheets3 mos.
Deposit proof sheets or tapes1
In-clearing proof sheets1
In-clearing tapes1
Out-clearing proof sheets1
Clearinghouse settlement checks10

TELLERS

Cash item record2
Cash item register2
Receipts for return items1
Return item carbons1
Teller's cash booksOpt.
Teller's cash tickets, orig. and carbon1
Teller's recapitulation (with general ledger tickets)10
Teller's scratch sheet or blotter3

TRANSIT

Outgoing cash letters1
Proof sheets1

INTERNATIONAL

Daily debits and credits7
Acceptances - Foreign exchange10 [50]

Acceptances purchased books10 [50]
 Advice checks drawn for our accounts7
 Application for postal registration7
 Cable copies7
 Cable orders7
 Miscellaneous checks & drafts7
 Collateral Records7
 Collections7
 Correspondence7
 Receipts for cash payments and securities delivered7
 Department record of checks & drafts drawn7
 Draft requisitions7
 Paid foreign drafts7
 Record of foreign exchange bought & sold7
 Federal reserve reports-Monthly report re foreign exchange position
7
 Letters of credit registers7
 Letters of credit dead7
 Letters of credit issued7
 Incoming payments7
 Mail transfersP
 Individual liability cards7
 Paid credits7
 Money order requisitions2
 Preliminary contracts7
 Remittances7
 Bills of exchange7
 Purchase and sales contracts (Cancelled)7
 Foreign drafts issued - Register10 [20]
 Telegraph code bookP
 Travelers letter of credit guarantee7
 Teller's blotter3
 Contracts and contract cards7
 Departmental settlement sheets1
 Foreign exchange remittance sheets or books7

SAVINGS ACCOUNTS

Deposits7
 Journals1
 Ledger cards or sheets7
 Control journal tapesOpt.
 Window bookkeeping machine control tapesOpt.
 Reports of accounts opened and closedOpt.
 Resolution (after closed)7
 Signature cards (after closed)7
 Signatures power of attorney7
 Trial balances3 mos.
 Affidavits Lost P/B7
 Withdrawal7*
 Work sheets interest on time accountsOpt.
 *EDIT - Unless returned to customer after microfilming.

III. DEPOSITS

ACCOUNT ANALYSIS

Analysis work sheets or cardsOpt.
Average balance cardsOpt.
Interest computation recordsOpt.
Service charge recordsOpt.

BANK (DUE TO) DEPOSITS

Advice of debit and credit, and memo entriesOpt.
Cash letters1
Cash letters for remittance1
Copies of advices of depositOpt.
Country bank ledger10
Ledger journal1
Reconcilements1
Reports of accounts, opened and closedOpt.
Resolutions (after account closed)7
Signature cards (after account closed)7
Trial balances6 mos.

CERTIFICATES OF DEPOSIT

Certificates (paid)7
Ledger cards (paid)7
Register (paid)7

COMMERCIAL DEPOSITS, INDIVIDUAL AND FIRM

Bookkeepers daily list of checks charged in total1
Check book ordersOpt.
Copies of advices of deposit1
Daily report of overdrafts1
Deposit tickets7*
Duplicate deposit ticketsOpt.
Individual ledgers7
Individual ledger journal1
Reports of accounts opened and closedOpt.
Resolutions (after closing)7
Signature cards (after closing)7
Signature power of attorney (after closing)7
Statement mailing order (after closing)3
Statement receipt cards (after closing)3
statement stubs7
Stop payment orders (after release)1
Trial balances1
Unclaimed depositsP
Undelivered statements and cancelled checks7

OFFICIAL CHECKS AND DRAFTS

Cashier's checks10
Cashier's check register10
Certified checks10
Certified check register10

Drafts10
Draft stubsOpt.
Draft register10
Expense checks10
Expense check register10
Expense vouchers10
Letters of credit & documents10
Receipts for certified checks10
RequisitionsOpt.

SAVINGS DEPOSITS

Deposit tickets7*
Duplicate deposit ticketsOpt.
Journal1
Ledger cards or sheets7
Control journal tapes1
Passbooks (closed accounts)D
Reports of accounts opened and closedOpt.
Resolutions (after account closed)7
Signature powers of attorney7
Trial balances1
Withdrawal receipts7

CHRISTMAS CLUB

Checks7
Check register7
Coupons (deposit ticket)7
Journal3 mos.
Ledger cards or sheets7
 (a) if paid by cash and receipt taken on card or sheet7
 (b) if paid by official check7
Signature cards (after closed)7
Trial balances1
Withdrawal receipts7*

*EDIT - Unless returned to customer after microfilming.

IV. MISCELLANEOUS COLLECTIONS

Collection receipts, carbons of3
Collection register3
Coupon cash letters, outgoing3
Coupon envelopesOpt.
Customers' file copies1
Incoming collection letters3
Installment contract or note records (after closing)10

CUSTOMER SERVICE

Brokers' confirmations1
Brokers' invoices1
Brokers' statements1
Escrow records (after closing)7

Safekeeping records & receipts10
Securities buy and sell orders7

GENERAL

Affidavits10
Applications for travelers' checks1
Attachments, garnishments7
Attachment releases7
Change of address orders1
Code books (not returned)D
Court order (after case closed)10
Court order memorandum record10
Death noticesOpt.
General correspondence3
Incoming mail envelopesOpt.
Night depository records1
Paid bills, statements and invoices1
Protest noticesOpt.
Receipts for check booksOpt.
Receipts (ordinary)7
Stenographers note books and mechanical device records, and extra copies of lettersOpt.
Telegrams, cable and radiogram copies3
Telegraphic transfer receipts and records3
Trust records1
Vault records, opening and closing6 mos.

REGISTERED MAIL

Insurance declarationsOpt.
Marine insurance booksOpt.
Registered mail (incoming) record2
Registered mail (outgoing) record2
Return receipt cards1

SAFE DEPOSIT VAULT

Access tickets (after entry date)7
Leases or contracts (closed)7
Storage receipts3
Ledger record of account3
Rent receipts1

V. U.S. SAVINGS BOND

U.S. Savings Bond stubs, Series EAs required in federal regulations.

U.S. Savings Bond Series E applicationsAs required in federal regulations.

(Memo: Applications must show bond numbers. File alphabetically by years).

VI. DATA PROCESSING RECORDS

TAPE & DISK FILES

Computer program tapes/disks - When a change is made, retain old

tape or disk one month to verify program.

Master file tape/disk - One day if backup is kept, until a Grandfather* if not.

Sorted daily transaction tape/disk - One day if a print-out is made, until a Grandfather if not.

Report tapes/disks - Until updated report has been verified for accuracy.

Miscellaneous data tapes/discs

New accounts - if print-outs are made daily, one day; until master is proven, if not.

Change of address - If print-outs are made daily, one day; until master is proven, if not.

Stop payment - If print-outs are made daily, one day; until master is proven, if not.

Other master files

Account history tapes - Until it is a Grandfather tape.

Statistical tapes - Until it is a Grandfather tape.

Original entry punch cards or cards punched by the computer - Two reporting periods of the information or two statement cycles.

*EDIT - Grandfather is a three-day-old tape/disk.

Grandfather - Monday

Father - Tuesday

Son - Wednesday

[*NEW SUBSECTION*] (b) Any record required to be retained by a bank under (a) of this section may be retained on microfilm, microfiche, or in any other form that preserves a true and accurate reproduction of the original document. (Eff. 12/13/70, Register 36; am / / , Register _)

AUTHORITY

[AS 06.05.070(b)]

AS 06.05.005(a)(2)

NOTES:

(a) The current regulation (the retention schedule) will become subsection (a). The few changes generally shorten some of the unnecessarily long retention requirements.

(b) To permit banks to retain records by microfilm/fiche.

[*NEW SECTION*] 3 AAC 02.020. REPORTS TO THE DEPARTMENT. (a) The quarterly reports of condition required under AS 06.05.045(a) shall be prepared on the FFIEC Consolidated Reports of Condition and Income form and, if the bank is required to file the form with the FDIC or the Federal Reserve Bank, the report to the department shall be a copy of the form filed with that agency.

(b) If compatible and with the approval of the department, a bank may file any reports required by the department by means of electronic transfer of information, or by telephone facsimile. If a signature is otherwise required, the department may accept a facsimile or an electronic signature in lieu of an original.

(c) In performing its annual examination of a state bank to be submitted to the department, as required under AS 06.05.438(d), the board shall have the books and records of the bank examined and a report prepared by an independent certified public accountant that has no interest, financial or otherwise, in the bank. (Eff. / / , Register __)

AUTHORITY

- AS 06.05.005(a)(2)
- AS 06.05.045
- AS 06.05.438(d)

NOTES:

- (a) Specifies that FDIC call reports are the appropriate forms for quarterly bank reports.
- (b) Provides for electronic and fax filings.
- (c) Requires annual bank audit. Key Bank has indicated concern that this may not allow them to use the audit of their BHC, which is done by an independent CPA. I think this provision accomodates their situation.

[*NEW SECTION*] 3 AAC 02.030. EXAMINATIONS. The examinations required under AS 06.01.015 may be conducted in alternate years, as appropriate, if the department determines that an examination of the financial institution conducted by the FDIC or other federal agency during the intervening year carries out the purposes of the statute. (Eff. / / , Register __)

AUTHORITY

- AS 06.01.015
- AS 06.05.005(a)(2)

NOTES: A new provision that the dept. can accept an FDIC exam instead of conducting its own exam, at dept's discretion. This is a paraphrase of the FDIC's statute, 12 USC 1820(d).

[*NEW SECTION - SUBJECT TO AMENDMENT OF BILL TO PROVIDE FEES BY REGULATION*] 3 AAC 02.040. FEES. (a) The following fees, which are nonrefundable, must accompany applications filed with the department under AS 06.05:

- (1) for processing a bank holding company permit application (AS 06.05.235 and 06.05.570).....\$1000;
- (2) for approval of a new state bank (AS 06.05.344).....\$2000;
- (3) for a certificate of authority for a branch bank or a change of location (AS 06.05.399).....\$1000;
- (4) for approval to operate an automated teller machine (AS 06.05.426).....\$500;
- (5) for approval of the merger or consolidation of two Alaska state banks, or a national bank located in Alaska and an Alaska state bank (AS 06.05.462).....\$2000;
- (6) for conversion of a national bank to a state bank (AS

06.05.462).....\$2000; and

(7) for an international or interstate bank to acquire or establish a branch bank (AS 06.05.555).....\$2000.

(b) If the cost to the department for processing an application exceeds the amount paid by the institution under (a) of this section, the department may assess the institution for the additional costs incurred. (Eff. / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)

AS 06.05.344

AS 06.05.399

AS 06.05.426

AS 06.05.462

AS 06.05.491

AS 06.05.570

NOTES: New section, outlining fees to be assessed for various department activities. The department proposes an amendment to the recodification bill to remove the specific fee references from the proposed statutes, which will then grant the department the authority to set all fees by regulation.

3 AAC 02.110. RESERVES AGAINST DEPOSITS.

[*NEW SUBSECTION*](a) In order to protect liquidity, each state bank shall maintain a reserve fund equal to 15 percent of the bank's total deposits, exclusive of deposits of the United States, the State of Alaska, borough and municipal governments, and other deposits of public money that are secured as required by law.

[*NEW SUBSECTION*](b) Only the following may be used in computing the reserves required under (a) of this section

(1) vault cash;

(2) deposits of the bank held by a federal home loan bank or federal reserve bank;

(3) certificates of deposit that mature in less than six months;

(4) unencumbered government securities under 3 AAC 02.205(a)(1)-(6); and

(5) the amount due from good and solvent banks located in the state or within the United States, the deposits of which are insured by the FDIC.

[*NEW SUBSECTION*] (c) The computation of reserves shall be made on the basis of average daily net deposit balances covering biweekly (14-day) periods.

(d) [(a)] For the purpose [PURPOSES] of maintaining a record of required reserves against deposits, the bank shall use the forms prescribed by the department and shall daily, according to the instructions furnished by the department, record the reserves required and the daily reserves maintained. As of the last day of the 14-day period the bank shall compute and record the average reserve required for the period and the average reserve maintained for the period. When a deficiency in the average reserves

maintained is shown, no new loans or investments may be made or dividends paid, without the prior approval of the department, until the reserves have been restored. The deficiency is considered to be restored if during the first three days of the next reserve period, using a moving 14-day average, the average reserve maintained does not result in a continuation of the deficiency. Forms reflecting the record of reserves required and maintained for a continuous period of one year shall be kept by the bank and made available to the department or a duly appointed examiner upon request.

[(b) THE REPORT OF RESERVE CONDITION IS THE UNIFORM FORMAT TO BE USED BY ALL STATE BANKS IN MAINTAINING A RECORD OF RESERVES AGAINST DEPOSIT AND REPORTING THESE RESERVES TO THE DEPARTMENT.

(1) THE DEPOSIT BASE SECTION OF THE REPORT IS TO BE USED IN RECORDING DEPOSITS AND ADJUSTMENTS FOR THE BIWEEKLY (14-DAY) PERIOD. DEPOSITS LESS ADJUSTMENTS ARE RECORDED IN THE 14 COLUMNS RUNNING FROM LEFT TO RIGHT ACROSS THE FORM.

