

**ALASKA LEGISLATURE COMMITTEE FILES**

**1993-1994**

**8672**

**8349**

**SENATE LABOR & COMMERCE**

SB 149 Summary, page 3

## CHANGES TO THE DEPARTMENT'S ENFORCEMENT POWERS

1. The bill consolidates all penalty provisions of Title 06 into one section. Proposed AS 06.01.035, section 7, pages 5-7. The new code also grants the department the authority to assess administrative penalties for violations of the code, regulations or department orders. Proposed AS 06.05.035(e)-(g). See the sectional analysis, page 2, for a description of what other states and the FDIC do in this area.
2. Revises sections relating to bank liquidations. Proposed AS 06.05.466-474, sections 81-85, pages 40-47. During the 1980's when several banks closed, the department discovered that its liquidation statutes were generally pretty good, but needed a few changes. In particular, the Supreme Court held in Hoffman v. State that although the constitution might not require a hearing before the department takes possession of a bank, the statutes do. The changes proposed will clarify that this hearing may be closed to the public (proposed AS 06.01.030(e), section 6, page 4); in fact, it is the department's intention to hold a closed hearing with the board in these cases at a board meeting called by the department.
3. Provides that the department may remove a director from a bank's board under certain, enumerated conditions, generally where the director's actions are threatening the soundness of the bank. Proposed AS 06.05.435(g), section 68, page 36. Also, provides that the department can recommend that a board fire an officer or employee, and if the board refuses, it risks liability for negligent or intentional actions of that employee that cause losses. Proposed AS 06.05.437(c), section 70, page 37.

A M E N D M E N T

OFFERED IN THE SENATE  
TO: SB 149

BY SENATOR KELLY

Page 58, following line 9:

Insert new bill sections to read:

**\*\* Sec. 91.** AS 06.45.020(c) is amended to read:

(c) At the time of presenting the articles of incorporation to the commissioner the incorporators shall also submit proposed bylaws to the commissioner for approval. Except to the extent the articles of incorporation provide the structure and designate the offices, the bylaws shall provide the organizational structure of the credit union and specifically designate those offices that will be held by the executive or managing officers of the credit union. Copies of the original bylaws of the credit union and any amendments of the bylaws shall be filed with the commissioner.

**\* Sec. 92.** AS 06.45.090(a) is amended to read:

(a) The business affairs of a credit union are managed by (1) a board of not less than five directors; (2) a credit committee of not less than three members; and (3) a supervisory committee of not less than three members or more than five members. The members of the board of directors [AND THE MEMBERS OF THE CREDIT COMMITTEE] shall be elected at the annual members meeting by and from the members. The supervisory committee shall be appointed by the board of directors, and a vacancy in the supervisory committee shall be filled by the board of directors. One of the members of the supervisory committee may be a member of the board of directors, other than the treasurer. The credit committee consists of an uneven number of three or more members appointed by the board of directors for the terms established by the bylaws. Members of the board of directors and of the credit and supervisory committees hold office for terms as the bylaws may provide.

**\* Sec. 93.** AS 06.45.110(a) is amended to read:

(a) At its first meeting after the annual meeting of the members, the board of directors shall elect from its membership [A PRESIDENT, ONE OR MORE VICE-PRESIDENTS, A SECRETARY, AND A TREASURER, WHO ARE] the executive officers of the credit union.

\* Sec. 94. AS 06.45.110 is amended by adding a new subsection to read:

(f) The board of directors shall appoint a president to act as chief executive officer of the credit union and to be actively in charge of the operations of the credit union.

\* Sec. 95. AS 06.45.120(b) is amended to read:

(b) The board of directors shall

- (1) act upon applications for membership;
- (2) require an officer or employee having custody of or handling funds to give bond with good and sufficient surety in an amount and character to be determined by the board of directors in compliance with regulations adopted by the commissioner and authorize the payment of the premium by the credit union;
- (3) fill vacancies in the board of directors [AND IN THE CREDIT COMMITTEE] until successors elected at the next annual meeting have qualified;
- (4) have charge of investments other than loans to members; the board of directors may designate a committee of not less than two to act as an investment committee that [WHICH] has charge of making investments under rules and procedures established by the board of directors;
- (5) determine the maximum number of shares and share certificates and the classes of shares and share certificates that may be held;
- (6) subject to the limitations of this chapter, determine the interest rates on loans, the security, and the maximum amount that may be loaned or provided in lines of credit;
- (7) subject to regulations adopted by the commissioner, authorize an interest refund to members of record at the close of business on the last day of any dividend period in proportion to the interest paid by the members during the dividend period; and
- (8) provide for compensation of officers and employees.

