

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8348 SENATE LABOR & COMMERCE

department under AS 06.05.305;

(5) the bank will have personnel with adequate knowledge and experience to conduct its business and officers that are of good character and financial responsibility;

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

(7) other facts and circumstances exist bearing on the bank and its relation to the community which the department considers relevant.

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

(h) If the department approves the application, the approval shall be endorsed on the articles of incorporation, and the articles of incorporation shall be filed and a certificate of incorporation issued under AS 10.06.910.

* Section 53. AS 06.05.345(a) is amended to read:

(a) In addition to those items required under AS 10.06.208, the [THE INCORPORATORS SHALL EXECUTE] articles of incorporation of a state bank [, WHICH] must specify

(1) [THE NAME ASSUMED BY THE BANK;

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

[(3) THE NATURE OF ITS BUSINESS;]

(2) [(4)] the amount of its capital stock, which shall be divided into shares having a par

value of not less than \$1 each;

~~(3) [(5)] that there will [THE NUMBER OF DIRECTORS OF WHOM THERE MUST]~~
be at least five but no more than 25 directors; and

~~(4) [(C)]~~ the period for which the bank is organized, if limited.

* Section 54. AS 06.05.345(1) is repealed and reenacted to read:

(l) A bank may amend its articles of incorporation in any manner consistent with its articles and bylaws, AS 10.06, and this chapter by a vote of its shareholders representing at least a majority of the capital at any regular meeting or at a special meeting called for that purpose.

* Section 55. AS 06.05.350(a) is repealed and reenacted to read:

(a) At any time after receiving a certificate of incorporation, the bank may apply to the department for a certificate of authority to engage in the banking business. Before receiving a certificate of authority, a bank may not perform any act other than to perfect its organization, obtain and equip a place of business, obtain subscriptions and payment for its shares, and otherwise prepare to do business, as to each location of the principal office and to each branch office. If a state bank transacts business before it receives a certificate of authority in violation of this subsection, the directors and officers who willfully authorized or participated in the action are personally, jointly, and severally liable for the debts and liabilities of the bank incurred before the certificate of authority is issued.

* Section 56. AS 06.05.350(b) is amended to read:

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

(1) certification by an officer [TO THE DEPARTMENT] by affidavit that the capital and surplus [AND UNDIVIDED PROFITS] required by the department have been fully paid in cash;

(2) a list of all shareholders [STOCKHOLDERS], giving the name, address, and number of shares held by each [HAS BEEN FILED WITH THE DEPARTMENT];

(3) bylaws of the corporation [HAVE BEEN ADOPTED AND FILED WITH THE

DEPARTMENT];

[(4) THE BANK HAS RECEIVED APPROVAL OF ITS APPLICATION FOR INSURANCE FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION;]

(5) evidence satisfactory to the department that the bank has complied with all the requirements of this chapter and any conditions imposed by the department and has advised the department in writing of any changes that have occurred in the facts reflected in the material it filed under AS 06.05.344 [AS 06.05.345].

* Section 57. AS 06.05.350 is amended by adding a new subsection to read:

(d) Except as authorized under this section, no person may

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

(2) represent that the person is, or acts for, a bank; or

(3) use an artificial or corporate name that purports to be or suggests that it is the name of a bank.

* Section 58. AS 06.05.355(a) is repealed and reenacted to read:

(a) The department may require a state bank, either at the time the bank applies for a certificate of authority or at any time during the bank's existence, to become a member of the Federal Deposit Insurance Corporation.

* Section 59. AS 06.05.355(c) is amended to read:

(c) Relinquishment of membership without giving notice and obtaining the department's consent, involuntary loss of membership, or failure to become a member after directed to do so by the department constitutes cause for the department to take possession of the bank in the manner provided by this chapter.

* Section 60. AS 06.05.385 is amended to read:

Sec. 06.05.385. ORGANIZATIONAL MEETING. [FIRST MEETING OF STOCKHOLDERS AND DIRECTORS.] (a) In the case of a state bank, the organizational meeting under AS

10.06.223 may not be called until all [AFTER THE] capital and surplus have been fully paid [, THE INCORPORATORS SHALL CALL A MEETING OF THE STOCKHOLDERS ON 10 DAYS' NOTICE TO ELECT DIRECTORS AND ADOPT BYLAWS, AND DIRECT THE CALL, ON FIVE DAYS' NOTICE, OF THE FIRST MEETING OF DIRECTORS FOR THE ELECTION OF OFFICERS].

(b) Bylaws shall be adopted and may be amended by a vote of the holders of a majority of the outstanding voting shares voted at a meeting of the shareholders [STOCKHOLDERS]. If not provided in the articles of incorporation, the bylaws must provide the organizational structure of the bank and specifically designate those offices that will be held by the executive or managing officers of the bank. Copies of the original bylaws of the bank, and any amendments thereafter adopted, must be filed with the department. [THE BYLAWS MAY PROVIDE FOR THEIR AMENDMENT BY THE BOARD OF DIRECTORS OF ANY PROVISIONS OTHER THAN THOSE RELATING TO THE DUTIES, TERM OF OFFICE, REMUNERATION, REIMBURSEMENT OR INDEMNIFICATION OF A DIRECTOR.]

* Section 61. AS 06.05.399 is amended to read:

Sec. 06.05.399. APPLICATION FOR CERTIFICATE OF AUTHORITY FOR BRANCH BANK OR CHANGE OF LOCATION. (a) Before operating a branch bank at [AS] a permanent location or a mobile facility branch bank, or changing the location of the principal office or [OF] a branch of the bank at a permanent location, a state bank must apply to the department [COMMISSIONER] for a certificate of authority to do so. The application must be in the form and contain the information the department [COMMISSIONER] requires to enable the department [COMMISSIONER] to determine whether a certificate of authority should be issued, including [BUT NOT LIMITED TO] the address at which the state bank or branch at a permanent location will operate. Investigation expenses incurred by the department in processing applications shall be charged to and paid by the applicant as provided in AS 06.01.010. At the time of submitting the application to the department [COMMISSIONER], the applicant shall pay to the department \$1000 [\$500] in partial

payment of those investigation expenses incurred by the department. If the investigation expenses incurred by the department do not exceed \$1000 [\$500], the remainder shall be promptly refunded to the applicant.

(b) The department shall notify the state bank of its action on the application for a branch bank or for a change of location. If the application and the accompanying documents do not conform to the requirements of (a) of this section, the department shall return them with an explanation of the defects in them. If the department does not respond within 30 days of its receipt of the application, the application [IT] shall be considered to have been accepted.

(c) The state bank shall publish notice of [THE ACCEPTANCE BY THE DEPARTMENT OF] the application for a branch bank or for a [APPROVAL TO] change in location in the manner provided in AS 06.05.344 (d) and (e) [AS 06.05.345(f) and (g)]. The notice shall state the proposed location for the facility.