(2) THE RESERVE COMPUTATION SECTION OF THE REPORT IS TO BE USED IN RECORDING THE RESERVE COMPUTATION, DAILY RESERVE REQUIREMENT, DAILY RESERVE MAINTAINED AND AVERAGE RESERVE REQUIRED FOR THE PERIOD. EACH DAILY COMPUTATION IS MADE BY POSTING IN THE APPROPRIATE COLUMN FROM LEFT TO RIGHT ACROSS THE FORM.

(3) THE FOLLOWING ARE BRIEF STEP-BY-STEP INSTRUCTIONS FOR MAKING DAILY COMPUTATIONS:

(A) GROSS DEMAND AND GROSS SAVINGS AND TIME DEPOSITS AS DEFINED IN (C) OF THIS SECTION ARE RECORDED UNDER THE APPROPRIATE DATE COLUMN IN THE DEPOSIT BASE SECTION OF THE REPORT;

(B) GROSS DEPOSITS ARE ADJUSTED BY SECURED DEPOSITS AS DEFINED IN (C) OF THIS SECTION;

(C) NET DEPOSITS ARE TRANSFERRED TO COLUMNS 1 AND 3 OF THE RESERVE COMPUTATION SECTION OF THE REPORT;

(D) 20 PERCENT OF COLUMN 1 IS RECORDED IN COLUMN 2. EIGHT PERCENT OF COLUMN 3 IS RECORDED IN COLUMN 4 AND THE TOTAL OF COLUMNS 2 AND 4 RECORDED IN COLUMN 5. THIS FIGURE REPRESENTS THE TOTAL REQUIRED RESERVE FOR THAT PARTICULAR DAY;

(E) CASH, BALANCES WITH OTHER BANKS, CASH ITEMS AND FEDERAL FUNDS SOLD AS DEFINED IN (C) OF THIS SECTION ARE RECORDED IN COLUMNS 6 AND 7;

(F) THE TOTAL OF COLUMNS 6 AND 7 ARE RECORDED IN COLUMN 8;

(G) IN COLUMN 9 A RUNNING DAILY AVERAGE OF THE REQUIRED RESERVE MAY BE KEPT AT THE BANK'S OPTION AND AS A CONVENIENCE IN COMPARING THE AVERAGE DAILY RESERVE MAINTAINED WITH THE RESERVE REQUIRED.

(c) IN THIS SECTION

(1) 'DEMAND DEPOSITS' MEANS THOSE DEPOSITS REFLECTED IN SCHEDULE E, ITEM 11 OF THE REPORT OF CONDITION (FORM 64); AND

(2) 'TIME AND SAVINGS DEPOSITS' MEANS THOSE DEPOSITS REFLECTED IN SCHEDULE F, ITEM 12 OF THE REPORT OF CONDITION (FORM 64);

(3) 'SECURED DEPOSITS' MEANS THOSE PUBLIC DEPOSITS FOR WHICH THE BANK HAS PLEDGED COLLATERAL IN THE AMOUNT OF 100 PERCENT OR MORE;

(4) 'AVERAGE DAILY NET DEPOSITS' MEANS TOTAL DEMAND DEPOSITS AND TIME AND SAVINGS DEPOSITS EXCLUSIVE OF SECURED DEPOSITS;

(5) 'BIWEEKLY PERIOD' MEANS A PERIOD OF 14 DAYS BEGINNING ON THE DATE TO BE DESIGNATED BY THE DEPARTMENT;

(6) 'CASH, BALANCES WITH OTHER BANKS AND CASH ITEMS IN PROCESS OF COLLECTION' MEANS CURRENCY AND COIN, DEMAND BALANCES WITH OTHER BANKS LOCATED IN THE UNITED STATES, FEDERAL FUNDS SOLD, AND CASH ITEMS IN PROCESS OF COLLECTION WHICH MAY INCLUDE AMOUNTS DUE FROM OTHER BANKS IN THE EXCHANGE OF CLEARING OR TRANSIT ITEMS; ITEMS NOT IN PROCESS OF COLLECTION ARE TO BE EXCLUDED.

(d) A BANK MAY SATISFY THE RESERVE REQUIREMENTS OF AS 06.05.200 BY MAINTAINING THE AMOUNT AND FORM OF RESERVES IT IS DIRECTED TO KEEP BY THE FEDERAL RESERVE BOARD.

(e) THE RESERVE REQUIREMENTS OF AS 06.05.200 MAY BE SATISFIED UNDER (d) OF THIS SECTION FOR ONLY SO LONG AS THE FEDERAL RESERVE BOARD MAINTAINS RESERVE REQUIREMENTS FOR STATE NONMEMBER BANKS.] (Eff. 1/17/69, Register 28; am 12/13/70, Register 36; am 7/30/82, Register 83; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2) [(1)]

AS 06.05.200

NOTES:

(a). New subsection, to set the reserve requirements. Current statute sets the amounts at 20% of demand deposits and 8% of time and savings. This proposal simplifies this requirement to 15% of all deposits.

For your information, here is a short review of what some other states are doing:

Other States:

OR and GA set minimum reserves at 15% of demand deposits, 5% of time deposits. By reg, however, OR has lowered these numbers to 12% and 4%.

ID requires 10% of demand deposits and 4% of time and savings, but these can be waived if the bank meets fed requirements.

FL sets its reserves at 15% of all deposits, similar to this proposal (658.68).

Ark. and MT use the federal requirements (MT actually can be set below fed requirements - the OCC amounts are the maximum amount the state can set in its regs).

(b). Current AS 06.05.200(b), repealed in our bill. Short-term CD's, deposits with the FHLB and FRB, and government securities (which presumably are readily marketable) have been added as permissive for calculating reserves, which will make it much easier for the banks to meet these requirements. The 6-month time limit for CD's was suggested by Northrim Bank.

(c). Also part of current AS 06.05.200(b).

(d). Current (a), amended to allow the department to authorize new loans or dividends even if reserve requirements are not met; this is consistent with our changes to AS 06.05.200(d) in the bill.

Current (b & c). Repealed. These essentially are instructions for Reserve Reports. These don't need to be here - they can simply be included with the report forms.

Current (f & g). Repealed. We will no longer accept federal reserve requirements, although the state requirements should be easy to meet, given the expansion of the types of assets we will accept.

[*NEW SECTION*] 3 AAC 02.112. DISCLOSURE OF ACCOUNT CHARGES. In meeting the requirement of AS 06.05.120 that it post a schedule of charges for certain accounts, a bank may make available upon request pamphlets, brochures, or other documents that clearly set out the required information and post a sign, readily visible, indicating the existence of these pamphlets, brochures or documents. (Eff. / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)

AS 06.05.120

NOTE: Simply provides that a bank can meet its obligation to "post" its schedule of charges by distributing pamphlets, so long as the existence of the pamphlets is posted.

3 AAC 02.115. NOW ACCOUNTS. Repealed.

NOTES: Repealed; this section goes too far into regulating the contractual rights of the parties.

[*REPEALED AND REENACTED*] 3 AAC 02.120. REPORTING LOANS OVER \$100,000. In each report to the board of directors under AS 06.05.438(c), the reporting officer shall specifically identify each loan made since the last report that exceeds \$100,000. It is not the purpose of this section to require the reporting of the aggregate liability of a borrower, but to encourage directors to review larger loans to ensure that lending practices are consistent with the bank's established lending policies. (Eff. 1/17/69, Register 28; am 10/2/83, Register 87; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2) [(1)]

[AS 06.05.205(a)]

AS 06.05.438(c)

NOTES: Current reg is based on AS 06.05.205(a), which will be repealed in the recodification. This replacement requires the monthly reports to the board under AS 06.05.438(c) to specifically identify each loan over \$100,000.

[*NEW SECTION*] 3 AAC 02.122. LENDING STANDARDS. A bank may not make a loan unless the bank has determined and documented, in the loan file, the type, amount, purpose, and repayment provisions of the loan and an analysis of the credit worthiness of the borrower. (Eff. / / . Register __)

AUTHORITY

AS 06.05.005(a)(2)
AS 06.05.207

NOTE: This is a spin off of AS 06.30.507.

[*REPEALED AND REENACTED*] 3 AAC 02.125. LOAN LENDING LIMITS. (a) For purposes of determining compliance with the loan lending limits in AS 06.05.205, the department will consider a loan fully secured if the fair market value of the collateral for the loan exceeds the total principal, interest and other charges owed to or incurred by the bank on the loan.

(b) A loan made to one borrower will be attributed to and combined with loans to another, for purposes of the lending limits in AS 06.05.205(b), when

(1) the proceeds of the loan to one borrower are to be used for the direct benefit of the other;

(2) the expected source of repayment of the loans is the same;

(3) there is substantial financial interdependence between the two borrowers, including where a majority of one's income is derived from sales or other transactions with the other;

(4) the proceeds of the loans to each person will be used to purchase a business enterprise in which the borrowers will have a majority interest.

(c) A loan made to a partnership, joint venture, or association will be considered a loan, under AS 06.05.205(b), to each member of that entity that may be held liable for the debts of the entity. (Eff. 5/2/84, Register 90; am / / / , Register __)

AUTHORITY

[AS 06.01.020]
AS 06.05.005(a)(2)
AS 06.05.205

NOTES: The current regulation merely states that banks can lend in parity with national banks. We want to eliminate use of the wildcard statute and adopt our own standards, which we have done in the recodification.

(a) Defines "fully secured." Some states use a figure higher than 100% secured (as high as 115%, as I recall), but the consensus is that this figure seems right.

(b) & (c) There are many possible ways to define loans to one borrower, but the OCC regulations seem pretty good. This

regulation attempts to paraphrase the OCC's, although in the process there has necessarily been some simplification of them. Please see 12 C.F.R. sec. 32.5.

3 AAC 02.130. IMPROVED REAL ESTATE. Repeal.

NOTES: The recodification repeals all distinctions between loan types (like between improved and unimproved property), and therefore this section is currently meaningless.

[*NEW SECTION*] 3 AAC 02.132. BANK FINANCIAL RECORDS. A bank shall maintain its financial books and records in accordance with the FFIEC Instructions for the Consolidated Reports of Condition and Income form.

NOTE: Will make examination of a bank's books easier.

3 AAC 02.135. DISPOSITION OF PROPERTY NOT NEEDED FOR BANKING BUSINESS. (a) The [AS REFERRED TO IN AS 06.05.245, THE] time limit for disposing of real estate [and personal property] not necessary for the convenient transaction or promotion of a banking business, including any property acquired to satisfy loans, is two years from the date [OF] the bank receives [bank's receiving] title to the property. Real property [PROPERTY] not disposed of within two years shall be written down annually at the rate of 20 percent of the book value at the time of acquisition until the book value is reduced to \$10. The book value of the property shall remain at \$10 until disposed of by the bank.

(b) The time limit for disposing of personal property not necessary for the convenient transaction or promotion of a banking business, including property acquired to satisfy loans, is one year from the date of the bank receives title to the property, unless the department approves a longer time limit in a particular case. Personal property not disposed of within the time limit of this subsection shall be charged off in its entirety. [TO HOLD ANY PROPERTY NOT NEEDED IN THE CONDUCT OF A BANKING BUSINESS FOR LEASING PURPOSES, ALL PROVISIONS OF THE LEASING CONDITIONS SET OUT BY STATUTE SHALL BE MET.] (Eff. 12/13/70, Register 36; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)

AS 06.05.230

AS 06.05.240

[AS 06.05.232]

AS 06.05.245

NOTES:

(a) Clarifies that the provision applies to OREO. Northrim and Key Bank both object to the required write downs of OREO, but the department thinks this is good and should be retained. The language is clarified -- the 20% write down is 20% of original book

value, not remaining value. FYI: ID requires total write-off of any property not disposed of within 2 years.

(b) This is a new rule for personal property, which generally requires a faster resale than real property.

Former (b) Repealed; the leasing provisions upon which this is based are repealed in the recodification, and now only subsidiaries can lease property.

3 AAC 02.141. ALTERNATIVE MORTGAGE INSTRUMENTS. Repeal.

NOTE: Repealed. Under Garn-St. Germain (1982), the feds have pretty much preempted the field by specifically authorizing all depository institutions and other housing lenders to "make, purchase, and enforce alternative mortgage transactions," as long as the transactions comply with federal guidelines. Under that language, it is not even clear if the dept. could demand compliance with AS 45.45.

3 AAC 02.145. AUTHORIZED ACTIVITIES FOR CERTAIN DOMESTIC BANK HOLDING COMPANIES [COMPANY]. (a) Where substantially all of the assets of a domestic bank holding company consist of interests in Alaska state banks, the [A] domestic bank holding company may engage only in activities of a financial or [,] fiduciary [OR INSURANCE] nature, or other activities permitted for subsidiaries of banks under AS 06.05.272 and this chapter, and it may invest, without limitation, in the shares of subsidiaries which engage in these activities, subject to the requirements of (c) of this section. The following are considered to be financial or [,] fiduciary [OR INSURANCE] activities: mortgage banking, factoring, leasing of equipment, property management, data processing services, armored car or messenger services, and operation of a credit bureau, travel agency, personal finance company, commercial finance company or trust company.