\* Sec. 96. AS 06.45.140(c) is amended to read:

(c) The credit committee may delegate to a loan officer the power to approve loans and lines of credit. [ONLY ONE MEMBER OF THE CREDIT COMMITTEE MAY BE APPOINTED AS LOAN OFFICER.] A loan officer shall furnish to the credit committee a record of each approved or unapproved application within seven days of the filing of the application."

Renumber the following bill sections accordingly.

Page 59, line 24:

Delete "91 and 92"

Insert "97 and 98"

Willis Kirkpatrick, State Division of Banking  
January 25, 1993  
Page 2

The new section (a) would read:

"At its first meeting after the annual meeting of the members, the board of directors shall elect from its membership a chairman, one or more vice-chairmen, a secretary, and a treasurer, who are the executive officers of the credit union."

We also propose that section (f) be added to read:

"The board of directors shall appoint a president to act as chief executive officer of the credit union and be in active charge of its operations."

We are seeking these changes in order to have parity with peers in other financial institutions and because the current statute is in conflict with titles that are presently in use.

Section 06.45.140(c) reads:

"The credit committee may delegate to a loan officer the power to approve loans and lines of credit. ~~Only one member of the credit committee may be appointed as loan officer.~~ A loan officer shall furnish to the credit committee a record of each approved or unapproved application within seven days of the filing of the application."

Recommended change: delete second sentence of section (c). The new section would read:

"The credit committee may delegate to a loan officer the power to approve loans and lines of credit. A loan officer shall furnish to the credit committee a record of each approved or unapproved application within seven days of the filing of the application."

Willis Kirkpatrick, State Division of Banking  
January 25, 1993  
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Because of these changes it would be necessary to change Section 06.45.090 Management of Credit Union Section (a) which reads:

"The business affairs of a credit union are managed by (1) a board of not less than five directors; (2) a credit committee of not less than three members; and (3) a supervisory committee of not less than three members or more than five members. The members of the board of directors and the members of the credit committee shall be elected at the annual members meeting by and from the members. The supervisory committee shall be appointed by the board of directors, and a vacancy in the supervisory committee shall be filled by the board of directors. One of the members of the supervisory committee may be a member of the board of directors, other than the treasurer. Members of the board of directors and of the credit and supervisory committees hold office for terms as the bylaws may provide."

The proposed new Section 06.45.090 would read:

"The business affairs of a credit union are managed by (1) a board of not less than five directors; (2) a credit committee of not less than three members; and (3) a supervisory committee of not less than three members or more than five members. The members of the board of directors shall be elected at the annual members meeting by and from the members. The supervisory committee shall be appointed by the board of directors, and a vacancy in the supervisory committee shall be filled by the board of directors. One of the members of the supervisory committee may be a member of the board of directors, other than the treasurer. The board of directors shall appoint a credit committee of an odd number, not less than three (3), whose terms shall be as the bylaws provide.

*Handwritten notes:*  
06.45.  
should appoint  
should appoint (3)  
should appoint

Willis Kirkpatrick, State Division of Banking  
January 25, 1993  
Page 4

Members of the board of directors and of the credit and supervisory committees hold office for terms as the bylaws may provide."

By appointing a credit committee the board can make certain the credit union's lending function is overseen by individuals who are knowledgeable of prudent lending practices and regulations.

We would appreciate any input and suggestions that the Division may have to these proposals for change. We anticipate contacting a member of the legislature to sponsor the changes in early February.

Thank you for your consideration.