(d) Upon acceptance of an application for a certificate of authority to operate a branch bank or for approval to change location, the department shall conduct an investigation to ascertain whether

(1) the addition of the proposed facility in the community is consistent with [NOT DETRIMENTAL TO] a sound and competitive banking system;

(2) the population density and other economic characteristics of the area primarily to be served afford reasonable promise of adequate support for the proposed facility [A BRANCH AT A PERMANENT LOCATION OR MOBILE FACILITY BRANCH BANK OR A RELOCATED PRINCIPAL OFFICE OR BRANCH AT A PERMANENT LOCATION];

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

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

(e) No later than 150 days after the application for a certificate of authority to operate a branch bank or to change location has been accepted, the department shall make a determination whether to

approve the application. Within 30 days after the second publication of the notice referred to in (c) of this section, any person opposing the pending application may file written objections with the department. When it approves or denies the application, the department shall notify the bank and any other person who requested in writing to [THAT THE PERSON] be notified; and if the application is denied, the department shall state the reasons for its decision.

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

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

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

(3) APPROVAL OF THE APPLICATION FOR INSURANCE HAS BEEN RECEIVED FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION].

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

* Section 62. AS 06.05 is amended by adding a new section to read:

Sec. 06.05.405. AUTOMATED TELLER MACHINES.

(a) A state bank may establish, maintain, and operate an automated teller machine on the premises of the bank's main office or any branch office.

(b) A state bank may establish, maintain, and operate an automated teller machine at any location other than bank premises with the prior approval of the department. An automated teller machine operated off bank premises must be made available on a nondiscriminatory basis for use by any other bank authorized to do business in Alaska, and its customers, upon the agreement of the other bank to pay a fair and equitable amount for the use of the machine.

(c) For each automated teller machine that a state bank proposes to establish or operate under (b) of this section, the state bank shall submit an application to the department for the machine. The application must contain the following:

- (1) the location and general description of the surrounding area, including a description of any business establishment in which the machine will be located;
- (2) the name of the manufacturer and owner of the machine;
- (3) the manner of operation, including whether the machine is on-line and the kinds of transactions the machine will perform;
- (4) the names of all other banks with whom the machine's services will be shared; and
- (5) any other information required by the department.

(d) A state bank may invest in a corporation organized to operate machines that perform automated teller services for two or more banks, each of which owns part of the capital stock of the corporation.

* Section 63. AS 06.05.435(a) is amended to read:

(a) The affairs of every bank incorporated under this chapter shall be managed by not less than five directors, nor more than 25 [, WHO SHALL BE ELECTED BY THE STOCKHOLDERS AND HOLD OFFICE FOR ONE YEAR AND UNTIL THEIR SUCCESSORS ARE ELECTED AND HAVE QUALIFIED]. A majority of the board of directors shall be bona fide residents of the state and a majority constitutes a quorum for the transaction of business.

* Section 64. AS 06.05.435(c) is amended to read:

(c) Unless otherwise approved by the department, each [EACH] director of a bank shall own, in the director's own right or jointly with the director's spouse, free of any encumbrance, capital stock of the bank in an amount equal to at least \$1,000 in par value.

* Section 65. AS 06.05.435 is amended by adding new subsections to read:

(f) A bank shall report within 30 days to the department any change in directors, including in its report a statement of the business and professional affiliations of new directors.

(g) The department may issue an order under AS 06.01.030 removing a person from the board of directors or prohibiting a person from being on the board, if the department determines that

- (1) due to the competence, experience, character or integrity of the person, it is not in

the best interests of the depositors or the public for that person to be or remain on the board;

(2) the person is dishonest or reckless in managing the affairs of the bank;

(3) the person has persistently violated the laws of this state or the orders of the department;

(4) the person has been indicted for a felony, or any other crime involving moral turpitude or breach of trust; or

(5) the person has filed a petition in bankruptcy either in an individual capacity or in the name of a majority-owned corporate interest.

* Section 66. AS 06.05.437 is amended to read:

Sec. 06.05.437. OFFICERS. (a) The officers of a bank shall be chosen [ELECTED] by the board of directors. An officer may not be appointed to serve [ELECTED] for a period longer than one year. [AN OFFICER MAY BE REMOVED BY THE BOARD OF DIRECTORS AT ANY TIME BUT REMOVAL DOES NOT PREJUDICE ANY RIGHTS THAT THE OFFICER MAY HAVE TO DAMAGES FOR BREACH OF CONTRACT OF EMPLOYMENT.] If the [THE] president of a bank or other chief officer responsible for the management of the bank is not a director, that person must be an ex officio [A] member of the board of directors with no power to vote.

(b) A bank shall report within 30 days to the department any changes among executive officers [AND DIRECTORS], including in its report a statement of the business and professional affiliations of new executive officers [AND DIRECTORS].

* Section 67. AS 06.05.437 is amended by adding a new subsection to read:

(c) If the department determines that any officer or employee of the bank has been negligent, dishonest, reckless or incompetent in the performance of official duties, the department may order the board to remove that officer or employee from office, after giving the board and the officer or employee an opportunity for a hearing under AS 06.01.030. If the board neglects or refuses to remove the officer or employee from office, in the event any losses accrue to such bank thereafter by some reason of the negligence, dishonesty, recklessness or incompetence of the officer or employee, the order of the

department shall be deemed to be conclusive evidence of the negligence of the board failing to act upon the same in any action brought against them, or any of them, for recovery of the losses.

* Section 68. AS 06.05.438(a) is amended to read:

(a) The board of directors of each bank shall hold a meeting at least once each month for at least 10 months in each calendar year [TO GENERALLY INVESTIGATE THE AFFAIRS OF THE BANK].

* Section 59. AS 06.05.438 is amended by adding new subsections to read:

(e) Unless prohibited by the articles or bylaws of the bank, the board of directors or a committee of the board can validly conduct a meeting by communicating simultaneously with each other by means of conference telephones or similar communications equipment.

(f) The department may require a meeting of the board of directors of a state bank to be held in the manner and at the time and place it directs when, in the judgment of the department, a violation of this title has occurred or is about to occur. A report of an examination required or allowed by this title, the conclusions drawn from the examination by the department, recommendations made by the department relative to it, and any other matters concerning the operation and condition of the bank may be presented to the board of directors by the department. If a report of examination or other information is presented by the department to the board, each member of the board of directors shall furnish to the department a statement, on forms to be supplied by the department, that the member has read and is familiar with the recommendations of the department.

* Section 70. AS 06.05.440 is amended to read:

Sec. 06.05.440. AUTHORITY TO DECLARE DIVIDENDS. The directors of a bank transacting business in the state may declare a dividend out of the net profits, subject to any restrictions under AS 06.05.307(c) and after complying with AS 06.05.441 - 06.05.445.