(b) Upon application to and approval of the department, a domestic bank holding company described in (a) of this section may diversify its holdings or activities, if the department determines that the diversification

(1) serves the needs and convenience of the public;

(2) is not detrimental to the company's banking subsidiary;

(3) the activity or investment is closely related to the business of banking or of managing or controlling banks; and

(4) the company demonstrates that it has capable and sufficient management personnel to provide the new service or manage the new subsidiary.

(c) A domestic bank holding company or subsidiary may not engage in an activity for which qualifications or licensing requirements are established by law, without first demonstrating those qualifications or obtaining the license and obtaining the written approval of the activity [OR MOVEMENT] from the department.

[(d) UPON OBTAINING THE WRITTEN APPROVAL OF THE DEPARTMENT, A DOMESTIC BANK HOLDING COMPANY OR SUBSIDIARY MAY ENGAGE IN ANY OF

THE ACTIVITIES THAT THE FEDERAL RESERVE BOARD PERMITS OF HOLDING COMPANIES SOLELY SUPERVISED BY THAT BOARD.] (Eff. 7/31/69, Register 31; am 12/13/70, Register 36; am 4/6/79, Register 70; am 1/1/84, Register 88; am / / , Register __)

AUTHORITY

[AS 06.01.020]
AS 06.05.005(a)(2)
AS 06.05.235
[AS 06.05.540(9)]

NOTES:

(a & b) This section restricts certain domestic BHC's - those whose only assets are banks - and their subsidiaries to financial or fiduciary activities, or activities permitted for bank subsidiaries, including real estate ownership, management, and development, insurance, securities brokerage, and anything else authorized in general in sec. 200 of these regulations, plus anything the department approves for the particular BHC on a case-by-case basis.

(c) Technical change.

(d) Repealed; this is "wildcard" language that we are repealing throughout, by adopting our own requirements.

3 AAC 02.150. PERMIT TO OPERATE A [REPORTS TO THE DEPARTMENT OF A DOMESTIC] BANK HOLDING COMPANY. (a) [*NEW SUBSECTION*] Each domestic and out-of-state bank holding company must apply for a permit from the department, authorizing the company to operate as a bank holding company in this state. A permit will be issued if the department determines that its issuance will not disadvantage the public and is not inconsistent with the maintenance of a competitive, safe and sound banking system.

(b) [(a)] Before obtaining a permit, and at [AT] the close of its accounting year, a [DOMESTIC] bank holding company shall submit a report to the department clearly reflecting its [YEAR-END] financial condition as of the end of its last accounting year, and a profit-and-loss statement covering operations for the preceding accounting year [12 MONTHS]. The report must disclose the holding company's relationship with and investment in all subsidiaries as well as the nature and financial condition of their respective operations. For domestic bank holding companies, the [THE] report must be prepared and certified by an independent certified public accountant.

(c) [(b)] In addition to the report of financial condition, the [THE] commissioner may require a [DOMESTIC] bank holding company [, ITS SUBSIDIARIES, OFFICERS, OR DIRECTORS,] to [CERTIFY THE ACCURACY OF AND] submit any other reports, accounts, or records the department determines necessary or desirable to insure financially sound banking organization and practice. (Eff. 7/31/69, Register 31; am 4/6/79, Register 70; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)
AS 06.05.235
AS 06.05.570

NOTE: Here is the new permitting process for bank holding companies. It provides for a one-time permit, with continued annual financial reports.

3 AAC 02.155. EXTENSION OF CREDIT BY A BANK [SUBSIDIARY] TO THE BANK'S [DOMESTIC BANK] HOLDING COMPANY OR SUBSIDIARIES OF THE HOLDING COMPANY. (a) A [NO] subsidiary bank may not extend credit, secured or unsecured, in excess of the bank's legal lending limit [,] to the bank's [DOMESTIC BANK] holding company or any of the holding company's [ITS] subsidiaries.

(b) The aggregate of all credit extended to a [DOMESTIC] bank holding company and its subsidiaries by a subsidiary bank may not exceed 20 percent of the [TOTAL] capital accounts of the subsidiary bank.

[(c) CREDIT EXTENDED TO A DIRECTOR, OFFICER, EMPLOYEE, OR REPRESENTATIVE OF A DOMESTIC BANK HOLDING COMPANY OR ANY OF ITS SUBSIDIARIES IS CONSIDERED AN EXTENSION OF CREDIT TO THE DOMESTIC BANK HOLDING COMPANY OR SUBSIDIARY TO THE EXTENT THAT THE PROCEEDS OF THE CREDIT ARE USED FOR THE BENEFIT OF THE DOMESTIC BANK HOLDING COMPANY OR ITS SUBSIDIARIES.]

(d) In this section, "credit extended" includes, but is not limited to, loans, purchase of securities or other assets under a repurchase agreement, the discount of promissory notes, bills of exchange, conditional sales contracts or other similar paper, and advances made against collateral security in the form of capital stock, bonds, debentures, or other obligations of the domestic bank holding company or its subsidiaries. (Eff. 7/31/69, Register 31; am 4/6/79, Register 70; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)
AS 06.05.205(b)
AS 06.05.235
AS 06.05.570

NOTES:

(a) Changed to make the restriction apply to all BHC's, not just domestics.

(b) Changed to use new terminology for capital accounts adopted in the code.

(c) Repealed because this is already covered by 3 AAC 02.125.

3 AAC 02.160. REQUIREMENTS TO FORM [FORMATION OF] A DOMESTIC BANK HOLDING COMPANY. (a) [A DOMESTIC BANK HOLDING COMPANY MAY BE LAWFULLY FORMED UNDER THE ALASKA BUSINESS CORPORATION ACT (AS 10.05) IF

(1) THE ARTICLES OF INCORPORATION AND BYLAWS OF THE

COMPANY DO NOT CONTAIN PROVISIONS INCONSISTENT WITH THE REGULATIONS IN THIS CHAPTER; AND

(2) THE] The executive officers, directors, and principal shareholders [STOCKHOLDERS] of a new domestic bank holding company must [THE PROPOSED COMPANY] file, on forms provided by the department, required biographical and financial information before engaging in activities regulated by 3 AAC 02.145 - 3 AAC 02.180. New or additional directors and officers shall also file on forms provided by the department the information required by this subsection within 30 days after being elected to or hired for the position. Biographical and financial information required under this section is considered confidential by the department and not subject to subpoena.

(b) In this section,

[(1) "DIRECTOR" MEANS AN INDIVIDUAL ON THE BOARD OF DIRECTORS;

(2) "OFFICER" MEANS AN INDIVIDUAL HOLDING ONE OF THE FOLLOWING OFFICES: CHAIRPERSON OF THE BOARD, CHIEF EXECUTIVE OFFICER, PRESIDENT, EXECUTIVE VICE PRESIDENT, SECRETARY, TREASURER OR VICE PRESIDENT; AND

(3)] "principal shareholder [STOCKHOLDER]" means a person, company, association or other entity owning 10 percent or more of the outstanding shares of the domestic bank holding company. (Eff. 7/31/69, Register 31; am 4/6/79, Register 70; am / / , Register __)

AUTHORITY

AS 06.01.025(a)

AS 06.05.005(a)(2)

[AS 06.05.060]

AS 06.05.235

[AS 06.05.240]

NOTES:

(a) The new code requires domestic BHC's to be corporations, but not necessarily Alaska corporations (to deal with the First Bank Delaware BHC situation). Thus, this has been cleaned up to be consistent with the code. As we discussed in drafting the code, we are going to allow the bank corporations to name their executive officers, so for consistency this has been changed, too.

3 AAC 02.165. EXISTING CORPORATION QUALIFYING AS A DOMESTIC BANK HOLDING COMPANY. Repeal.

NOTE: This is already covered in the permitting process, 3 AAC 02.150(b).

3 AAC 02.170. CERTIFICATE OF AUTHORITY OF A DOMESTIC BANK HOLDING COMPANY. Repeal.

NOTE: Repealed; once we start issuing permits, there's no reason

to have cert. of authority, too.

3 AAC 02.175. CHANGE IN CONTROL OF A [DOMESTIC] BANK HOLDING COMPANY. (a) Before [IF] a change of ownership may [OCCURS OR IS ABOUT TO] occur in the outstanding voting shares [STOCK] of a domestic bank holding company that [, AND THE CHANGE RESULTS IN OR] will result in a change of control, the transaction must be approved by [CHIEF EXECUTIVE OFFICER MUST REPORT THESE FACTS TO] the department [IMMEDIATELY].

(b) If a change of ownership occurs or is about to occur in the outstanding voting shares of an out-of-state bank holding company, and the change results in or will result in a change of control, the transaction must be reported by the out-of-state bank holding company to the department immediately. (Eff. 7/31/69, Register 31; am 4/6/79, Register 70; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)
AS 06.05.235
AS 06.05.570
[AS 06.05.540(9)]

NOTES:

(a) The changes here are to make the language consistent with what will now be required for banks under proposed AS 06.05.327. Thus, prior approval of the department will be required for a change in control of a domestic BHC.

(b) Language here, relating to out-of-state BHC's, is taken from the current section for domestic BHC's; rather than requiring prior notice and approval for a change in control, for these the department will only require immediate subsequent notice.

3 AAC 02.185. BANKING RELATED [NONBANKING] ACTIVITIES. [(a) A BANK MAY ENGAGE IN THE ACTIVITIES DESCRIBED IN (b) AND (c) OF THIS SECTION EVEN THOUGH THOSE ACTIVITIES ARE NOT INCLUDED UNDER THE DEFINITIONS OF EITHER 'BANKING' IN AS 06.05.540(3) OR 'BRANCH BANK' IN AS 06.05.540(4).]

(b) A bank may establish offices which [DO NOT ENGAGE IN BANKING AND WHICH ARE NOT BRANCH BANKS. THESE OFFICES MAY] engage in the following activities without a certificate of authority issued under AS 06.05.350 or AS 06.05.399:

(1) local representation and assistance to the public concerning banking services performed at the bank;

(2) loan production activities as described in (c) of this section; and

(3) other services or activities related to the bank's business such as tax preparation, insurance evaluation, accounting, data processing, and public relations.

(c) A loan production office may engage in the following loan production activities which do not constitute "lending money" within the meaning of AS 06.05.540(3) or (4):

(1) soliciting loans on behalf of a bank or a branch

bank;

- (2) assembling credit information;
- (3) making property inspections and appraisals;
- (4) securing title information;
- (5) preparing applications for loans, including making any recommendations to the bank for action;
- (6) soliciting investors to purchase loans from the bank and seeking to have these investors contract with the bank for servicing of those loans; and
- (7) other similar services or activities which may be allowed by the commissioner.

(d) If loans are approved and funds disbursed solely at the main office or a branch of a bank, a loan production office which engages in only the activities listed in (c) of this section is not a "place at which money is lent" within the meaning of AS 06.05.540(4).

(e) An office which operates as a representative office or a loan production office under this section must conduct its activities in such a manner that neither the public nor customers will be deceived as to the limited services available from the office.

(f) Notwithstanding (b) [(a)]-(e) of this section, if an office of a bank or of any of its branches engages in receiving deposits, payment of checks, lending of money, or any other activity included under the definition of banking in AS 06.05.540(3) then the office must first apply to the commissioner for a certificate of authority to operate as a branch bank.

[*NEW SUBSECTION*](g) A bank may operate a courier service, for the purpose of collecting or disbursing funds to customers, provided that the activities of the courier are directly related to the bank's business.

[*NEW SUBSECTION*](h) A bank may make available its data processing equipment or perform data processing services on such equipment for other banks and bank customers if the bank is adequately insured against any additional liability incurred through the sale of the services. (Eff. 6/16/82, Register 82; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)

AS 06.05.075

[AS 06.05.540]

NOTES:

(a) Repealed; with our new statutes on subsidiaries, arguably a bank cannot engage in activities other than banking. However, the activities listed here, which really involve support services for banking operations, should be considered banking (hence the minor change in (b)).

(g) New subsection, to permit banks to offer a courier service to their customers.

(h) Former AS 06.05.275(c).

3 AAC 02.190. LETTERS OF CREDIT. (a) [A LETTER OF CREDIT MUST

(1) BE CONSPICUOUSLY LABELED AS A LETTER OF CREDIT;

(2) BE LIMITED IN AMOUNT;

(3) CALL UPON THE ISSUING BANK TO PAY ONLY UPON THE PRESENTATION OF A DRAFT OR OTHER DOCUMENTS AS SPECIFIED IN THE LETTER OF CREDIT AND MAY NOT REQUIRE THE ISSUING BANK TO MAKE DETERMINATIONS OF FACT OR LAW AT ISSUE BETWEEN THE ACCOUNT PARTY AND THE BENEFICIARY; AND

(4) BE ISSUED ONLY SUBJECT TO AN AGREEMENT BETWEEN THE ACCOUNT PARTY AND THE ISSUING BANK WHICH ESTABLISHES THE UNQUALIFIED OBLIGATION OF THE ACCOUNT PARTY TO REIMBURSE THE ISSUING BANK FOR ALL PAYMENTS MADE UNDER THE LETTER OF CREDIT.

(b)] All letters of credit are subject to classification in all regulatory reports of examination.