Sincerely,

Leslie Ellis  
President

LE/al

# Alaska State Legislature

Senator Tim Kelly, Chair  
Senator Steve Rieger, Vice Chair  
Senator Drue Pearce  
Senator Judy Salo  
Senator Georgianna Lincoln



SENATE LABOR AND COMMERCE  
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## MEMORANDUM

**TO:** Representative Brian Porter, Chair  
House Judiciary Committee

**FROM:** Senator Tim Kelly, Chair *TDK*  
Senate Labor & Commerce Committee

**DATE:** April 15, 1993

**RE:** Request for a hearing for SB 149 - Banking Code Revision

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I respectfully request you consider scheduling SB 149 for a hearing before the House Judiciary Committee at the committee's earliest convenience. This legislation passed the Senate on April 1 with a vote of 18 yeas and 2 nays.

The existing banking code was taken from Oregon law at the time of Alaska Statehood in 1959. It is now viewed as obsolete by those in the industry as well as the division of banking. Since the code was adopted the financial market place has changed substantially, and we've experienced numerous bank failures.

For the past few years the Division of Banking, Securities and Corporations has been working to identify areas where the code needs updating and revision. More recently, the 5 state chartered banks in the State have been working with the banking division through the Senate Labor & Commerce Committee to address these needed revisions. The result of these efforts is Senate Bill 149.

This bill not only addresses the new financial marketplace and the problems of failing banks, but could provide additional economic development opportunities for our State banks.

Every banking institution in the state was invited to review and comment on the legislation before introduction. In addition, Mr. Kirkpatrick, the

Representative Bill Hudson, Chair  
House Labor & Commerce Committee  
April 8, 1993  
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Director of the Division of Banking, agreed to provide a draft of regulations that would result from the implementation of the banking code revision. It has been a constructive and collective effort.

Attached you will find a letter from Mr. Kirkpatrick explaining the need for this revision, a brief overview and description of the bill, and a sectional analysis.

You should note that two other bills in the House Judiciary Committee, SB 86 and SB 112, Uniform Commercial Code Revisions, update obsolete and antiquated laws critical to the efficient flow of commerce and trade in the State. They both passed the Senate unanimously on April 2.

These bills, along with SB 149, will require a 2/3rds vote as they enact court rule changes. For this reason, I believe it is important that they move through the committee process together as a package. Passage of this package of legislation will be a real accomplishment and asset to this legislative session.

Thank you in advance for your consideration.

Attachments

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

DIVISION OF BANKING, SECURITIES AND CORPORATIONS

WALTER J. HICKEL, GOVERNOR

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March 17, 1993

The Honorable Tim Kelly  
Alaska State Senate  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Kelly:

Re: Senate Bill 149  
The Need for a New Alaska Banking Code

The current Alaska Banking Code (AS 06.05) is critically obsolete. The existing code was taken from Oregon law at the time of Alaska statehood, and has had only minor revisions since then. The Division of Banking, Securities and Corporations (division) has for the past few years been working to identify areas where changes in the code are needed. These changes fall into three basic categories:

- I. obsolescence concerning today's financial institution marketplace;
- II. obsolescence in addressing problems or failing banks; and
- III. the need for a banking law that could provide additional economic development opportunities.

### Section I, The Marketplace

Since statehood, there have been vast changes in the financial institution marketplace. Interest on deposits is no longer regulated; new competition such as brokerage firms now offer interest on deposits, which also has checking privileges. Credit card issuers have now grown to include a telephone company and an automobile manufacturer. The amended Alaska Banking Code provides more flexibility to change through regulation.

Other amendments address additional banking powers like international banking and international branching, including interstate branching; provisions for bank subsidiaries; and revamps existing lending statutes along with reserves and capital requirements.

Existing law gives the department authority to promulgate regulations in conflict with statutes to provide competitive parity with nationally-chartered banks. The amendments of the banking code bring those prior parity regulations into statutory conformance.

### Number II, Problem and Failing Institutions

The current Alaska Banking Code is completely out-of-step, when addressing failing financial institutions. One of the most obvious provisions is the

assessment of stockholders in situations of "impairment of capital." The assessment of shareholders to increase capital of a bank is virtually a 1930's action in a unit-bank system, where banks are closely held in a small community setting. The amendments to the banking code provide a series of administrative action that provide due process for addressing unsafe and unsound conditions. Under due process, the department is given the authority to address violations of the Alaska Banking Code which could if not corrected, carry civil money penalties.