* Section 71. AS 06.05.441 is amended to read:

Sec. 06.05.441. CONDITIONS PRECEDENT TO DIVIDEND DECLARATION AND PAYMENT. (a) Before a bank dividend is declared[,] or the net profits for the period covered by the dividend disposed of, after the restoration of any undivided profits or surplus under AS 06.05.442,

not less than one-fifth of these net profits shall be carried to the bank surplus account until the surplus account equals 100 percent [AMOUNTS TO 100 PER CENT] of the paid-in capital of the bank.

(b) The department may require a bank to suspend the payment of any dividends until all orders, or requirements of AS 06.05.441 - 06.05.442 [MADE BY THE DEPARTMENT] have been complied with.

* Section 72. AS 06.05.442 is amended to read:

Sec. 06.05.442. RESTORATION OF SURPLUS BEFORE PAYMENT OF DIVIDENDS. A loss sustained by a bank in excess of its undivided profits and any capital contingency reserves [RESERVE] shall be charged to its surplus account or, with the approval of the department, carried as negative undivided profits. The bank's undivided profits and [ITS] surplus account shall thereafter be reimbursed from earnings, and no dividends may be declared or paid by the bank [IN EXCESS OF ONE-HALF OF ITS NET EARNINGS] until any negative undivided profits are eliminated and the surplus account is restored to at least the amount from which the surplus was originally reduced [OR AN AMOUNT EQUAL TO 100 PER CENT OF PAID-IN CAPITAL].

* Section 73. AS 06.05.445 is amended to read:

Sec. 06.05.445. DETERMINING NET PROFITS. (a) A bank may not declare or pay a dividend in an amount greater than its net undivided profits then on hand.

(b) In determining net profits for the purpose of declaring a dividend, a bank may not include in its calculations

(1) loan loss reserves and any losses in excess of reserves, including any loans or other credits upon which interest for a period of six months is due and unpaid, unless the loan or credit is well secured and in the process of collection;

(2) interest accrued but not collected on loans or other credits [IF THE DEBT] upon which the interest [IS] due is more than 90 days delinquent; [,]

(3) [(2) THE] interest collected but not earned; [, OR]

(4) assets or depreciation that the department has required to be charged off;

~~(5)~~ [(3)] the appreciation of any asset above its actual cost to the bank [OR PAR VALUE] ; and

(6) any accrued expenses, interest or taxes due from the bank.

* Section 74. AS 06.05.450 is amended to read:

Sec. 06.05.450. SHAREHOLDERS [STOCKHOLDERS] LIST. Each bank shall keep a record of [BOOK IN WHICH IT SHALL ENTER] the name and residence of each shareholder [STOCKHOLDER] of the bank, the class and number of shares held by each, the time when each person became a shareholder [STOCKHOLDER], and all transfers of stock, stating the time when made, the number of shares, and by whom transferred. A list of current shareholders [THE STOCKHOLDERS] shall be available for inspection in the bank office by any shareholder, on demand [SHOWING THE NUMBER OF SHARES HELD BY EACH STOCKHOLDER OF RECORD].

* Section 75. AS 06.05.462 is amended to read:

Sec. 06.05.462. CONVERSIONS, MERGERS AND CONSOLIDATIONS. (a) A national [CHARTER] bank located in the state may convert to a state [CHARTER] bank or merge or consolidate with a state [CHARTER] bank, and a state [CHARTER] bank may merge or consolidate with another state [CHARTER] bank, if the merger or consolidation is consistent with federal and state law and approved by the department.

(b) Before merger or consolidation under (a) of this section, banks shall file with the department an application and other information and reports that the department requires.

(c) The department, in the exercise of its power to approve or disapprove applications for merger or consolidation, shall act in the interests of promoting and maintaining a sound banking system, the security of deposits and customers, the preservation of the liquid position of banks, and in the interest of preventing injurious credit expansions and contractions. [THE DEPARTMENT MAY ADOPT REGULATIONS TO IMPLEMENT THIS SECTION.]

(d) A state [CHARTER] bank converting to or merging or consolidating with a national [CHARTER] bank shall submit a copy of the application for national charter or application to convert,

merge or consolidate to the department at the time those documents are forwarded to the comptroller of the currency.

* Section 76. AS 06.05.466 is repealed and reenacted to read:

Sec. 06.05.466. **DISSOLUTION BEFORE COMMENCEMENT OF BUSINESS.** If the department discovers, after it approves the articles of incorporation but before it issues a certificate of authority, a reason why the bank should not have been incorporated, or if a certificate of authority has not been issued within one year after the issuance of the certificate of incorporation or within the time the department allowed for satisfaction of conditions precedent to the issuance of a certificate of authority, the bank shall proceed to voluntarily dissolve under AS 10.06.605 - 10.06.625 or may be involuntarily dissolved by the department under AS 10.06.633.

* Section 77. AS 06.05 is amended by adding a new section to read:

Sec. 06.05.468. **CEASE AND DESIST; OPPORTUNITY FOR HEARING; DEPARTMENT TAKEOVER.** (a) A state bank may be closed and the department may take possession of the bank if the bank voluntarily places its affairs and assets under the department's control, or if the department finds

- (1) the bank has violated any order of the department;
- (2) the bank has violated a provision of this chapter or any regulation of the department adopted under this chapter;
- (3) the bank's capital is impaired or it is otherwise in an unsafe or unsound condition;
- (4) the bank's business is being conducted in an unlawful, unsafe or unsound manner;
- (5) the bank is insolvent;
- (6) the bank is unable to continue normal operations;
- (7) a department examination of the bank has been obstructed or impeded;
- (8) the bank holding company that controls the bank has refused to permit an examination as provided in AS 06.05.235; or
- (9) the bank has lost, or received notice of the termination or suspension of, its

membership in the Federal Deposit Insurance Corporation or has relinquished its membership in the Federal Deposit Insurance Corporation without the consent of the department.

(b) Except as provided under (d) of this section, before the department may take possession of a bank the department must issue a notice to the board of directors of the bank under AS 06.01.030(a) of the problems identified by the department and issue an order to the board under AS 06.01.030(b) to correct the problems. The notice must also specify that failure to comply with the order may result in the department taking possession of the bank.

(c) If a bank fails to comply with an order issued under (b) of this section, the department may take possession of the bank by posting upon the bank premises a notice stating that it is assuming possession under this chapter. Its possession is considered to commence at the time of posting of the notice. The notice shall also be filed in the superior court of the judicial district in which the bank is located. The department shall notify the local federal reserve bank if the bank is a member of the Federal Reserve System.

(d) Notwithstanding the provisions of this section and AS 06.01.030 if, in the opinion of the department, an emergency exists which will result in serious losses to the depositors, the department may take possession of a bank without prior hearing. Within two days after the department has taken possession under this subsection, any interested party may file with the department an application for an order vacating the possession. The department shall grant the application if it finds that its action was unauthorized under this chapter.