[(c) A BANK MAY NOT ISSUE, EXTEND, OR AMEND A LETTER OF CREDIT OR OTHER SIMILAR ARRANGEMENTS, HOWEVER NAMED OR DESCRIBED, OR GRANT ANY OTHER EXTENSION OF CREDIT IF, IN THE AGGREGATE, THE AMOUNT OF ALL LETTERS OF CREDIT ISSUED, RENEWED, EXTENDED, OR AMENDED ON OR AFTER AUGUST 18, 1988, WHEN COMBINED WITH OTHER EXTENSIONS OF CREDIT ISSUED BY THE BANK, EXCEED LEGAL LIMITS PERTAINING TO EITHER AFFILIATES OR LOANS, INCLUDING LIMITATIONS TO ANY ONE CUSTOMER OR ON AGGREGATE EXTENSION OF CREDIT.]

(b) If [(d) FOR PURPOSES OF (b) AND (c) OF THIS SECTION, IF] several banks participate in the issuance of a letter of credit under an agreement that provides that each participant is liable only up to a certain percentage or amount of the total amount of the letter of credit issued, only the amount of a participating bank's potential liability will be considered for purposes of determining compliance with lending limitations; otherwise, the entire amount of the letter of credit must be considered.

(c) (e) No bank may issue a letter of credit unless the credit standing of the account party is the subject of credit analysis equivalent to that applicable to the potential borrower in an ordinary loan situation.

(d) (f) The total amount of all outstanding letters of credit must be fully and adequately disclosed in the bank's published financial statements.

(e) (g) A bank shall maintain records of its letters of credit comparable to the records maintained in connection with the bank's direct loans in order that at all times the bank's potential liability under its letters of credit and the bank's compliance with this section can be readily determined by the department.

(f) (h) A letter of credit is not subject to this section [OR AS 06.05.275] if the letter of credit is secured by cash, or a cash equivalent such as a certificate of deposit issued by the bank that issued the letter of credit. (Eff. 8/18/88, Register 107; am 1/14/89, Register 109; am / / , Register __)

AUTHORITY

AS 06.01.015

[AS 06.01.020]

AS 06.05.005(a)(2)
[AS 06.05.275]

NOTE: "Loans is defined in AS 06.05.540 to include letters of credit. The changes made to the section are simply to simplify it; current (a) is probably a case of over regulation and (c) is already covered in the statutes.

3 AAC 02.195. BORROWING. (a) Neither a bank's federal funds purchased nor its sale [PURCHASE] of securities, which a bank may deal in, underwrite, purchase, and sell for its own account without limitation, subject to an agreement that the bank [SELLER] will repurchase at the end of a stated period, constitute "money borrowed" for purposes of AS 06.05.255.

(b) The purchase of [OTHER TYPES OF] securities subject to an agreement that the seller will repurchase at the end of a stated period is regarded as a loan from the purchasing bank to the seller and not as an obligation of the underlying obligor or the security. (Eff. 8/18/88, Register 107; am 1/14/89, Register 109; am / / , Register __)

AUTHORITY

- [AS 06.01.020]
- AS 06.05.005(a)(2)
- AS 06.05.255
- 12 U.S.C. 84(c)(7)
- 12 C.F.R. 32.103

NOTE: Technical changes; the existing regulation is incorrectly worded and doesn't make sense.

[*NEW SECTION*] 3 AAC 02.197. PLEDGE OF ASSETS. An Alaska state bank may pledge assets of the bank as collateral security to a housing authority created pursuant to AS 18.55.996. (Eff. / / , Register __)

AUTHORITY

- AS 06.05.005(a)(2)
- AS 06.05.260(a)(1)

NOTE: This is to handle the minor issue raised by Key Bank in Anchorage, to clarify an interpretation of AS 06.05.260 that has already been made by the department.

[*NEW SECTION*] 3 AAC 02.200. BANK SUBSIDIARIES. (a) A wholly-owned bank subsidiary may engage in any business activity that is authorized for the parent bank, including conducting a safe deposit business, engaging in an activity authorized in 3 AAC 02.185, and operating a trust company formed under AS 06.25, except that a bank subsidiary may not take deposits. An activity authorized by this subsection must be solely for the benefit of the parent bank and may be performed by the subsidiary on the bank's premises by bank

personnel.

(b) In addition to those activities authorized under (a) of this section, a bank may invest in bank subsidiaries engaged in the following, subject to the prior approval of the department and compliance with any conditions placed on the bank or its subsidiary by the department:

(1) those activities expressly authorized by AS 06.05.272;

(2) activities authorized under (a) of this section, when the subsidiary is not wholly-owned by the bank; and

(3) any other activity approved in advance by the department.

(c) Each bank subsidiary shall conduct business and operations in a safe and sound manner, observe separate corporate formalities, and maintain separate accounting procedures and corporate records.

(d) A bank may not require a customer to utilize the services of the bank's subsidiary as a condition of engaging in a service of the bank.

(e) The department may revoke or restrict the authority of a bank to hold stock in any subsidiary, if the department determines that the holding of the subsidiary stock is contributing or is likely to contribute to the deterioration of the condition of the bank. (Eff. / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)

AS 06.05.272

NOTES:

(a) Provides that a bank may set up wholly-owned subsidiaries to perform any activity the bank could do on its own, and such a subsidiary can be located on the bank's premises and run by bank personnel. No prior approval of the department will be necessary for these.

(b) Other permissible activities for subsidiaries. These activities, however, are subject to prior department approval and any restrictions that the department deems necessary or appropriate, such as requiring a separate entrance or separate employees. For activities other than those specifically authorized in AS 06.05.272, the department will analyze each proposal on a case-by-case basis.

(c) Taken from South Dakota, sec. 20:07:16:04.

[*NEW SECTION*] 3 AAC 02.205. BANK INVESTMENTS. (a) In addition to loans, subsidiaries, and acquisitions expressly authorized by AS 06.05 and this chapter, a state bank may deal in, underwrite, and invest in for its own account

(1) direct or guaranteed obligations of the United States, either directly or in the form of securities of, or other interests in, an open-end management type investment company or investment trust registered under 15 U.S.C. 80a-1

- 80a-64 (Investment Company Act of 1940), if

(A) the portfolio of the investment company or investment trust is limited to obligations of the United States government and repurchase agreements fully collateralized by the obligations; and

(B) the investment company or investment trust takes delivery of the collateral directly or through an authorized custodian;

(2) general obligations of the State of Alaska and its political subdivisions;

(3) general obligations of a state of the United States or its political subdivisions;

(4) revenue obligations of the State of Alaska or its political subdivisions subject to the limitation of (b) of this section;

(5) revenue obligations of a state of the United States or its political subdivisions subject to the limitation of (b) of this section;

(6) obligations of instrumentalities of the United States government including, but not limited to Federal Intermediate Credit Banks, Federal Land Banks, the Federal National Mortgage Association, and Banks for Cooperatives;

(7) commercial paper of prime or equivalent quality as rated by a recognized national rating service subject to the limitation of (b) of this section;

(8) secured corporate obligations rated within the three highest grades of a national rating service subject to the limitation of (b) of this section;

(9) obligations of the International Bank for Reconstruction and Development, the Inter-American Development Bank, or the African Development Bank, subject to the limitation of (b) of this section;

(10) stock in the Federal National Mortgage Association, a Federal Reserve Bank, or a Federal Home Loan Bank;

(11) the stocks, bonds, and other securities of

(A) a corporation licensed under AS 10.13; or

(B) a corporation attempting to become licensed under AS 10.13 if the corporation intends to use the proceeds to fulfill the tasks necessary to become licensed under AS 10.13.

(b) A state bank may not underwrite or invest for its own account an amount exceeding 15 per cent of its combined capital, surplus and undivided profits in any one issue of securities authorized in (a)(4) and (5) of this section or with any one obligor of the securities authorized in (a)(7), (8) and (9) of this section. (Eff. / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)

AS 06.05.270

NOTES: This is current AS 06.05.270(a) & (b), which we have

decided to place in regulations in the recodification.

[*NEW SECTION*] 3 AAC 02.209. APPLICATION FOR CERTIFICATE OF INCORPORATION. (a) Required Application Material. The incorporators of a proposed bank shall initially submit to the division the following documents, together with supporting materials:

- (1) a notice of intent to incorporate a bank;
- (2) an application for a certificate of incorporation;

and

(3) a request to use written solicitation materials to solicit bank stock subscribers as provided in 3 AAC 02.212.

(b) Notice of Intent. The incorporators of a proposed bank shall submit to the division a written notice of intent to organize the bank, which

- (1) is signed by each incorporator;
- (2) contains the proposed name to be reserved for the proposed bank;
- (3) specifies the proposed location of the bank;
- (4) indicates the residence address, mailing address, and occupation of each incorporator; and
- (5) indicates the individual selected by the incorporators to accept notice from the department on behalf of all incorporators.

(c) Application for Certificate of Incorporation. The following information and fee must be submitted to the division in support of the application for a certificate of incorporation:

- (1) all information required under AS 06.05.344(a);
- (2) a completed FDIC new bank application, which may be obtained directly from the FDIC, or a request that the department waive FDIC insurance;
- (3) a copy of the proposed bylaws;
- (4) a check or money order for the fee required under 3 AAC 02.040 made payable to the State of Alaska as a partial prepayment of investigation expenses incurred by the department in accordance with AS 06.01.010;
- (5) a list of the services to be offered by the proposed bank;
- (6) the names and addresses of potential large commercial customers of the proposed bank;
- (7) an economic analysis to support the need and feasibility of the proposed bank;
- (8) a proposed list of the amounts of stock to be subscribed and paid for by each incorporator; and
- (9) any additional information requested by the department.

(d) Interim Banks. The information to be submitted to the division in support of an application for a certificate of incorporation of a bank that will never function under the proposed articles as an operating bank must include a written notice of intent as specified in (b) of this section and all of the information required by (c) of this section, except that (c) (5)-(7) of this section need not be included.

(e) Expense Fund. An expense fund over which the department has withdrawal control must be established by the incorporators. All organizational expenses incurred in establishing the proposed bank will be paid out of the expense fund, after being approved by the department. The expense fund must be established with the minimum balance required by the department before any withdrawals for pre-incorporation or other expenses are made. (Eff. / / , Register __)

AUTHORITY

AS 06.01.010
AS 06.05.005(a)(2)
AS 06.05.344
AS 06.05.345

NOTES: 3 AAC 02.210 is split into 2 sections: this one deals with getting the certificate of incorporation, while the next deals with certificates of authority. This section is current 3 AAC 02.210(a)-(e), with the following substantive changes:

(c)(1) The reference to all requirements of AS 06.05.344(a) includes proposed articles, so the specific reference to them has been removed.

(c)(2) Provides that the bank may request a waiver of FDIC insurance, consistent with the changes in the proposed code.

(c)(4) Changed to refer to the fee required under the new fee-setting regulation.

3 AAC 02.210. APPLICATION FOR CERTIFICATE OF AUTHORITY [ORGANIZATION AND INCORPORATION REQUIREMENTS].

(a)-(e) REPEALED.

(a) [(f)] Application for Certificate of Authority. After receiving a certificate of incorporation under 3 AAC 02.209, the [THE] following information must be submitted to the division in support of an application for a certificate of authority:

(1) a statement [STATEMENTS] as to whether the proposed bank will operate [be] on owned or leased property [WITHIN WHICH IT WILL CONDUCT ITS BUSINESS] and, if leased, a fully executed copy of all lease documents, which must contain a bankruptcy clause;

(2) statements [A STATEMENT] as to whether the proposed bank plans to finance any improvements to the property[,] and, if leased, whether the proposed lessor will be a borrowing customer of the proposed bank;

(3) the amount of fire and liability insurance coverage to be carried for the proposed bank facility and equipment, who will pay the premium, and, if to be paid by the proposed bank, the amount of payment;

(4) the total investment in proposed bank premises and equipment to be reflected on the books of the proposed bank, including [;

(5) THE ITEMIZED BOOK VALUE OF] the proposed bank's investment in land, building, leasehold improvements,

furniture, fixtures and equipment, [INVESTMENT IN STOCK OF A BANK BUILDING CORPORATION,] investment in other assets indirectly representing bank premises, and any proposed amount and method of depreciation [TO BE REFLECTED ON THE BOOKS OF THE PROPOSED BANK;]

(6) the amount and type of the proposed bank's fidelity bond and any excess coverage bond to be in force at the time of opening of the proposed bank;

(7) an organization chart of the proposed bank showing the line of authority to be used by the proposed bank in providing its services;

(8) copies, certified by the chief executive officer [PRESIDENT] of the proposed bank, of all documents and information required by AS 06.05.350(b); [AND]

(9) the total proposed investment in each proposed bank subsidiary; and

(10) additional information as requested by the department.

(b) [(g)] No bank or proposed bank may conduct a banking business without a certificate of authority issued by the department and the certificate being prominently and publicly displayed in the office of the bank. (Eff. 12/13/70, Register 36; am 4/6/79, Register 70; am / / , Register __)

AUTHORITY

[AS 06.01.010]

AS 06.05.005(a)(2)

AS 06.05.230

[AS 06.05.340]

[AS 06.05.345]

AS 06.05.350

[AS 06.05.380]

AS 06.05.385

[AS 06.05.395]

NOTES:

(a)-(e) Now contained in preceding section.