The amendments also provide for methods of bank closure with FDIC as receiver which would allow meaningful action and preserve due process. This corrects a problem area pointed out by the Alaska Supreme Court in Hoffman v. State.

### Section III, Improve Economic Development Opportunities

The current Alaska Banking Code is very restrictive as to what banks can do or invest in. The revised code increases the powers banks will have, especially in subsidiary powers. Investments will be by regulation, rather than a statutory investment menu. The subsidiary provisions will give financial institutions an opportunity to broaden their earning centers, and increase service activities within the community.

The amended banking code could increase potential development by allowing international banks to establish branches in Alaska. This provision alone has been targeted by the department as a need for economic development. Far Eastern financial institutions could establish an operating branch in Alaska, which would be in a beneficial time zone by being equal distance to many money-center markets worldwide. These international offices could also provide capital to develop Alaska resources. This resource development by international branches could be in the form of assisting the bank's customers in processing needed resources from Alaska.

The new code also provides for interstate branching. Alaska is following the State of New York's lead, on the subject of interstate branching. Preemption by Congress would have a detrimental economic impact on the State of Alaska. The amended code provides for the proper vehicle to protect from undue concentrations and some orderly control in instances where there would be interstate branching into Alaska. Through meaningful regulation, interstate branching may then provide some additional available capital to Alaska markets, very much like that of interstate banking brought in 1981.

Sincerely,



Willis F. Kirkpatrick  
Director

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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.

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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.

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## CHANGES TO THE DEPARTMENT'S ENFORCEMENT POWERS

1. The bill consolidates all penalty provisions of Title 06 into one section. Proposed AS 06.01.035, section 7, pages 5-7. The new code also grants the department the authority to assess administrative penalties for violations of the code, regulations or department orders. Proposed AS 06.05.035(e)-(g). See the sectional analysis, page 2, for a description of what other states and the FDIC do in this area.

2. Revises sections relating to bank liquidations. Proposed AS 06.05.466-474, sections 81-85, pages 40-47. During the 1980's when several banks closed, the department discovered that its liquidation statutes were generally pretty good, but needed a few changes. In particular, the Supreme Court held in Hoffman v. State that although the constitution might not require a hearing before the department takes possession of a bank, the statutes do. The changes proposed will clarify that this hearing may be closed to the public (proposed AS 06.01.030(e), section 6, page 4); in fact, it is the department's intention to hold a closed hearing with the board in these cases at a board meeting called by the department.

3. Provides that the department may remove a director from a bank's board under certain, enumerated conditions, generally where the director's actions are threatening the soundness of the bank. Proposed AS 06.05.435(g), section 68, page 36. Also, provides that the department can recommend that a board fire an officer or employee, and if the board refuses, it risks liability for negligent or intentional actions of that employee that cause losses. Proposed AS 06.05.437(c), section 70, page 37.

COMMITTEE SUBSTITUTE FOR SENATE BILL 149 (FIN)  
RECODIFICATION OF THE ALASKA BANKING CODE  
SECTIONAL ANALYSIS

Section 1. Technical change. Alaska no longer issues a "charter," so references to that term are eliminated throughout the statutes.

Section 2. Technical change.

Section 3. This is current AS 06.05.025 and 06.05.040, mostly with minor technical changes. Recognizing that examiners should not be precluded from merely investing in banks, we have changed the provisions to allow an examiner to own up to 5% of the voting stock of another institution; this will allow simple investments but will not permit an examiner to have a controlling ownership interest in a bank.

Since the department examines all financial institutions, not just banks, the provisions relating to exams have been moved to AS 06.01, the chapter that applies to all financial institutions.

Section 4. Changed to bring the section up to date, given that the list of federal agencies in the current statute is inaccurate. The change will make the statute apply regardless of what changes occur in the future to the names of the federal agencies.

Also, at the banks' request, "corresponding" was removed in (2) to allow the department to equalize competition between financial institutions regardless of what they are called.