*Section 78. AS 06.05.470(b) is amended to read:

(b) [THE DEPARTMENT SHALL TAKE POSSESSION UNDER (A) OF THIS SECTION BY POSTING UPON THE BANK PREMISES A NOTICE STATING THAT IT IS ASSUMING POSSESSION UNDER THIS CHAPTER. ITS POSSESSION IS CONSIDERED TO COMMENCE AT THE TIME OF POSTING OF THE NOTICE. THE NOTICE SHALL ALSO BE FILED IN THE SUPERIOR COURT OF THE JUDICIAL DISTRICT IN WHICH THE BANK IS LOCATED. THE DEPARTMENT SHALL NOTIFY THE FEDERAL RESERVE BANK IF THE BANK IN THE

POSSESSION OF THE DEPARTMENT IS A MEMBER OF THE FEDERAL RESERVE SYSTEM.] When the department has taken possession of a bank, it is vested with the full and exclusive power of management and control, including the power [TO ASSESS OUTSTANDING CAPITAL STOCK UNDER AS 06.05.310,] to continue or discontinue the business, to stop or limit the payment of the bank's [ITS] obligations, to employ necessary assistants, to execute any instrument in the name of the bank, to commence, defend and conduct in the bank's [ITS] name any action or proceeding in which it may be a party, to terminate the [ITS] possession by restoring the bank to its board of directors, and to reorganize or liquidate the bank in accordance with this chapter. As soon as practicable after taking possession, the department shall make an inventory of the assets and file a copy of the inventory [IT] with the superior court.

* Section 79. AS 06.05.470(g) is amended to read:

(g) A judgment, lien, or attachment may not be enforced against [EXECUTED UPON] any asset of the bank while it is in possession of the department. Upon the election of the department in connection with a liquidation or reorganization,

(1) any lien or attachment, other than an attorney's or mechanic's lien, obtained upon any asset of the bank during the department's possession or within four months before commencement of that possession, may [SHALL] be vacated, except liens created by the department while in possession; and

(2) any transfer of an asset of the bank made after or in contemplation of its insolvency or in anticipation of the department's takeover, with intent to effect a preference of one creditor over another or to prevent the distribution of the bank's assets according to law, is void.

* Section 80. AS 06.05 is amended by adding new sections to read:

Sec. 06.05.472. REORGANIZATION. (a) If the department decides to reorganize a bank, the department, after according a hearing to all interested parties, shall enter an order proposing a reorganization plan. A copy of the plan shall be sent to each depositor and creditor who will not receive

payment of a claim in full under the plan together with notice that, unless within 30 days the plan is disapproved in writing by persons holding one-third or more of the aggregate amount of such claims, the department will proceed to effect the reorganization.

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

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

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

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

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

(5) the plan assures the removal of any director, officer, or employee responsible for any problems identified by the department under AS 06.05.468(a) and (b), including any unsafe, unsound or unlawful action or the existence of any unsafe or unsound condition;

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

(c) When in the course of reorganization supervening conditions render a plan of reorganization unfair or its execution impractical, the department may modify the plan or liquidate the bank.

Sec. 06.05.473. LIQUIDATION. (a) In liquidating a bank, the department may exercise any power incidental to liquidating a bank, but it may not, without the approval of the superior court,

(1) sell any asset of the bank having an appraised value in excess of \$100,000;

(2) compromise or release any claim which exceeds \$100,000, exclusive of interest;

(3) make full payment on a claim, other than a claim upon an obligation incurred by the department, before preparing and filing a schedule of its determinations in accordance with AS 06.05.475(d)(3).

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

(c) As soon after the commencement of involuntary liquidation as is practicable, the department shall take the necessary steps to terminate all fiduciary positions held by the bank and take action necessary to surrender all property held by the bank as a fiduciary and to settle its fiduciary accounts.

Sec. 06.05.475. CLAIMS. (a) As soon after commencement of liquidation by the department as practicable, the department shall

(1) mail notice of the liquidation proceedings to the last known post office address of each depositor, creditor, lessee of a safe deposit box, or bailor of property;

(2) post notice of the proceedings conspicuously on the premises of the bank; and

(3) publish such notice of the proceedings as the department deems appropriate.

(b) The department shall mail with the notice sent under (a)(1) of this section a statement of the amount shown on its books to be the claim of the depositor or creditor. The notice shall also demand that property held by the bank as bailee or in a safe deposit box be withdrawn by the person entitled to it within 30 days. That notice shall direct that objections of depositors and creditors, if the amount claimed differs from that in the statement, be filed with the bank in accordance with the procedure described in the notice, before a specified date not less than 60 days from the date of first publication.

(c) The contents of safe deposit boxes which have not been removed within 30 days after demand shall be opened. The contents of the boxes, together with any other unclaimed property held by the

bank as bailee, shall be retained by the department until the conclusion of the liquidation proceedings, at which time it will be considered abandoned and turned over to the Department of Revenue for handling in accordance with AS 34.45.110 - 34.45.780.

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

- (1) reject any claim that it determines to be invalid;
- (2) determine the amount, if any, owing to each known creditor or depositor and the priority class of the person's claim under this chapter;
- (3) prepare a schedule of its determinations for filing in the superior court;
- (4) provide for notice, by publication in newspapers once each week for three successive weeks, of the times and the places that the schedule of determinations will be available for inspection and the date, no sooner than 30 days after the first publication, when the department will file its schedule in court.

(e) Within 30 days after the filing with the superior court of the department's schedule under (d)(4) of this section, any creditor, depositor, or stockholder may file with the court an objection to any determination made. Objections filed shall be heard and determined by the court, upon such notice to the department and interested claimants as the court may prescribe. If an objection is sustained, the court shall direct an appropriate modification of the schedule.

(f) After filing its schedule, the department may make partial distribution to the holders of claims that are undisputed or have been allowed by the court, if an adequate reserve is established for the payment of disputed claims. As soon as is practicable after the determination of all objections, the department shall make final distribution.

(g) The following claims have priority in liquidation proceedings, in the order listed:

- (1) obligations incurred by the department in liquidating the bank;
- (2) wages and salaries of officers and employees earned during the three-month period preceding the department's possession in an amount not exceeding \$3,000 for each person;

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

(4) deposits;

(5) claims secured by assets pledged under AS 06.05.260(a).

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

(i) If the sum available for any class of creditors is insufficient to provide payment in full, that sum shall be distributed pro rata to the claimants in the class.

(j) When the department has liquidated a bank, any assets remaining after all claims have been paid shall be distributed to the shareholders in accordance with their respective interests.

(k) Unclaimed funds remaining after the completion of the liquidation by the department shall be handled in accordance with AS 34.45.110 - 34.45.780.

(l) When the assets have been distributed in accordance with this chapter, the department shall file an account with the superior court. Upon approval of the account, the department is relieved of liability in connection with the liquidation and the court shall cancel the certificate of authority and enter an order of dissolution. Upon the filing of the order, the department shall issue a certificate of dissolution of the corporation.