(a){formerly (f)}(5) This has been combined with (4). Reference to bank building corps is removed in any case, since these will no longer exist except as subsidiaries of the bank under the general rules applicable to subsidiaries.

(a)(10) Added to require disclosure of information regarding subsidiaries.

3 AAC 02.212. SOLICITATION MATERIALS. (a) If a public solicitation of shareholders [STOCKHOLDERS] for a proposed bank or for an increase in capital of an existing bank is contemplated, all written material to be used for solicitation must be submitted to the division for review and approval before use.

(b) The division's review of solicitation materials will be conducted as if the material were submitted for registration under AS 45.55.

(c) Upon approval of the written material, the incorporators

of a proposed bank may solicit subscribers until the capital stock is fully subscribed.

(d) Before calling the stock subscriptions or accepting payment for the subscriptions from the subscribers to a proposed bank, the chairperson shall submit [,] to the department, for its approval or disapproval, a list of subscribers which indicates the name, residence address, mailing address, and amount of subscription for each subscriber.

(e) At the time the chairperson calls the stock subscriptions, all funds received from stock subscribers, including paid-in pre-incorporation subscriptions, must be placed in an escrow account approved by the department and over which the department has withdrawal control.

(f) The chairperson shall call the subscriptions and receive payment in full within 30 days from the date of the notice of the call; however, the chairperson may extend the period of the call if the extension is approved in writing by the division.

(g) When the subscriptions are fully paid and deposited in the escrow account, the incorporators on at least 20 days' written [10 DAYS'] notice shall call the first meeting of subscribers. The agenda for the meeting must include those items required under AS 10.06.223 [ELECTION OF DIRECTORS, ADOPTION OF BYLAWS,] and a shareholder resolution that the paid-in subscriptions be converted to stock certificates upon departmental approval. [WITHIN FIVE DAYS OF THE FIRST MEETING, THE DIRECTORS SHALL MEET TO SELECT BANK OFFICERS.]

(h) With prior departmental approval, a portion or all of the organizational expenses may be withdrawn and paid out of the stock subscription escrow account; however, no withdrawals or payments may be made until the stock subscriptions are fully paid into that account [,] and full disclosure is made to subscribers at the first meeting of subscribers.

(i) In this section, "chairperson" means the individual who was appointed by the incorporators to represent them in dealing with the department on the new bank application. (Eff. 4/6/79, Register 70; am / / , Register __)

AUTHORITY

[AS 06.01.010]
AS 06.05.005(a)(2)
AS 06.05.345
AS 06.05.385
AS 10.06.223

NOTES:

(a) Expanded to apply to any stock subscriptions, even those that occur to increase capital of an existing bank.

(g) Changed to be consistent with the corporations code provisions.

3 AAC 02.215. APPLICATION FOR BRANCH OR CHANGE OF LOCATION. (a) The bank must apply to the division for a certificate of authority to

operate a branch office or to change the location of the home office or branch office.

(b) The following information must accompany a bank's [the] application for a new branch office or a change of location of an existing branch or home office:

(1) if the bank is insured by the FDIC, a completed FDIC branch or change of location application which may be obtained directly from the FDIC;

(2) a check or money order for the fee required under 3 AAC 02.040 [\$500] made payable to the State of Alaska as a partial prepayment of investigation expenses incurred by the department in accordance with AS 06.01.010;

(3) a statement as to whether the proposed office will operate on [BE] owned or leased property[,] and, if leased, a fully executed copy of all lease documents, which must contain a bankruptcy clause;

(4) statements [A STATEMENT] as to whether the bank plans to finance any improvements to the property[,] and, if it intends to lease, whether the proposed lessor is or will be a borrowing customer of the bank;

(5) the amount of fire and liability insurance coverage to be carried for the proposed office location and equipment, who will pay the premium, and, if paid by the bank, the amount of payment[,] and the annual premium for the coverage at the time of the application;

(6) the total investment in bank premises and equipment to be reflected on the books of the bank for the proposed office;

(7) the itemized book value of the bank's present investment in land, buildings, leasehold improvements, furniture, fixtures and equipment, [INVESTMENT IN STOCK OF A BANK BUILDING CORPORATION,] and investment in other assets indirectly representing bank premises, and any depreciation reflected on the books of the bank;

(8) a listing of the income, expenses, loan volume, time deposits, savings deposits, and demand deposits, on a calendar year basis for each branch (including the principal office of the bank) opened within three years of the date of the application and the date of opening of each branch listed;

(9) a daily statement and statement of income and expenses for the bank as of the date of the application;

(10) the amount and type of the bank's fidelity bond in force and any excess coverage bond;

(11) a list of the banking services to be offered by the proposed office;

(12) the names and addresses of potential large deposit customers of the proposed office;

(13) a three-year projection of the bank's capital accounts;

(14) the name and resume of the proposed branch manager or, if none, a resume of the individual who will be directly responsible for the management of the proposed office;

(15) an [A] economic analysis which supports the need in the community for and feasibility of the proposed office;
[AND]

(16) if an international bank, the information required under AS 06.05.555; and

(17) other materials as requested by the department.

(c) No bank may conduct a banking business through a branch without a certificate of authority issued by the department and that certificate being prominently and publicly displayed in that branch.

(d) Upon written request from a bank [THE DEPARTMENT], after reviewing the past reports of examination of the bank [REQUIRED UNDER AS 06.05.025] and finding that the bank is in compliance with the department's recommendations in those reports, the department will, in its discretion, waive any of the application requirements set out in (b)(3) - (15) of this section.

[*NEW SUBSECTION*] (e) The department may, in its discretion, waive any of the requirements of this section if the bank is simply relocating its home or branch office to another location in the same general market. (Eff. 12/13/70, Register 36; am 4/6/79, Register 70; am 12/31/80, Register 76; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)

AS 06.05.399

AS 06.05.555

NOTES:

(a) This subsection is meaningless and merely reiterates what the statutes require.

(b) I have only made a few technical changes to make this subsection consistent with changes proposed in the recodification. As for the specific requirements, although Northrim wants this simplified, we have decided not to make any changes at this time. Of course, under (d) the department can always waive any of these requirements anyway.

Remember: The provisions of this section will now apply to international branching, i.e. if an international bank wants to set up a de novo branch in Alaska - see (b)(16).

(e) This is new, to allow a bank or branch to relocate in the same area, like across the street, without going through the formal application requirements.

3 AAC 02.217. APPLICATION FOR A MOBILE FACILITY. (a) The following information must accompany a bank's [THE] application for a mobile facility:

(1) materials [AND FEE] required by 3 AAC 02.215(b)(1) and (3)-(10) [SEC. 215(b)(1) - (10) OF THIS CHAPTER];

(2) a map of the area to be served of a scale to show at least the city boundaries and indicating

(A) the locations at which the mobile facility would provide banking services;

(B) the point of origin of and storage location of the proposed mobile facility when not in use; and

(C) the location and identity of financial institutions within a 25-mile radius of the proposed site [MARKED ON THE MAP AND IDENTIFIED];

(3) a list of the banking services to be offered by the proposed mobile facility;

(4) the proposed schedule indicating the time of day and days of the week that the proposed mobile facility would provide banking services at the indicated locations and whether operated on a year-round or seasonal basis;

(5) security procedures to be used when the mobile facility is in use and when not in use;

(6) a description of the type of mobile facility proposed to provide the services indicated and a statement of how assets and liabilities of the proposed mobile facility will be carried on the books of the bank;

(7) the name and resume of the individual who will be directly responsible for the management of the proposed mobile facility;

(8) a brief economic analysis supporting the assertion that the service area needs the proposed services; [AND]

(9) the fee required under 3 AAC 02.040; and

(10) other materials as requested by the department.

(b) Any proposed change in the daily schedule for a [BRANCH OR] mobile facility or any change in the location at which a mobile facility is to provide banking services must be approved in writing by the division at least 30 days before the proposed implementation date.

(c) No bank may conduct a banking business through a mobile facility without a certificate of authority for that facility issued by the department and the certificate being prominently and publicly displayed in the facility.

(d) Upon written request from a bank the department, after reviewing the past reports of examination of the bank [REQUIRED UNDER AS 06.05.025] and finding that the bank is in compliance with the department's recommendations in those reports, will, in its discretion, waive any of the application requirements set out in (a)(6) - (8) of this section and those requirements referred to in (a)(1) of this section other than 3 AAC 02.215(b)(1) [AND (2)]. (Eff. 4/6/79, Register 70; am 12/31/80, Register 76; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)

AS 06.05.399

NOTES:

Same changes as in sec. 215.

3 AAC 02.219. OFF-PREMISES CUSTOMER-BANK COMMUNICATION TERMINALS. Repealed.

NOTE: This is repealed, because the requirements for applications for ATM's is now contained in the code, AS 06.05.426.

3 AAC 02.310. MERGER. (a) Any proposed bank merger of an international, [A] national, [BANK] or state [AN ALASKA]-chartered bank with an Alaska state [-CHARTERED] bank must be accomplished under a merger plan filed with and approved by the department.

(b) Each [THE BOARD OF DIRECTORS OF EACH] bank [, OR THE INCORPORATORS OF A PHANTOM BANK,] must [, BY RESOLUTION ADOPTED BY EACH BOARD,] approve a merger plan which sets forth

(1) the names of the banks proposing to merge and the name of the bank into which they propose to merge, referred to in this chapter as the surviving bank;

(2) the terms and conditions of the proposed merger;

(3) the manner and basis of converting the shares of each merging bank into shares, other securities, or obligations of the surviving bank or of any other bank or corporation, in whole or in part, or into cash or other property;

(4) a statement of any amendments to the articles of incorporation of the surviving bank caused by the merger; and

(5) other provisions as required by the department.

(c) [THE CHAIRPERSON OF THE BOARD OF EACH BANK, OR THE INCORPORATORS OF A PHANTOM BANK, SHALL SUBMIT TO THE DIVISION IMMEDIATELY AFTER THE RESOLUTIONS ARE ADOPTED A COPY OF THE RESOLUTIONS ADOPTED UNDER (b) OF THIS SECTION.] (Eff. 4/6/79, Register 70; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)

AS 06.05.462

AS 06.05.555

NOTES:

(a) Changed to make the section also apply to the situation where an interstate or international bank branches in Alaska through the purchase of an Alaska bank.

(b) Amended to remove the specific directives relating to internal corporate actions. Under the revision, the merger plan must be approved by each bank in whatever manner their bylaws or articles require (in most cases, this will be by board action).

(c) Current subsection simply states that the resolution must be submitted by the chair to the department; it would seem more reasonable to include this as part of the application under sec. 350.

3 AAC 02.320. CONSOLIDATION. (a) Any proposed bank consolidation of a national bank or state [AN ALASKA]-chartered bank with an Alaska state [-CHARTERED] bank must be accomplished under a consolidation plan filed with and approved by the department.

(b) Each [THE BOARD OF DIRECTORS OF EACH] bank must [, BY A RESOLUTION ADOPTED BY EACH BOARD,] approve a consolidation plan which sets forth

(1) the names of the banks proposing to consolidate and the name of the new bank into which they propose to consolidate, referred to in this chapter as the new bank;

(2) the terms and conditions of the proposed consolidation;

(3) the manner and basis of converting the shares of each bank into shares, other securities, or obligations of the new bank or of any other bank or corporation, in whole or in part, or into cash or other property;

(4) if the new bank will be an Alaska state bank, all of the statements with respect to the new bank required to be set forth in articles of incorporation for banks [ORGANIZED] under AS 06.05.345; and

(5) other provisions as required by the department.

(c) [THE CHAIRPERSON OF THE BOARD OF EACH BANK SHALL SUBMIT TO THE DIVISION IMMEDIATELY AFTER THE RESOLUTIONS ARE ADOPTED A COPY OF THE RESOLUTIONS ADOPTED UNDER (b) OF THIS SECTION.] (Eff. 4/6/79, Register 70; am / / ; Register __)

AUTHORITY

AS 06.05.005(a)(2)

AS 06.05.345

AS 06.05.462

AS 06.05.555

NOTES: Same changes made here as were made in preceding section.

3 AAC 02.325. CONVERSION. (a) Any proposed conversion of a national bank to an Alaska state [-CHARTERED] bank must be accomplished under a conversion plan filed with and approved by the department.

(b) The board of directors of the converting national bank must, by resolution adopted by the board, approve a conversion plan which sets forth

(1) the name of the bank proposing to convert;

(2) the name of the bank into which it proposes to convert, referred to in this chapter as the "converted bank";

(3) the terms and conditions of the proposed conversion;

(4) the manner and basis of converting the shares of the national bank into shares, other securities, cash, other property, or obligations, in whole or in part, of the converted bank or of any other bank or corporation;

(5) a statement of any amendments to the articles of incorporation of the converted bank caused by the conversion; and

(6) other provisions as required by the department.

[(c) THE CHAIRPERSON OF THE BOARD OF THE CONVERTING NATIONAL BANK SHALL SUBMIT TO THE DIVISION IMMEDIATELY AFTER IT IS ADOPTED A COPY OF THE RESOLUTION REQUIRED UNDER (b) OF THIS SECTION.] (Eff. 5/1/80, Register 74; am / / , Register __)

AUTHORITY

AS 06.05.005(a)(2)

AS 06.05.075
[AS 06.05.452]
AS 06.05.462

NOTES: Minor technical changes, consistent with changes made in preceding sections.