Section 5. Current AS 06.05.060(a) and (b). Only change is to clarify that this section applies only to records relating to financial institutions, not all records of DCED.

Section 6. (a) - (d). New cease and desist provisions, to more accurately set out the procedure used by the department; existing law has been confusing. These new subsections are generally taken from the FDIC Act (12 USC 1818(b)(1)) and the Alaska Securities Act (AS 45.55.200(a)), both of which have proven track records. (d) will permit the department to issue temporary orders before a hearing, to ensure preservation of the status quo (like a TRO).

(d) Current (b), amended to make it clear that public hearings need not be held in cease and desist proceedings.

(e) Current (c) & part of (d), without substantive change; the rest of (d) has been moved to Section 8 of the bill.

(f) Current (e).

(g) Defines "unsafe or unsound practice."

Section 7. This section consolidates all penalty provisions from AS 06 relating to financial institutions. Existing penalty provisions, scattered throughout the code, are repealed in this bill.

(a). The criminal sentences on individuals are generally kept

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

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

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

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

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

Section 90. Technical amendment.

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

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

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

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

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

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

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

Section 99. Conforming amendment.

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

Section 101. Technical amendment.

Section 102. Repealers:

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

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

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

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

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

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

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

AS 06.05.035. Already covered by AS 06.01.010.

AS 06.05.040. Moved to AS 06.01.015(a).

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

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

(c). Already covered in AS 09.25.110.

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

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

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

AS 06.05.080. Already established in Alaska case law.

AS 06.05.085. Already covered by Alaska case law.

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

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

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

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

AS 06.05.190. See note to previous section.

AS 06.05.195. See note to repeal of AS 06.05.185.

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

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

(e). Already covered under sound lending practices.

(f). Obsolete.

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

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

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

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

AS 06.05.220. Already covered by federal law.

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

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

(d). Covered by comprehensive penalties section.

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

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

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

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

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

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

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

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

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

AS 06.05.300. Covered by AS 10.06.010.

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

(e). Repealed as obsolete.

AS 06.05.325. Covered by the Corporations Code.

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

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

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

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

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

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

AS 06.05.380. (a) and (b). are the same as 350(b)(1).

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

AS 06.05.390. Covered, with minor variations, by AS 10.06.490.

AS 06.05.395. Substance moved to and incorporated in AS 06.05.350(a).

AS 06.05.430. Covered by AS 10.06.405 and 10.06.415.

AS 06.05.435. (b). Covered by AS 10.06.223.

(e). Covered by AS 10.06.465.

AS 06.05.443. Combined with AS 06.05.445.

AS 06.05.465. Voluntary liquidations will now be covered under the same procedure as involuntary ones, i.e. under the control of the department. See AS 06.05.468(a) in Section 82 of the bill. Of course, if a bank wishes to voluntarily dissolve and there is no reason for the department to get significantly involved, the department can appoint the existing board as receiver.

AS 06.05.470. This section has been split up to make it more manageable. The substance of this section remains essentially unchanged.

(a). Substance moved to sec. 468(a).

(d). Now sec. 468(d).

(f). Now sec. 471(a).

(j) and (k). Now sec. 471(b) and (c).

(l) - (n). Now sec. 472.

(o) - (y). Now sec. 473.

(z). Now sec. 474.

AS 06.05.480. Moved to sec. 350(d).

AS 06.05.485. Moved to new sec. 262.

AS 06.05.490. Included in comprehensive penalties section, AS 06.01.035.

AS 06.05.495. Duplicative; same as sec. 470(g)(2).

AS 06.05.500 - 06.05.520. Covered by comprehensive penalties section.

AS 06.05.525. Covered by AS 06.01.030.

AS 06.05.530. Obsolete.

AS 06.20.320(b). Covered by new comprehensive penalties section, AS 06.01.035.

AS 06.25.060. Covered by comprehensive penalties section.

AS 06.25.070. Also covered by comprehensive penalties section.

AS 06.25.320. Also covered by comprehensive penalties section.

AS 06.30. Repeals state Savings Association Act.

AS 06.40.160(b). Covered by comprehensive penalties section.