Sec. 06.05.477. FEDERAL DEPOSIT INSURANCE CORPORATION AS RECEIVER OR LIQUIDATOR. The department may appoint the Federal Deposit Insurance Corporation as receiver for a bank of which it has taken possession and whose deposits are insured by that corporation. Upon filing with the court a certificate indicating the acceptance of the appointment by the Federal Deposit Insurance Corporation, the possession of and title to all the assets, business, and property are considered transferred to that corporation. The department is then relieved from all responsibility and liability with respect to the reorganization or liquidation of the bank. The Federal Deposit Insurance Corporation may liquidate, reorganize, merge or consolidate the bank in the manner permitted by the laws of the United States or by this chapter, possessing all rights, powers, duties and obligations of the department.

Sec. 06.05.481. AUTHORITY OF INTERSTATE OR INTERNATIONAL BANK TO BRANCH. (a) An international bank, or an interstate bank whose deposits are insured by the Federal Deposit Insurance Corporation, may acquire a branch bank as the result of a merger or consolidation of that bank with, or the purchase of all or substantially all of the assets of, a state bank or a national bank with its principal office in this state, or a branch thereof, unless the state bank or national bank is a recently formed bank.

(b) An international bank may establish a new branch bank in this state or acquire a recently formed bank with the prior approval of the department. An interstate bank, however, may establish a branch bank only through the acquisition of a bank located in this state under (a) of this section and may not establish a new branch bank in this state.

(c) An interstate or international bank that opens, occupies, or maintains a branch bank in this state shall have the same powers under the laws of this state as a like-type Alaska state or national bank.

Sec. 06.05.491. CERTIFICATE OF AUTHORITY FOR INTERSTATE AND INTERNATIONAL BRANCHING. (a) Before acquiring a branch bank under AS 06.05.481(a) or establishing a branch bank under AS 06.05.481(b), an interstate or international bank must file an application for and receive a certificate of authority. The application must include

- (1) all information and fees required under AS 06.05.399(a);
- (2) the name of the bank and the address of its principal office;
- (3) if an international bank, the country under which it is organized;
- (4) the amount of the bank's capital actually paid in cash and the amount subscribed for and unpaid;
- (5) a complete and detailed statement of the bank's financial condition;
- (6) the names of all other states and countries in which the bank is admitted or qualified to do business;
- (7) a copy of the bank's charter, articles of incorporation, and by-laws, as applicable;
- (8) if an international bank, evidence satisfactory to the department that the bank is

authorized to conduct a banking business under the laws of the country of its organization, and the nature of the bank's business;

(9) a properly executed designation of the department as the bank's agent for service of process in any action or proceeding arising out of a transaction involving the branch bank, which shall include the name and address of the officer, agent or other person to whom such process shall be forwarded by the department; and

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

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

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

(d) Upon acceptance of an application by an interstate or international bank for a certificate of authority to operate a branch bank, the department shall conduct an investigation to determine that

(1) if an interstate bank,

(A) the laws of the home state of the bank authorize an Alaska bank to acquire a branch bank in that state, with no conditions or restriction on the operations of such a branch; and

(B) the bank supervisor of the home state of the bank has agreed to provide to the department such examination reports as the department may deem sufficient to permit the department to ascertain on a current basis the financial condition of the bank;

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

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

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

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

(e) No later than 150 days after the application by an interstate or international bank for a certificate of authority to operate a branch bank has been accepted, the department shall make a determination whether to approve the application. Within 30 days after the second publication of the notice referred to in (c) of this section, any person opposing the pending application may file written objections with the department. When it approves or denies the application, the department shall notify the bank and any other person who requested in writing to be notified, and if the application is denied, the department shall state the reasons for its decision.

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

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

(2) the requirements of this chapter are satisfied.

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

Sec. 06.05.501. ASSET REQUIREMENTS FOR INTERNATIONAL BANKS. (a) Every international bank with one or more branch banks in this state shall maintain in this state assets in an amount acceptable to the department, which may not be less than the amount of deposits payable at or through the branch banks.

(b) The department shall determine the value of the assets maintained by the international bank for purposes of this section. In making its determination, the department may include as assets currency, bonds, notes, debentures, drafts, bills of exchange, and other evidences of indebtedness owed

by persons in the United States and collectible in the United States in United States currency or, with the approval of the department, in currency freely convertible into United States currency, but may not include prepaid expenses, customers' liability on prepaid expenses, or amounts due from other offices, branches or wholly-owned subsidiaries of the international bank.

(c) Upon the department taking possession of a branch bank of an international bank under AS 06.05.468 and 06.05.470, all assets of the international bank in the state shall be turned over to the department and disbursed as provided in AS 06.05.470 - 06.05.475.

Sec. 06.05.511. APPLICABILITY OF CODE TO INTERSTATE OR INTERNATIONAL BRANCH. (a) An interstate or international bank operating a branch bank in this state is subject to all provisions of this title, and all regulations adopted and orders issued under this title, except for the residency requirements in AS 06.05.435(a).

(b) In meeting the reserve requirements of AS 06.05.200(a) and applicable regulations, the bank must maintain the required reserve fund in Alaska. However, assets held to meet the requirements of AS 06.05.501(a) may be applied to meet the statutory reserve fund requirements.

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

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

Sec. 06.05.521. OUT-OF-STATE BANK HOLDING COMPANIES. (a) An out-of-state bank holding company may acquire and own all or any portion of the voting securities or other capital stock of, or all or substantially all of the assets of, one or more state banks, domestic bank holding companies, or national banks conducting a banking business in the state, unless the state bank or national bank is a recently formed bank. Before an out-of-state bank holding company may acquire a

bank or bank holding company doing business in this state, the out-of-state bank holding company must apply for and obtain a permit from the department. In considering whether to issue a permit, the department will consider the benefits to the public, the preservation of a competitive banking industry, and the maintenance of a safe and sound bank industry. To assure full protection of the public the department may require an out-of-state bank holding company that directly or indirectly owns, holds, or controls stock in a state bank or domestic bank holding company to post a bond with the department, under conditions the department may prescribe. The amount of the bond shall be not more than the product obtained by multiplying the amount of paid-in capital and paid-in surplus of the state bank or domestic bank holding company by the percentage of state bank or domestic bank holding company stock directly or indirectly owned, held, or controlled by the out-of-state bank holding company.

(b) When the department considers it necessary, an out-of-state bank holding company directly or indirectly owning, holding, or controlling state bank stock or domestic bank holding company stock is subject to an examination by the department or a competent person designated by the department. The out-of-state bank holding company shall pay an examination fee under AS 06.01.010.

(c) The provisions of this section do not apply to a company

(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 a state 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, the exemption in this subparagraph will not apply if the department determines, after notice and opportunity for hearing under AS 06.01.030, that the ownership, control, or holding of the 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 organization 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.