3 AAC 02.330. ADOPTION OF CONVERSION, MERGER OR CONSOLIDATION PLANS. Repeal.

NOTE: This is repealed - it encroaches too far into the internal operations of the bank corporations.

3 AAC 02.340. ARTICLES OF CONVERSION, MERGER OR CONSOLIDATION. Repeal.

NOTE: See notes to preceding section.

3 AAC 02.350. APPLICATION FOR CONVERSION, MERGER, OR CONSOLIDATION.
(a) The boards [CHAIRPERSON OF THE BOARD OR THE BOARD REPRESENTATIVE] of each bank proposing to convert, merge, or consolidate shall jointly or independently submit to the department an application for permission to implement the plan.

(b) The application must include

(1) an analysis by the converting bank of why the proposed conversion is in the best interest of promoting and maintaining a sound and competitive banking system;

(2) an analysis by the banks proposing to merge or consolidate of why the proposed merger or consolidation is in the interest of promoting and maintaining a sound and competitive banking system, the security of deposits and customers, the preservation of the liquid position of the banks in general, and the prevention of injurious credit expansions and contractions in the state;

(3) a copy of the articles of incorporation of the converting national bank, merging banks, or consolidating banks;

(4) copies of the resolutions of each bank board approving the plan of merger, consolidation or conversion, or other evidence that necessary corporate approval was obtained;

(5) [THREE FULLY EXECUTED, ORIGINALLY SIGNED AND VERIFIED] copies of the proposed articles of conversion, merger, or consolidation;

(6) [(5)] copies of the bylaws of the converting national bank and the proposed bylaws for the converted bank;

(7) [(6)] if the transaction is a merger or consolidation involving an international or interstate bank, all information required under AS 06.05.555(a) [A CHECK OR MONEY ORDER FOR \$1,000 MADE PAYABLE TO THE STATE OF ALASKA AS A PARTIAL PREPAYMENT OF THE DEPARTMENT'S INVESTIGATION EXPENSES]; and

(8) [(7)] other materials as required by the department.

(c) The department will conduct an investigation of the

application and, if the department finds that the application is in order and that approval of the application is consistent with the maintenance or promotion of a safe and sound banking system [THE PROVISIONS OF AS 06.05.462 HAVE BEEN MET], it will issue a public notice of the department's intent to approve the conversion, merger, or consolidation [,] and to issue a certificate of conversion, merger or consolidation.

(d) If the department does not receive a request for a hearing within 30 days after the final publication of notice under (c) of this section [THE TIME SPECIFIED UNDER AS 06.01.030(b)] or determines after a hearing that the application is in order, the department will approve the application, issue a certificate of conversion, merger or consolidation, and forward the certificate [WITH TWO COPIES] to the chairperson or the board representative of the converted, surviving, or new bank. The certificate of conversion, merger, or consolidation becomes effective upon issuance unless the certificate specifies a later effective date, which must be no later than 15 days after issuance of the certificate.

(e) Conversion, merger, or consolidation has the following effects:

(1) the converting national bank becomes a state-chartered bank as provided in the conversion plan; the merging or consolidating banks become a single bank, designated in the merger plan as the surviving bank and in the consolidation plan as the new bank;

(2) the converting national bank ceases to exist and the existence of the converting bank begins; the separate identities of merging or consolidating banks cease to exist and the existence of the surviving or new bank begins;

(3) the converted, surviving, or new bank has the rights, privileges, immunities and powers, and is subject to the duties and liabilities of a bank [INCORPORATED] under AS 06.05;

(4) the converted, surviving, or new bank possesses the rights, privileges, immunities and franchises, public and private, of the converting national bank, and the respective merging or consolidating banks;

(5) all real, personal, and mixed property, all debts due, including but not limited to subscriptions to shares, all choses in-action, and every other interest in, belonging to or due to each of the banks are transferred to and vested in the converted, surviving, or new bank;

(6) the title to or interest in real estate vested in the converted, surviving, or new bank does not revert nor is it in any way impaired by a conversion, merger, or consolidation;

(7) the converted, surviving, or new bank is liable for the liabilities and obligations of the converting national bank or each of the respectively merged or consolidated banks;

(8) an existing claim or pending action or proceeding by or against the bank may be prosecuted as if the conversion, merger or consolidation has not taken place, or the converted,

surviving, or new bank may be substituted in its place;

(9) neither the rights of creditors nor liens upon the property of a converting, merging, or consolidating bank are impaired by the conversion, merger or consolidation;

(10) the articles of incorporation of the converted bank are amended to comply with the conversion plan;

(11) the articles of incorporation of the surviving bank are amended to comply with the merger plan;

(12) articles of consolidation become the original articles of incorporation of the new bank; and

(13) the net undivided profits of the converting national bank or merging or consolidating banks available for the payment of [THE] dividends immediately before the conversion, merger or consolidation, to the extent that the undivided net profits are not transferred to stated capital by the issuance of shares or otherwise, remain available for the payment of dividends by the converted, surviving or new bank. (Eff. 4/6/79, Register 70; am 5/1/80, Register 74; am / / , Register __)

AUTHORITY

[AS 06.01.010]
AS 06.01.030
AS 06.05.005(a)(2)
AS 06.05.075
AS 06.05.462
AS 06.05.555

NOTES:

These are generally just technical changes to make sure the section applies to interstate and international bank mergers and consolidations. In (d), since the statutes don't provide when a party must request a hearing in these cases, we decided on 30 days.

3 AAC 02.360. [*REPEALED AND REENACTED*] DISSENTING SHAREHOLDER RIGHTS. If a shareholder of an Alaska state bank objects to a consolidation, merger or conversion of the bank, the dissenting shareholder's rights shall be exercised under and governed by AS 10.06.574 - 10.06.582.

AUTHORITY

[AS 06.01.010]
[AS 06.01.030]
AS 06.05.005(a)(2)
AS 06.05.075
AS 06.05.462

NOTE: The current section is quite similar to the provisions in the corporations code. We have decided to simplify the process and adopt the corp code by reference.

[3 AAC 02.420. DEBT COLLECTION PRACTICES. THE DEBT COLLECTION

PROCEDURES AND REQUIREMENTS AS SET FORTH IN CH. 01 OF THIS TITLE APPLY TO BANKS GRANTED CERTIFICATES OF AUTHORITY UNDER THIS CHAPTER. (Eff. 4/6/79, Register 70)

AUTHORITY

AS 06.05.005
AS 06.05.015
AS 06.05.075]

NOTE: Repealed; already covered by 3 AAC 01.910(2).

3 AAC 02.910. DEFINITIONS. (a) In this chapter and AS 06.05,

[(1) "CUSTOMER-BANK COMMUNICATION TERMINAL" MEANS A STAFFED OR UNSTAFFED ELECTRONIC TERMINAL WHICH PERMITS A BANK CUSTOMER TO ACCOMPLISH VARIOUS FINANCIAL TRANSACTIONS, SUCH AS DEPOSITING AND WITHDRAWING FUNDS, MAKING LOANS, AND TRANSFERRING FUNDS BETWEEN ACCOUNTS, AND ENCOMPASSES ALL SIMILAR DEVICES OR FACILITIES KNOWN OR REFERRED TO BY ANY OTHER NAME OR DESIGNATION INCLUDING BUT NOT LIMITED TO ELECTRONIC FUNDS TRANSFER DEVICES (EFT'S), AUTOMATED OR AUTOMATIC TELLERS, OR '24-HOUR TELLERS';]

[(1) [(2)] "department" means the Department of Commerce and Economic Development;

[(2) [(3)] "division" means the division of banking, [AND] securities and corporations within the department;

[(3) [(4)] "FDIC" means Federal Deposit Insurance Corporation;

[(4) [(5)] "FFIEC" means the Federal Financial Institutions Examination Council. ["MOBILE FACILITY" MEANS A BRANCH BANK WHICH MOVES FROM ONE LOCATION TO ANOTHER TO PROVIDE BANKING SERVICES AND IS LOCATED IN OR SERVES REMOTE AREAS OF THE STATE NOT BEING ADEQUATELY SERVED BY PERMANENTLY LOCATED BRANCH BANKS];

[(6) "OFF-PREMISES" MEANS EITHER

(A) SITUATED BEYOND THE PHYSICAL CONFINES OF THE INITIAL OFFICE OF THE BANK AS DESCRIBED IN ITS CERTIFICATE OF AUTHORITY; OR

(B) SITUATED AT A POINT BEYOND THE PHYSICAL CONFINES OF A BRANCH BANK OR PRINCIPAL OFFICE AS DESCRIBED IN ITS CERTIFICATE OF AUTHORITY;]

[(7) "PRODUCE IN TRANSIT" MEANS THE FOLLOWING PRODUCTS, THE MAJOR PORTION OF WHICH MUST HAVE ORIGINATED IN ALASKA WITH ADDITIVES PERMITTED ONLY FOR THE PURPOSE OF PROCESSING OR FINISHING ONLY:

(A) HARD MINERAL PRODUCTS IN THE FORM OF ORES OR SMELTED INGOTS, SUCH AS COAL, TIN, IRON, COPPER, AND SILVER;

(B) RAW OR REFINED LIQUID MATERIAL PRODUCTS, SUCH AS GAS, OIL, OR PETROCHEMICALS;

(C) AGRICULTURAL PRODUCTS, SUCH AS POTATOES, GRAINS, CARROTS, HAY, BERRIES, AND MEAT PRODUCTS;

(D) TIMBER PRODUCTS, SUCH AS LOGS, CHIPS, PULP,

LUMBER, AND PEAT MOSS;

(E) MANUFACTURED PRODUCTS USING NATIVE MATERIALS, SUCH AS ANIMAL HIDES AND FURS, VEGETATION, BONE AND HORN PRODUCTS, AND RAW FURS; AND

(F) RAW OR PROCESSED FISH OR FISH PRODUCTS;]

[(8) "SUBSIDIARY" MEANS A COMPANY WHOSE VOTING SHARES ARE DIRECTLY OR INDIRECTLY OWNED OR CONTROLLED BY A DOMESTIC BANK HOLDING COMPANY, OR HELD BY IT WITH POWER TO VOTE; OR A COMPANY THE SELECTION OF A MAJORITY OF WHOSE DIRECTORS, PARTNERS, TRUSTEES OR MANAGING OFFICERS IF CONTROLLED IN ANY MANNER BY THE DOMESTIC BANK HOLDING COMPANY; OR IF THE COMMISSIONER DETERMINES AFTER NOTICE AND OPPORTUNITY FOR HEARING, A COMPANY WHOSE MANAGEMENT OR POLICIES ARE SUBJECT TO A CONTROLLING INFLUENCE BY A DOMESTIC BANK HOLDING COMPANY;]

[(9) "TOTAL CAPITAL ACCOUNTS OF SUBSIDIARY BANK" MEANS CAPITAL, SURPLUS, UNDIVIDED PROFITS, CAPITAL NOTES, AND DEBENTURES NOT MATURING WITHIN ONE YEAR FROM THE DATE OF THE LOAN;]

[5] [(10)] "FHLBB" means the Federal Home Loan Bank Board.

[(b) AS USED IN AS 06.05.235, "COMPANY" DOES NOT INCLUDE A BANK, CORPORATION, PARTNERSHIP, JOINT STOCK COMPANY, BUSINESS TRUST, ASSOCIATION, OR SIMILAR ORGANIZATION, DOMESTIC OR FOREIGN

(1) THAT ACQUIRES OR HOLDS VOTING SECURITIES OR OTHER CAPITAL STOCK OF A BANK OR BANK HOLDING COMPANY ONLY FOR A REASONABLE PERIOD OF TIME IN CONNECTION WITH THE UNDERWRITING OF SECURITIES;

(2) THAT IS AN AGENCY OF THE UNITED STATES OR ANY STATE OR THE MAJORITY OF WHICH IS OWNED BY THE UNITED STATES OR ANY STATE;

(3) THAT IS AN INDEPENDENT FEDERAL FINANCIAL REGULATORY AGENCY OR A TRUSTEE OR AGENT OF SUCH A REGULATORY AGENCY; OR

(4) THAT, UNDER A PLAN OF FINANCIAL RESTRUCTURING WHICH IS INTENDED TO PREVENT THE FAILURE OF AN ALASKA BANK AND WHICH IS APPROVED BY THE DEPARTMENT,

(A) ACQUIRES OR RECEIVES 25 PERCENT OR MORE OF A CLASS OF VOTING SECURITIES OR OTHER CAPITAL STOCK OF THE BANK OR BANK HOLDING COMPANY SUBJECT TO THE PLAN, AND OWNS, CONTROLS, OR HOLDS, WITH THE POWER TO VOTE, THE SECURITIES ACQUIRED OR RECEIVED IN EXCESS OF 24.99 PERCENT OF THAT CLASS FOR A PERIOD OF TIME THAT WILL PERMIT THE DISTRIBUTION OR RESALE OF THE SECURITIES OR OTHER CAPITAL STOCK ON A REASONABLE BASIS; OR