AS 06.45.320. Covered by comprehensive penalties section.

AS 06.45.330. Also covered by comprehensive penalties section.

### Section 103. Transitional provisions.

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

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

### Section 104. Notes possible Court Rule change.

### Section 105. Effective date 1/1/94.

## SENATOR KELLY'S BULLETS FOR SB 149 BANKING CODE REVISION

The existing code was taken from Oregon law at the time of Alaska Statehood in 1959, and is now viewed as obsolete by those in the industry as well as the division of banking. Since the code was adopted the financial market place has changed substantially and we've experienced numerous bank failures.

For the past few years the Division of Banking, Securities and Corporations has been working to identify areas where the code needs updating and revision. More recently, the 5 state chartered banks in the State have been working with the banking division through the Senate Labor & Commerce Committee to address these needed revisions. The result of these efforts is Senate Bill 149.

This bill not only addresses the new financial marketplace and the problems of failing banks, but could provide additional economic development opportunities for our State banks.

Every banking institution in the state was invited to review and comment on the legislation before introduction. In addition, Mr. Kirkpatrick agreed to provide a draft of regulations that would result from the implementation of the banking code revision. It has been a constructive and collective effort.

LARRY CAROL

With that, I'll turn it over to ~~Willis Kirkpatrick~~ and Jeff Bush.



**FISCAL NOTE**

**STATE OF ALASKA**  
**1993 LEGISLATIVE SESSION**

**BILL NO. SB 149**

Revision Date: \_\_\_\_\_  
 Title: Laws Governing Financial Institutions and  
relating to Trust Companies, Small Loan Companies  
 Sponsor: Senate Labor and Commerce Committee  
 Requestor: Senate Labor and Commerce Committee

Department Affected: Commerce and Economic Development  
 BRU: Banking, Securities, and Corporations  
 Component: \_\_\_\_\_  
 COMPONENT SERIAL NO. \_\_\_\_\_

**EXPENDITURES/REVENUES:**

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	0	0	0	0	0	0
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<b>REVENUE</b>						
<b>FUND SOURCE:</b>	0	0	0	0	0	0

**FUNDING:**

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	0	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
<b>TOTAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**POSITIONS:**

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY 93) impact: \_\_\_\_\_

ANALYSIS: (Attach a separate page if necessary.)  
 Has no fiscal impact on program.

Prepared by: Willis F. Kirkpatrick  
 Division: Banking, Securities, and Corporations

Phone: 465-2521  
 Date: March 19, 1993

Approved by Commissioner: Paul Fuhs  
 Agency: Commerce and Economic Development

Date: March 19, 1993

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 For further distribution information call the Governor's Legislative Office

Josh →  
Would this "news"  
impact the banking bill  
in any way? <sup>hopefully</sup>  
good? M

# Alaska Business News Summaries

## Dubious "first" in the nation: Bad loan ratios rising at banks

Banks in Alaska were ranked number 1 in rising bad loans among the nation's banks for the first nine months of 1992. Loans 90 days past due went up eight-tenths of 1 percent to 2.2 percent of total loans of \$2.17 billion. National Bank of Alaska, Key Bank of Alaska and First Bank in Ketchikan were the chief banks with the bad loan problem. NBA had a 255 percent jump to \$14.2 million in its nonperforming loans, or 1.45 percent of total loans. However, NBA said that nonperformers fell to \$6.9 million in the fourth quarter of 1992 as some of the large borrowers got back on track. Key Bank's bad loans rose 59 percent by Sept. 30, 1992 to \$23.2 million, or 4.45 percent of total loans. First Bank saw nonperforming loans surge 155 percent to \$122,000, or two-tenths of 1 percent of total loans.

**ACCOMPANY WANTS MORE NATIVES IN MANAGEMENT:** The Alaska Commercial Co. says it will create a regional training center in Bethel with the goal of bringing more Natives into management jobs in the chain. The center should be in place this year and AC officials say they hope to recruit up to 20 qualified employees a year and bring them to Bethel for intensive four-month management training courses. Alaska Commercial will need new workers, especially managers, in order to reach its aim of opening 15 to 25 new stores in the Bush in the next five years.