* Section 81. AS 06.05.540 is repealed and reenacted to read:

Sec. 06.05.540. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "automated teller machine," means a staffed or unstaffed electronic device or terminal which permits a bank customer to accomplish various financial transactions, such as depositing or withdrawing funds, making loans, and transferring funds between accounts, and encompasses any similar device or facility known or referred to by any other name or designation including customer-bank communication terminal, electronic fund transfer device, or "24-hour teller," but does not include a machine that is operated by more than one bank;

(2) "bank" means any person doing a banking business whether subject to the laws of this

or any other jurisdiction;

(3) "banking" means the negotiation for and the discounting of promissory notes, drafts, bills of exchange and other evidences of indebtedness; receiving deposits; selling and buying exchange, coin, and bullion; lending money on personal, real and other security; or other kindred financial operations;

(4) "branch bank" includes any office, agency, or other place of business located in the state at which deposits are received, checks are paid, or money is lent, but does not include the principal office of a bank or an automated teller machine;

(5) "capital" means the amount of outstanding common stock plus outstanding and perpetual preferred stock;

(6) "capital accounts" include capital, surplus, undivided profits, and capital notes and debentures not maturing within one year from the date of the loan;

(7) "commissioner" means the commissioner of commerce and economic development or a designee of the commissioner;

(8) "company" means any bank, corporation, partnership, joint stock company, business trust, association or similar organization, domestic or foreign.

(9) "community" means a city, town, unincorporated village, or, in the absence of any one of the foregoing, a trade area;

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

(11) "domestic bank holding company" means a corporation that maintains its principal office and place of business in the state and that has control over a bank or another domestic bank holding company through one of the following:

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

(B) the corporation controls in any manner the election of a majority of the

directors or trustees of the bank or company; or

(C) the department determines, after notice and opportunity for hearing, that the corporation directly or indirectly exercises a controlling influence over the management of policies of the bank or bank holding company;

(12) "fiduciary" means trustee, agent, executor, administrator, committee, guardian or conservator for a minor or other incompetent person, receiver, trustee in bankruptcy, assignee for creditors or any holder of a similar position of trust;

(13) "financial institution" means an institution subject to the regulation of the department under this title;

(14) "good faith" means honesty in fact in the transaction and some reasonable ground for belief that the transaction is rightful or authorized;

(15) "impaired capital" or "impairment of capital" means that the value of the bank's assets is less than the bank's liabilities plus 120 percent of the amount of the bank's paid-in capital;

(16) "insolvent" means

(A) the value of the bank's assets is less than the bank's liabilities, other than liability on account of capital stock, capital notes or debentures;

(B) the bank fails to increase its total adjusted capital accounts or reserves after being ordered to do so under AS 06.05.305(c); or

(C) the bank cannot meet its obligations or demands upon it as they become due in the ordinary course of business;

(17) "international bank" means a corporation, partnership, or association organized and operating under the laws of a country other than the United States, which is authorized by its license or charter to carry on a banking business;

(18) "interstate bank" means

(A) a corporation, partnership, or association organized under the laws of another

state and holding a charter, license or certificate of authority to do a banking business from another state; or

(B) a national bank, except a national bank whose principal office, as designated in its articles of incorporation, is located in Alaska;

(19) "loans" include all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person, guarantees, overdrafts, letters of credit, and any liability of a bank to advance funds to or on behalf of a person under a contractual commitment;

(20) "mobile facility branch bank" means a branch bank that 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 banks or bank branches;

(21) "out-of-state bank holding company" means a company that

(A) is a bank holding company as defined in 12 U.S.C. 1841 (Bank Holding Company Act of 1956), as amended; is registered as a bank holding company with the Board of Governors of the Federal Reserve System, with the federal reserve bank of the Federal Reserve District in which the operations of the bank holding company are principally conducted, or with a Federal Reserve Bank that the Board of Governors may designate; maintains its principal office and place of business outside the state; and principally conducts its operations out of the state, as measured by total deposits held or controlled by it on the date on which it becomes an out-of-state bank holding company; or

(B) a corporation, partnership, or association organized and operating under the laws of a country other than the United States.

(22) "national bank" means a bank chartered by the United States;

(23) "recently formed bank" means a state bank or national bank conducting a banking business in the state that commenced that banking business in the state on or after July 1, 1982,

and that has not been in existence and continuously operating in the state for a period of three years or more; however, "recently formed bank" does not include

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

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

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

(24) "state bank" means any bank organized under this chapter;

(25) "subsidiary" means a corporation in which a bank owns more than 50 percent of the voting power directly or indirectly through one or more other subsidiaries of the bank;

(26) "surplus" includes amounts paid in for stock in excess of the par value of the stock, generally called capital surplus or paid-in surplus, plus any amounts transferred to this account from undivided profits, generally called earned surplus;

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

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

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

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

(D) transfers to surplus and capital,

(E) amounts declared as dividends to stockholders.

(28) "unsafe or unsound condition," with respect to a bank, means the bank is insolvent; its capital is impaired; it is operating in violation of law, order of the department, or its articles or bylaws; it has less than the statutory or regulatory requirements for capital, surplus or reserves; or any other condition that the department deems threatens the safety of depositors or the soundness of the state banking system;

(29) "unsafe or unsound practice or action" means operating a bank while it is in an unsafe or unsound condition; doing any act that is in violation of law, order of the department, or the bank's articles or bylaws; or doing any act reasonably likely to result in a bank's condition becoming unsafe or unsound.

* Section 82. AS 06.25.085 is amended to read:

Sec. 06.25.085. APPLICATION OF GENERAL BANKING LAWS. The provisions of AS 06.05 not inconsistent with this chapter [AS 06.05.005 - 06.05.085, 06.05.090, 06.05.270, 06.05.307, 06.05.320 - 06.05.327, 06.05.440 - 06.05.445, 06.05.462, 06.05.465 - 06.05.510, AND 06.05.525 - 06.05.545] apply to all trust companies engaged in any phase of the business of banking as that term is defined in AS 06.05.540 or AS 06.25.100.

* Section 83. AS 10.06.005 is amended to read:

Sec. 10.06.005. PURPOSES. A corporation may be organized under this chapter for any lawful purpose except for the purpose [PURPOSES] of [BANKING AND] insurance.

* Section 84. AS 10.06.990(13) is amended to read:

(13) "corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this chapter, but does not include a foreign corporation or a [STATE OR] national bank;

* Section 85. AS 45.50.481 is amended by adding a new subsection to read:

(b) The exemption in (a)(3) of this section does not apply to any acts or transactions between a bank and its borrowers, depositors or other customers or potential customers.