(B) PURCHASES OR RECEIVES SECURITIES UNDER THE PLAN AND, AFTER THE PURCHASE OR RECEIPT, OWNS, CONTROLS, OR HOLDS, WITH A POWER TO VOTE, LESS THAN 25 PERCENT OF A CLASS OF VOTING SECURITIES OR OTHER CAPITAL STOCK OF THE BANK OR BANK HOLDING COMPANY SUBJECT TO THE PLAN BUT SUBSEQUENTLY, SOLELY THROUGH THE ACTION OR INACTION OF OTHERS, INCLUDING THE BANK OR BANK HOLDING COMPANY, OWNS, CONTROLS, OR HOLDS, WITH A POWER TO VOTE, 25 PERCENT OR MORE OF A CLASS OF VOTING SECURITIES OR OTHER CAPITAL

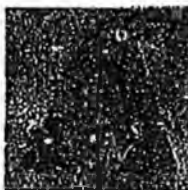
STOCK OF THE BANK OR BANK HOLDING COMPANY; HOWEVER, A COMPANY UNDER THIS CLAUSE WILL BE CONSIDERED A 'COMPANY,' AS USED IN AS 06.05.235, IF THE DEPARTMENT DETERMINES, AFTER NOTICE AND OPPORTUNITY FOR HEARING, THAT THE OWNERSHIP, CONTROL, OR HOLDING OF SECURITIES OR STOCK EXCEEDING 24.99 PERCENT OF A CLASS, OTHERWISE THAN UNDER A PLAN TO PROMPTLY DISPOSE OF THE SECURITIES OR STOCK UNDER THE SUPERVISION OF THE DEPARTMENT, WOULD PERMIT THE COMPANY IN ANY MANNER TO CONTROL THE ELECTION OF A MAJORITY OF THE BOARD OF DIRECTORS OR TRUSTEES, OR TO DIRECTLY OR INDIRECTLY EXERCISE A CONTROLLING INFLUENCE OVER THE MANAGEMENT OR POLICIES, OF THE BANK OR BANK HOLDING COMPANY.] (Eff. 4/6/79, Register 70; am 3/29/80, Register 73; am 12/23/87, Register 105; em am 8/18/88 - 12/15/88, Register 107; am / / , Register __)

AUTHORITY

[AS 06.01.020]
AS 06.05.005(a)(2) [(1)]
[AS 06.05.075]
[AS 06.05.235]
[AS 06.05.462(c)]
AS 06.05.540

*EDIT - Sec. 910 is based on definitions in former sec. 180 (Eff. 7/31/69, Register 31; am 12/13/70, Register 36) and former sec. 230 (Eff. 6/8/76, Register 58; am 11/18/76, Register 60) as well as new definitions added with Register 70.

NOTES: We have eliminated most of the definitions. Former (a)(1), (6), and (9) are terms no longer used in the regs. Former (5) and (7) are now defined in the code. Former (8) is different than the definition adopted in the code. Former (b) has been incorporated into AS 06.05.235. [NOTE TO AGO: The Editor's note may no longer be applicable.]



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April 7, 1993

Honorable Bill Hudson
Chairman
House Labor and Commerce Committee
State Capitol Building
Juneau, Alaska 99801
VIA FAX: (907) 465-6790

Call Back: (907) 465-3744

Attention: Linda Giguere, Esquire

Re: TRAC vehicle leasing and UCC Article 2A-
Leases in Alaska-- Senate Bill #112

Dear Representative Hudson:

I'm writing to you on behalf of the American Automotive Leasing Association (AALA)¹ to ask your help in obtaining Alaska state legislation. We are concerned about our members' decades-old practice of leasing fleets of motor vehicles to commercial business lessees under lease agreements with terminal rental adjustment clauses (TRACs).

UCC Article 2A-Leases, the new uniform state law governing leasing of motor vehicles and equipment, is silent (or neutral) on the status under state commercial law of TRAC vehicle leases that are widely used in our industry, with the specific approval and endorsement of the federal tax laws. We have no quarrel with UCC 2A. Yet with the clarification of many other aspects of state leasing law in UCC 2A, we submit that the Alaska Vehicle Code should now be amended to make it

¹ AALA is a national trade association of companies engaged in leasing motor vehicles, primarily to commercial and industrial users. The vehicles are generally leased in fleets, ranging in size from a few automobiles to large fleets of hundreds or thousands of automobiles, for periods of a year or more. The member companies of AALA lease and manage the majority of sales and service vehicles used by businesses throughout our country, a market exceeding three and a half million vehicles. Vehicles leased by AALA members operate in all the States, including Alaska.

American Automotive Leasing Association

clear that TRAC vehicle leases are valid "leases"-- not "sales" or "security interests"-- under state commercial law.

1. Background

Terminal rental adjustment clauses (TRACs) have been widely used throughout the motor vehicle leasing industry for well over thirty (30) years. A TRAC clause permits (or requires) an upward or downward adjustment of rent to make up for any difference between the projected value of a vehicle and the actual value upon lease termination. The objective of TRAC vehicle leases is to provide a financial incentive for the lessee/user, who is the party to the transaction best able to control the maintenance of the vehicle, to keep the vehicle in good repair.

Over the years, TRAC vehicle leasing has been increasingly accepted in the law. The federal tax laws were amended in 1983 to codify industry practice and specifically recognize TRAC motor vehicle leases to commercial lessees as true leases. See 26 U.S.C. §7701(h) (1986).² Tax law at the state level also generally follows federal tax law in recognizing that TRAC vehicle leases to commercial lessees are true leases for state tax purposes. And today many varieties of TRAC vehicle leases are recognized as true leases for accounting purposes.

TRAC vehicle leases also have been recognized as true leases for state commercial law purposes by some state courts. See Old Wine in New Bottles: UCC Article 2A-Leases, 39 U. Ala-bama L.Rev. 615, 638-641 (1988) (discussing case law). But other courts have disagreed. See id. There appears to be no Alaska court decision on point.³ Whether TRAC vehicle leases are true leases under state commercial law remains unsettled.

This is troublesome for TRAC vehicle lessors, since the state commercial law validity of TRAC vehicle leases (their

² TRAC vehicle leasing is confined, by virtue of federal tax law, to a commercial business setting. It does not involve leasing to consumers.

³ TRAC vehicle leasing was not involved in Dischner v. United Bank Alaska, 631 P.2d 107 (Alaska S.Ct. 1981). The vehicle lease in Dischner contained a "nominal" option of the kind that destroys true lease status under newly amended UCC 1-201(37). It was a "bailment lease" that was stipulated to be a secured sale (not a true lease). See 631 P.2d at 108 n.2. By contrast, TRAC vehicle leases do not involve "nominal" options, and newly amended UCC 1-201(37) is deliberately silent as to whether TRAC vehicle leases are, or are not, true leases. See Old Wine in New Bottles, 39 Alabama L.Rev. 615, 639 (1988).

status as "true leases" and not "sales" or "security interests") is important to the lessor in cases where the lessee is in bankruptcy. When this occurs, a TRAC vehicle lessor is entitled to receive full current rental payments or (on appropriate motion) to repossess the vehicles, if the TRAC lease is viewed as a true "lease". By contrast, if the TRAC lease is viewed as a "perfected security interest", then the TRAC lessor in this situation will have the right to receive payments representing only the depreciation on the leased equipment (about 50% to 80% of full rentals, in the recent experience of TRAC vehicle lessors). And if the TRAC vehicle lease is viewed as an "unperfected security interest", the trustee in bankruptcy may be able to keep the vehicles, without making current payments of any kind, and sell them. See id. (citing bankruptcy cases); In re Tulsa Port Warehouse Co., 690 F.2d 809 (10th Cir. 1982). True lessors of vehicles and equipment are thus better off than holders of "perfected security interests" who, in turn, are better off than holders of "unperfected security interests", when the lessee is in bankruptcy. See generally In re Pacific Express, Inc., 780 F.2d 1482 (9th Cir. 1986) (opinion spelling out difference between a true lease and a security interest, where lessee/borrower is in bankruptcy).

Typically, federal bankruptcy courts look to state commercial law to determine whether a transaction is a "lease" or a "sale" or a "security interest". See id. We therefore seek Alaska state legislation clarifying the status of TRAC motor vehicle leases, in major part because of its impact on federal bankruptcy cases. Moreover, the status of TRAC vehicle leases as true leases for tax, accounting and all other purposes would be buttressed, if Alaska state commercial law also clearly recognized the true lease status of TRAC vehicle leases.

To date, sixteen (16) States have enacted our model TRAC/state law: Alabama, the District of Columbia, Florida, Illinois, Michigan, Minnesota, Missouri, New Jersey, New York, North Dakota, Ohio, Oklahoma, Rhode Island, Texas, Virginia, and Wisconsin. Other States including Connecticut, Oregon, New Hampshire, Vermont, and Washington, are actively considering our TRAC proposal, which is being raised in most of the States throughout the country. We think Alaska should follow suit.

The original sponsors of UCC Article 2A-leases-- the Commissioners on Uniform State Laws-- have been advised of our proposed TRAC vehicle amendment and they have no problem with it. See attached letter from the Commissioners on Uniform State Laws' national office on TRAC vehicle leases. Indeed, we do not know of anyone -- in Alaska or anywhere else -- who opposes our amendment.

TRAC vehicle leasing is a well-established form of business that is here to stay. It is a good business. It lowers lease rental rates. It serves the public interest. There is no warrant for imposing any state law or bankruptcy law "penalty" on TRAC vehicle lessors for simply using TRAC leases that federal tax law specifically recognizes and encourages. This is only common sense and simple justice.

2. Validating TRAC vehicle leases
in Alaska's Vehicle Code

To be very specific, we respectfully suggest that the following new section be added to Senate Bill #112, seeking to enact UCC Article 2A-Leases in Alaska, adding the following new section 28.10.375 to the Alaska Statutes, Title 28 ("Motor Vehicles"), Chapter 10 ("Vehicle Registration and Title"), Article 4 ("Filing Documents Evidencing Liens or Encumbrances"):

**Sec. 28.10.375. TERMINAL RENTAL ADJUSTMENT CLAUSES:
VEHICLE LEASES THAT ARE NOT SALES OR SECURITY INTERESTS**

In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.

This special provision would not be at odds with UCC 2A. Our understanding is that UCC 2A is silent (or neutral) -- not hostile-- towards TRAC vehicle leases. We respectfully ask for your assistance in enacting legislation that supports the public interest by making it clear that TRAC vehicle leases are true "leases"-- not "sales" or "security interests" --under Alaska state commercial law.

Other industry groups support AALA's proposal. Years ago, when TRAC vehicle leasing was discussed by the Commissioners on Uniform State Laws, both AALA and the Equipment Leasing Association of America (ELA) supported validating motor vehicle TRAC leases as true leases under state law. In the view of ELA, the scope of TRAC leasing was properly defined by commercial custom so that it was acceptable for automobiles and other closely-related equipment within the scope of the tax Code/TRAC provision, 26 U.S.C. §7701(h) (1986), though it would be objectionable if applied to leasing for railroad rolling stock, aircraft, or any other kinds of equipment. This accomodation between AALA and ELA reflects an acceptance of the

different commercial customs and traditions that prevail in different industries.

The impact of the provision we urge would simply bring state commercial law into agreement with federal tax law.

3. Conclusion

TRAC vehicle leases deserve your support on their merits. Our proposed TRAC amendment serves the public interest. It will benefit both lessors and lessees in Alaska. Our AALA members, engaged in leasing vehicles to commercial business lessees in Alaska and other states, strongly support the TRAC amendment we seek. We ask you to support our TRAC vehicle amendment in the public interest.

Thank you very much for considering our views.

Yours very truly,

Edwin E. Huddleson

Edwin E. Huddleson, III

Volpa Boskey and Lyons
Counsel for AALA

Attachment

National Conference of Commissioners on Uniform State Laws
676 North St. Clair Street, Suite 1700, Chicago, Illinois 60611-(312)915-0195

Aug 18, 1990

John M. McCabe
Legislative Director

Edwin H. Huddleston, III
Volpe, Boskey and Lyons
World Center Building
919 16th Street, N.W.
Washington, D.C. 20006

RE: TRAC Leasing

Dear Ed:

As Legislative Director for the Uniform Law Commissioners, I would be willing to provide a statement by letter or otherwise that corresponds to the following:

As Legislative Director for the Uniform Law Commissioners, I will not oppose or counsel opposition to the adoption of language in the Motor Vehicle Code to the effect that, "In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement either upward or downward by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer." I do not find this language to be in conflict with Uniform Commercial Code, Article 2A or Uniform Commercial Code, Section 1-201(37), nor to impair essential uniformity of law with respect to the subject matter of leases.

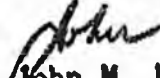
Although not an expression of general support for this treatment of the TRAC issue, it does fairly represent how the ULC, as represented through my office, will react to the introduction of provisions of this type in the state statutes. I am willing to provide a letter to this effect in any jurisdiction in which UCC Article 2A is under consideration, and would testify in the same fashion if asked in any legislative hearing.

I reserve the right, however, to make this statement personally from jurisdiction to jurisdiction. I do not intend this letter to be a general statement that may be used

independently of my own personal representations in any forum.
And I consider it applicable only in jurisdictions in which UCC
Article 2A is under active consideration.

Is this at all helpful? Thanks for your kind attention.

Sincerely,


John M. McCabe
Legislative Director

cc: Fred Miller

National Bank of Alaska



Juneau Office P.O. Box 021189 Juneau, Alaska 99802-1189 (907) 586-3324 FAX (907) 463-3997

April 7, 1993

Representative Bill Hudson
Capitol Office Building
Room 108
Juneau, AK 99801

Dear Representative Hudson:

I urge your support in scheduling Senate Bill 86 for house consideration. This rather lengthy and unglamorous bill is extremely important in conducting business in and outside of Alaska. Briefly the bill sets out clear lines of responsibility between parties utilizing electronic fund transfers. With more and more business being conducted through electronic transfers it is important to provide clear lines of responsibility which will reduce and eliminate legal disputes. The bill provides clear, fair and sound rules for all parties (not just financial institutions) in conducting business through fund transfers. This bill will eliminate disputes that could arise between the State of Alaska and the other 44 states which have adopted this regulation. I know that the Alaska Banker's Association as well as my company are solidly in support of this bill.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Peter M. Crandall'.

Peter M. Crandall
Senior Vice President

STATEMENT OF
SEN. JAY KERTTULA
ON
S.B. 86 AND S.B. 112
"UNIFORM COMMERCIAL CODE"
BEFORE THE
HOUSE JUDICIARY COMMITTEE
HONORABLE BRIAN PORTER, CHAIRMAN
MONDAY, APRIL 19, 1993

GOOD AFTERNOON. I'D LIKE TO THANK COMMITTEE CHAIRMAN PORTER AND THE MEMBERS OF THE HOUSE JUDICIARY COMMITTEE FOR SCHEDULING SENATE BILLS 86 AND 112 FOR PUBLIC HEARING TODAY. THE BILLS ARE COMPANION PIECES OF LEGISLATION AMENDING ALASKA'S UNIFORM COMMERCIAL CODE.

AS SPONSOR, I WILL PROVIDE AN OVERVIEW OF THE BILLS. I HAVE ALSO ASKED A REPRESENTATIVE OF THE DEPARTMENT OF LAW, AND ALASKA UNIFORM LAW COMMISSIONER ART PETERSON TO BE HERE TODAY TO EXPLAIN THE MORE TECHNICAL ASPECTS OF THE BILLS, SHOULD THE COMMITTEE DESIRE SUCH AN EXPLANATION.

I WILL BEGIN WITH SENATE BILL 86, ALSO KNOWN AS THE "FUNDS TRANSFERS' BILL.

SPONSOR STATEMENT-SB 86 AND AB 112
PAGE 2

GENERALLY SPEAKING, SENATE BILL 86 BRINGS THE FUNDS TRANSFERS PORTION OF ALASKA'S UNIFORM COMMERCIAL CODE UP TO DATE WITH REGARD TO CURRENT ELECTRONIC TECHNOLOGY AS IT APPLIES TO MODERN BUSINESS PRACTICES.

S.B. 86 WILL ENACT THE NEW ARTICLE 4A INTO THE STATE'S UNIFORM COMMERCIAL CODE. THE U.C.C. IS A COMPREHENSIVE CODIFICATION OF COMMERCIAL LAW THROUGHOUT THE COUNTRY. UNTIL 1989, HOWEVER, THE U.C.C. DID NOT DEAL WITH FUNDS TRANSFERS BETWEEN COMMERCIAL ENTITIES. AS BUSINESS PRACTICE HAS COME TO RELY MORE HEAVILY ON THE SPEED, EFFICIENCY, RELIABILITY AND RELATIVELY LOW COST OF ELECTRONIC TECHNOLOGY, IT IS APPARENT THAT ALASKA'S COMMERCIAL LAWS NEED TO BE BROUGHT UP TO DATE.

THE NEW ARTICLE 4A EMBODIED IN S.B. 86 DOES THIS. THE PROVISIONS IN S.B. 86 HAVE ALREADY BEEN ADOPTED BY 44 OTHER STATES, INCLUDING NEW YORK, ILLINOIS AND CALIFORNIA--THE MAJOR FINANCIAL CENTERS FOR AMERICA.

THE SHEER VOLUME OF COMMERCIAL FUNDING TRANSACTIONS VIA MODERN TECHNOLOGY MAKES ENACTMENT OF S.B. 86 NECESSARY. IN 1989, A RECORD THREE TRILLION DOLLARS WERE TRANSFERRED ON A SINGLE DAY--MORE MONEY THAN THE 1989 U.S. GROSS NATIONAL PRODUCT. THE AVERAGE INDIVIDUAL FUNDS TRANSFER IN 1989 WAS FIVE MILLION DOLLARS, AND THE AVERAGE DAILY TRANSFER WAS ONE TRILLION DOLLARS.

UNLESS THE PARTIES TO A TRANSACTION USE THE SAME BANK, A FUNDS TRANSFER, ON AVERAGE, INVOLVES AT LEAST FOUR ENTITIES: THE ORIGINATOR OF THE PAYMENT; THE BANK TO WHICH THE ORIGINATOR COMMUNICATES THE FIRST PAYMENT ORDER; THE BANK OF THE ENTITY RECEIVING THE ORDER; AND THE RECIPIENT OR BENEFICIARY.

BECAUSE THESE TRANSACTIONS ARE DONE ELECTRONICALLY, AND NOT IN CASH, A NUMBER OF QUESTIONS REGARDING RESPONSIBILITY AND LIABILITY ARISE. QUESTIONS SUCH AS: WHAT HAPPENS IF THE FIRST

BANK MAKES A MISTAKE ON THE AMOUNT TO BE PAID? WHAT
IF THE SECOND BANK FAILS TO NOTIFY THE RECIPIENT?
WHAT HAPPENS IF THE ORIGINAL PAYMENT ORDER IS
FRAUDULENT AND NOT ACTUALLY ISSUED BY THE
ORIGINATOR? WHO BEARS THE RISK OF LOSS AT A GIVEN
TIME IN THE TRANSACTION PROCESS? AND WHAT
CONSTITUTES ACCEPTANCE AND REJECTION OF A PAYMENT
ORDER?

THESE AND OTHER QUESTIONS ARE ANSWERED IN THE
ARTICLE 4A ENACTED BY SENATE BILL 86 WHICH,
BASICALLY, ESTABLISHES THE RULES GOVERNING THE
PAYMENT OF LARGE SUMS OF MONEY.

THE BILL PROVIDES A SIGNIFICANT IMPROVEMENT IN
ALASKA COMMERCIAL LAW. IT WILL HELP KEEP ALASKA'S
UNIFORM COMMERCIAL CODE UP TO DATE WHICH, IN TURN,
HELPS ASSURE A FAVORABLE COMMERCIAL CLIMATE IN
ALASKA--ONE THAT IS IN LINE WITH THE REST OF THE
NATION AND CAN, ACCORDINGLY, HELP ENCOURAGE
ECONOMIC DEVELOPMENT AND GROWTH IN ALASKA.

S.B. 86 HAS A ZERO FISCAL NOTE FROM THE DEPARTMENT OF LAW. IN ADDITION, FEDERAL FINANCIAL REGULATORS ARE ENCOURAGING INDIVIDUAL STATES TO ENACT THE PROVISIONS EMBODIED IN S.B. 86. TO BRING THEIR RESPECTIVE STATE LAWS INTO COMPLIANCE WITH FEDERAL LAW. UNLESS STATES ADOPT THESE PROVISIONS, THE FEDERAL GOVERNMENT WILL STEP IN AND PERFORM THE REGULATORY AND ENFORCEMENT DUTIES RELATING TO FUNDS TRANSFERS.

THE PROVISIONS IN S.B. 86 HAVE BEEN ENDORSED BY THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS.

SENATE BILL 112

SENATE BILL 112, IN GENERAL, ALSO MAKES AMENDMENTS TO ALASKA'S UNIFORM COMMERCIAL CODE. IN MOST INSTANCES THESE CHANGES ARE DESIGNED TO BRING THE CODE UP TO DATE WITH THE REST OF THE COUNTRY.

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THE FIRST CHANGE ADDS A NEW ARTICLE 2A TO THE EXISTING LAW. WHILE THE EXISTING LAW COVERS COMMERCIAL PROPERTY LEASES, THERE IS NO LANGUAGE RELATING TO PERSONAL PROPERTY LEASING.

PERSONAL PROPERTY BEING LEASED RANGES FROM CARS, HORSES, AND MOVING VANS TO CONSTRUCTION EQUIPMENT AND OIL RIGS.

ARTICLE 2A DEALS WITH WHAT ARE CALLED "TRUE" LEASES AND "FINANCE" LEASES. THE ARTICLE PROVIDES THE STATUTORY ANSWERS TO A BROAD RANGE OF LEGAL ISSUES, COVERING SUCH MATTERS AS OFFER AND ACCEPTANCE, WARRANTIES, MISTAKE, FAILURE TO PERFORM, RISK OF LOSS AND REMEDIES.

THE CURRENT ABSENCE OF THESE RULES PROMOTES LITIGATION.

ARTICLE 3 OF S.B. 112, FOR THE MOST PART, REORGANIZES THE EXISTING MATERIAL IN THE STATE CODE TO MAKE IT MORE CLEAR AND TO ACCOUNT FOR MODERN

TECHNOLOGIES. THESE REVISIONS FIX MANY OF THE PROBLEMS THAT HAVE ARISEN OVER THE PAST 40 YEARS WITH THE UNIFORM COMMERCIAL CODE AND WITH NEGOTIABLE INSTRUMENTS. SOME OF THE CHANGES INCLUDED IN ARTICLE 3 AND ARTICLE 1 OF S.B. 112 ARE NECESSARY TO BRING THESE ARTICLES INTO COMPLIANCE WITH THE NEW LANGUAGE IN ARTICLE 4A AS IT APPEARS IN S.B. 86.

ONE IMPORTANT CHANGE IN ARTICLE 3 IS THAT THE REVISION RECOGNIZES THAT THERE ARE TWO TYPES OF INSTRUMENTS--NOTES AND DRAFTS--WHICH USUALLY PERFORM DIFFERENT FUNCTIONS AND, THEREFORE, MERIT DIFFERENT TREATMENT.

BENEFITS FROM ENACTING ARTICLE 3 OF S.B. 112 INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING: CERTAINTY OF THE LAW, SPEED AND RELIABILITY, LOWER COSTS, REDUCED LITIGATION, AND STRICTER STANDARDS FOR FIDUCIARIES.

FINALLY, SENATE BILL 112 SEEKS TO REPEAL ARTICLE 6 OF THE PRESENT UNIFORM COMMERCIAL CODE. ARTICLE 6 DEALS WITH BULK SALES. A BULK SALE IS ONE IN WHICH A BUSINESS SELLS ALL OR A LARGE PART OF ITS INVENTORY TO A SINGLE BUYER OUTSIDE THE ORDINARY COURSE OF BUSINESS.

THE EXISTING LAW WAS DESIGNED TO PROTECT CREDITORS OF SUCH BUSINESSES FROM THE PROPRIETOR WHO ABSCONDS WITH THE PROCEEDS OF SUCH A SALE. THESE LAWS WERE ENACTED IN A CLIMATE OF SMALLER BUSINESSES.

BUT THE CREDIT ENVIRONMENT HAS CHANGED DRASTICALLY OVER THE YEARS, SO THAT THE RISK OF THE ABSCONDING PROPRIETOR IS NO LONGER VERY GREAT. IT IS NOW EASIER FOR BUSINESSES TO ESTABLISH THE CREDITWORTHINESS OF A PROPRIETOR OR MERCHANT, AND EASIER TO PURSUE THOSE FEW WHO DO "TAKE THE MONEY AND RUN".

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IN ADDITION, UNDER ARTICLE 9 OF THE EXISTING CODE, PROTECTIONS FOR CREDITORS ARE MORE SIGNIFICANT THAN IN THE PAST.

BECAUSE OF THESE FACTORS, THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, AND A GROUP OF 16 ALASKA BUSINESS LAW ATTORNEYS, HAVE RECOMMENDED THAT ARTICLE 6 BE REPEALED. AS OF 1991, 14 STATES HAD APPROACHED THIS ISSUE AND TEN OF THEM OPTED FOR THE REPEAL APPROACH ENACTED IN SENATE BILL 112.

THIS BILL RECEIVED A ZERO FISCAL NOTE FROM THE DEPARTMENT OF LAW'S DIVISION OF LEGAL SERVICES. ACCORDING TO THE DEPARTMENT'S ANALYSIS ACCOMPANYING THIS FISCAL NOTE, THE BASIC CHANGES PROPOSED IN S.B. 112 ARE--AND I QUOTE:

". . .NEEDED TO HELP BRING ALASKA BUSINESSES AND CONSUMERS INVOLVED IN COMMERCIAL TRANSACTIONS UP TO DATE WITH BUSINESSES AND CONSUMERS IN THE REST OF THE COUNTRY." (END QUOTE).

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BECAUSE OF THIS, AND THE OTHER REASONS I HAVE
OUTLINED IN MY STATEMENT, IT IS MY HOPE THAT THIS
COMMITTEE WILL LOOK FAVORABLY ON BOTH SENATE BILL 85
AND SENATE BILL 112, GIVING IT A "DO PASS"
RECOMMENDATION.

(end statement)