* Section 86. AS 06.01.010(c), AS 06.05.015, 06.05.020, 06.05.025, 06.05.030, 06.05.035, 06.05.040, 06.05.055, 06.05.060, 06.05.065(d), 06.05.065(e), 06.05.065(f), 06.05.070, 06.05.080, 06.05.085, 06.05.090(c), 06.05.130, 06.05.175(c), 06.05.185, 06.05.190, 06.05.195, 06.05.200(b), 06.05.200(c), 06.05.205(a), 06.05.205(e), 06.05.205(f), 06.05.206, 06.05.208, 06.05.210(b), 06.05.220, 06.05.232, 06.05.235(c), 06.05.235(d), 06.05.235(e), 06.05.235(f), 06.05.235(h), 06.05.238, 06.05.255(c), 06.05.260(b), 06.05.270(b), 06.05.275(a), 06.05.275(c), 06.05.280(a), 06.05.280(b), 06.05.300, 06.05.307(d), 06.05.307(e), 06.05.325, 06.05.330, 06.05.345(b), 06.05.345(c), 06.05.345(d), 06.05.345(e), 06.05.345(f), 06.05.345(g), 06.05.345(h), 06.05.345(i), 06.05.345(j), 06.05.345(k), 06.05.360, 06.05.367, 06.05.380, 06.05.390, 06.05.395, 06.05.430, 06.05.435(b), 06.05.435(e), 06.05.443, 06.05.465, 06.05.470(a), 06.05.470(d), 06.05.470(f), 06.05.470(j), 06.05.470(k), 06.05.470(l), 06.05.470(m), 06.05.470(n), 06.05.470(o), 06.05.470(p), 06.05.470(q), 06.05.470(r), 06.05.470(s), 06.05.470(t), 06.05.470(u), 06.05.470(v), 06.05.470(w), 06.05.470(x), 06.05.470(y), 06.05.470(z), 06.05.480, 06.05.485, 06.05.490, 06.05.495, 06.05.500, 06.05.505, 06.05.510, 06.05.520, 06.05.525, 06.05.530, AS 06.20.320(b), AS 06.25.070, 06.25.320, AS 06.30, AS 06.40.160(b), AS 06.45.320, and 06.45.330 are repealed.

* Section 87. TRANSITIONAL PROVISIONS. (a) For any existing state bank that is required to amend its articles of incorporation to comply with this Act and the provisions of the Alaska Corporations Code, the bank shall have until 60 days after the date of its next annual shareholders' meeting to file amended articles with the department.

(b) Banks incorporated in this state before the effective date of this Act are subject to the provisions of the Alaska Corporations Code as if incorporated on the effective date of this Act.

* Section 88. This Act takes effect January 1, 1994.

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JIM CRAWFORD, Chair

DAN CUDDY, Chairman of the Board
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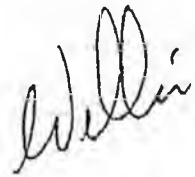
MEMORANDUM

State of Alaska

Department of Commerce & Economic Development
Division of Banking, Securities & Corporations
(907) 465-2521

January 26, 1993

TO: Senator Tim Kelly
Attention Max Gifford



From: Willis F. Kirkpatrick
Director
Division of Banking, Securities &
Corporations

Subject: List of Industry Committee Members
Recodification of the Alaska Banking Code

Mr. Gary Roth ✓
President
Denali State Bank
P.O. Box 74568
Fairbanks, Ak

Mr. Craig Ingham ✓
President
Mt McKinley Mutual Savings Bank
P.O. Box 73880
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Mr. Michael Burns ✓
President
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Mr R. Marc Langland ✓
President
Mr Chris Knudson ✓
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LAW OFFICE OF JEFF BUSH
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(907)463-4150
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February 11, 1993

Mr. Willis Kirkpatrick
Director
Division of Banking, Securities & Corporations
Department of Commerce & Economic Development
P.O. Box 110807
Juneau, AK 99811-0807

Dear Willis,

Enclosed is a draft of the proposed banking regulations, which would be adopted to take effect when the new Banking Code becomes law. All sections are done, though perhaps a little rough, except 3 AAC 02.200, dealing with subsidiaries. As you know, this is a first draft on my part of that section, which you have not even reviewed yet, so the section may need substantial revision.

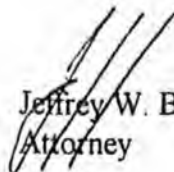
Legislative Affairs is currently preparing the recodification bill for introduction. I understand that some of the sections in my final draft of that bill will be moved. Thus, once the bill draft is completed, I may need to change some of the "Authority" citations in this draft to correspond to the new section numbers.

As you know, the recodification bill is currently scheduled for hearing in the Senate Labor & Commerce Committee on February 23 and 25. Please distribute copies of this draft to the state banks and ask them to get their comments back to me as soon as possible, so that I might be able to incorporate their ideas into a subsequent draft before the February 23 hearing.

Willis Kirkpatrick, page 2

Please contact me if you need anything further at this time. Otherwise, I will await word on any banker comments and prepare to attend the Labor & Commerce hearings.

Sincerely,



Jeffrey W. Bush
Attorney

enclosure: 2/11/93 Draft of Banking Regulations

2/11/92 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

(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 LOANS] 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 reports2 [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 stubsF
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.

[*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*] 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 approval of a new state bank (AS 06.05.344).....\$2000;

(2) for a certificate of authority for a branch bank or a change of location (AS 06.05.399).....\$1000;

(3) for approval to operate an automated teller machine (AS 06.05.405).....\$500;

(4) 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;

(5) for conversion of a national bank to a state bank (AS 06.05.462).....\$2000; and

(6) for an international or interstate bank to acquire or establish a branch bank (AS 06.05.491).....\$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 _____
AS 06.05.344
AS 06.05.399
AS 06.05.405
AS 06.05.462
AS 06.05.491

NOTES: New section, outlining fees to be assessed for various department activities. The specific fee references have been removed from the proposed statutes, which will now generally grant the dept the authority to set fees by reg.

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 __ 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. I have added short-term CD's (how long should these be?), deposits with the FHLB and FRB, and government securities (which presumably are readily marketable) as permissive for calculating reserves.

(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 regs seem pretty good. This reg attempts to paraphrase those regulations, 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 subs, including real estate ownership, management, and development, insurance, securities brokerage, and anything else authorized in general in sec. 200 of these regs, plus anything the dept. 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 05.05.005(a)(2)

AS 06.05.235

AS 06.05.521

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 06.05.521

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 corps (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 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 06.05.521

[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 dept. 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 dept. 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 reg 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 subs to perform any activity the bank could do on its own, and such a sub 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 subs. 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

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) I combined this 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 subs.

(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 06.05.491; 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 06.05.481(b)

AS 06.05.491

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 06.05.405.

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 06.05.491

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 06.05.491

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 06.05.491(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 06.05.491

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.

**POSSIBLE AMENDMENTS TO HCS CSSB 149 (L&C)
TO PRECLUDE BANK SUBSIDIARIES FROM ENGAGING IN REAL ESTATE
BROKERAGE OR INSURANCE**

1. In section 47 of the bill, page 24, insert a new subsection (b) to AS 06.05.272 to read:

(b) Notwithstanding (a) of this section, a subsidiary of a bank may not engage in an activity that requires a license issued under AS 08.38 (real estate brokers) or AS 21 (insurance), except that a bank subsidiary may engage in the sale and service of credit life insurance.

Renumber other subsections accordingly.

2. In section 103 of the bill, page 61, add a new subsection (c) to read:

(c) Notwithstanding the provisions of AS 06.05.272(b), enacted in section 47 of this bill, a bank that owns and operates, as of the effective date of this act, a subsidiary corporation engaged in a business otherwise prohibited by this subsection may continue to own and operate that subsidiary corporation.

3756
Josh
Fink

April 22, 1993

The Alaska State Association of Realtors® agrees with Section 47 as amended with the addition of subsection (d).

* Sec. 47. AS 06.05 is amended by adding a new section to read:

Sec. 06.05.272. BANK SUBSIDIARIES. (a) A state bank may purchase or establish, and operate, one or more subsidiaries engaged in any of the following activities, if the subsidiary has the necessary licenses and permits and the operation is not detrimental to the bank's business:

- (1) real property ownership, development, and leasing;
- (2) securities brokerage;
- (3) other activities authorized in regulations adopted under this section; or
- (4) other activities approved by the department.

(b) Under this section, a bank may invest in subsidiaries an amount equal to the lesser of 20 percent of its total assets or 50 percent of its total capital accounts. Loans to subsidiaries are considered investments subject to the limitations of this subsection.

(c) A subsidiary of a state bank is subject to examination by the department as part of the examination of the bank under AS 06.01.015.

(d) Notwithstanding any other provision of law, a state bank may not purchase, establish, or operate a subsidiary that engages in the business of insurance or real estate brokerage. This subsection does not apply to a state bank that owns or operates a subsidiary that engages in the business of title insurance on or before the effective date of this act, from engaging in that business

For the Alaska Association of Realtors®
Legislative Vice-Chair




Gregory T. Erkins

MEMORANDUM**State of Alaska**

Department of Commerce & Economic Development
 Division of Banking, Securities & Corporations
 (907) 465-2521

January 26, 1993

TO: Senator Tim Kelly
 Attention Max Gifford

From: Willis F. Kirkpatrick 
 Director
 Division of Banking, Securities &
 Corporations

Subject: List of Industry Committee Members
 Recodification of the Alaska Banking Code

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 President
 Mt McKinley Mutual Savings Bank
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To <i>MAX Gifford</i>	From <i>Willis Kirkpatrick</i>
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Summary of Senate Bill 149
Recodification of Alaska Banking Code

REVISIONS AND EXPANSIONS OF BANK POWERS

1. Creates an entirely new article on interstate and international banking, to allow foreign and other US banks to enter the Alaska marketplace. Section 87, beginning on page 52.

A. Either an interstate (a US bank headquartered outside Alaska) or international bank can purchase an Alaska state or national bank. Proposed AS 06.05.550(a), page 52.

B. An international bank may establish a new branch in Alaska; an interstate bank cannot, but rather must purchase an existing Alaska bank or branch. Proposed AS 06.05.550(b), page 52.

C. For an interstate bank, reciprocity with the bank's home state will be required. Proposed AS 06.05.555(d)(1), pages 53-54. This will hopefully open up the availability of other state markets for our banks.

D. Also for an interstate bank, FDIC insurance will be required. Proposed AS 06.05.550(a). An international bank, instead, will have to maintain assets in the state at least equal to 100% of its Alaska deposits. Proposed AS 06.05.560, pages 54-55.

E. Any branches of interstate or international banks will be subject to examination by the department, which also is authorized to examine the home office of the bank to the extent necessary to protect Alaska depositors. Proposed AS 06.05.565(c) and (d), pages 55-56.

2. Provides for banks to have subsidiaries. Proposed AS 06.05.272, section 47, page 24. The new code specifically authorizes subsidiaries engaged in real estate ownership, development and leasing; insurance; and securities brokerage. Other activities for subsidiaries are subject to department approval, and the plan, as set out in the draft regulations (see draft 3 AAC 02.200, at page 28), is to analyze other activities on a case-by-case basis for now.

3. Revamps the bank lending statutes.

A. Adopts general lending limits, i.e. the amount a bank can loan to any one person or entity, that are similar to those used by the Comptroller of the Currency (OCC); these limits have applied in Alaska for several years anyway by regulation adopted under AS 06.01.020, the "wildcard" statute. Proposed AS 06.05.205(b), section 25, page 14. Thus, if adopted, the statutes will be brought into conformity with current practice.

B. Provides that the department may adopt regulations (see draft 3 AAC 02.125(b) and (c), at page 19) to determine when a loan to one person will be attributed to another, for purposes of calculating the lending limits of AS 06.05.205(b). Proposed AS 06.05.205(g), section 28, page 15.

SB 149 Summary, page 2

C. Eliminates all loan-to-value and term restrictions for real estate lending, requiring instead that lending comply with sound bank policies, subject to examination. Proposed AS 06.05.207, section 29, page 15.

D. At the request of the banks, the new code proposes a change to AS 06.05.215 to provide personal liability for directors or officers for loans made in violation of law or bank policies only when gross negligence is proven. Section 33, page 17.

REVISIONS TO DEPARTMENT'S REGULATION OF BANKS

1. Changes the capital and reserve requirements for banks.

A. With respect to reserve requirements, the new code provides that these will be set by regulation. Proposed AS 06.05.200(a), section 23, page 13. Current law provides for reserves of 20% of demand deposits and 8% of time and savings deposits. The draft regulations propose a new figure of 15% of all deposits. See draft 3 AAC 02.110(a), at page 15. Although this figure is arguably higher than the old numbers, the department also proposes greatly expanding the list of assets that can be considered for reserve purposes. Draft 3 AAC 02.110(b), at page 15. According to department calculations, the new proposal will not significantly raise or lower current requirements; the department's intention is to simply try to find a single figure, for ease of calculation, that approximates current requirements.

B. With respect to capital requirements, the new code raises minimum capital requirements to \$1 million in general, and \$2 million for banks in Anchorage and Fairbanks. Proposed AS 06.05.305, section 50, page 25. These are minimums -- the department will set the actual requirements in each case. At present, the smallest Alaska state bank has \$7.9 million in capital.

2. Makes the Alaska Corporations Code, AS 10.06, generally applicable to banks. Proposed AS 06.05.301, section 49, page 25. This will eliminate the essentially duplicative statutory scheme with respect to bank formation, corporate actions, and filing requirements.

3. Sets up a permitting system for bank holding companies. Proposed AS 06.05.235(b), section 38, page 19, and AS 06.05.570(a), section 87, page 56.

4. Makes FDIC insurance optional, although only with a waiver from the department. Proposed AS 06.05.355(a), section 61, page 32. If waived, presumably there will need to be some alternative protection for depositors, like the asset requirements for international banks (see, e.g., proposed AS 06.05.560, section 87, pages 54-55).

5. Repeals Alaska's Savings Association Act, AS 06.30. Section 96, page 59. At present, there are no existing state S&L's, and if formed, a new one would be subject to duplicative state and federal regulation. Therefore, it would be better to repeal this authorization, and if an organization wishes to form a savings bank, it can do so either under a federal charter, or under the state Mutual Savings Bank Act, AS 06.15.