*North West Co., owner of the Alaska Commercial Co. and Canada's largest bush retailer, says its expansion plans include a new store for Nome. The new store will probably be near the site of the present store and construction should begin within two or three years. The Nome store would be 20,000 square feet, with a deli, a bakery and a convenience store open 24 hours a day. Togiak will also get an AC store. AC took over the Native-owned Our Store in mid-January and will operate that store under the old name. AC has a long-term lease renewable every five years for 20 years, officials say. The store was remodeled and restocked; it now includes a fresh meat and produce department.*

**JUNEAU MAY GET NEW HOUSING GRANTS:** A Juneau city-borough assembly committee recommended awarding \$507,000 to three low-income housing projects that would build 42 low-income apartments in Juneau. The money would come from the balance of a \$500,000 state housing grant that the municipality received in 1991 and from the assembly lands fund. The committee also recommended that the land fund be reimbursed with payments made to the city-borough from low-income housing loans made in early 1980s.

**UAF'S SUPERCOMPUTER MAY FACE CONGRESSIONAL SCRUTINY:** University of Alaska Fairbanks officials say they think their new \$25 million Cray supercomputer may be among the 50 federally-funded projects being investigated by the House Science Committee. The computer would be used to study the arctic; and university officials say UA is unfairly accused of pork barrel research schemes because it is so often the sole recipient of federal grants to study the arctic. Also, UA's supercomputer is vital because it is in the arctic where the first major effects of global change will take place, officials say. Other Alaskan programs under scrutiny include the \$12.5 million project to renovate Poker Flat Research Range and the \$60 million High-Frequency Auroral Research Program, which seeks to build a high-powered transmitter to investigate the ionosphere and communicate with satellites under arctic ice.

**RADIO NETWORK BUYS TWO RADIO STATIONS:** Alaska Broadcast Communications bought two Anchorage radio stations, KBRJ-FM and KHAR-AM, from Sourdough Broadcasters. The Juneau-based company now has a total of nine stations in the state. The company says it is looking for a strong morning disc jockey and sales people for KBRJ, a country music station. The two Anchorage stations will broadcast news from the Great Land News Network, the company's newscast that began earlier this month.

N

# NORTHERN MARINE INSURANCE INC

April 7, 1993

TO: REPRESENTATIVE BILL HUDSON/CHAIRMAN, HOUSE LABOR & COMMERCE COMMITTEE

SUBJECT: SENATE BILL 149  
ITEM #2

Dear Mr. Hudson:

#2. Insurance Sales and Service:

Please understand that I as an Alaska resident Insurance Agency Owner do not object to new competitors (new agencies) entering the insurance sales field.

I DO OBJECT TO A COMPETITOR THAT WILL HAVE ACCESS TO THE "TRADE SECRETS" AND THE "INTELLECTUAL PROPERTY" OF MY BUSINESS.

Each time I provide a bank with a certificate showing coverage for a property insured through my agency, I have given the bank competitor the coverage information on the property and the "EXPIRATION DATE" of the clients policy. The expiration date allows THE BANK COMPETITOR TO "TARGET" MY CLIENTS WITH A GREAT DEGREE OF ACCURACY.

CURRENTLY I DO NOT PROVIDE MY COMPETITORS WITH A LIST OF MY CLIENTS, AND THE EXPIRATION DATES OF THEIR POLICIES. If Senate Bill 149 passed, every bank in Alaska will have inside information concerning my clients and a very strong competitive edge on my business.

PLEASE DO NOT PASS SENATE BILL 149, OR IF PASSED PLEASE DELETE ITEM #2.

Cordially,

  
Mike Miller  
President, Owner



# PORTER SPAULDING INSURANCE

PROPERTY • CASUALTY • PERSONAL & COMMERCIAL INSURANCE

**OUR PHONE NUMBER IS: 1-907-225-9841 • OUR FAX NUMBER IS: 1-907-225-1718**

## FACSIMILE COVER SHEET

TO: House Labor and Commerce FAX # 1-465-6790

Please deliver the following page(s) to: Chairman Rep. Hudson and Committee Members

CLIENT NAME: \_\_\_\_\_

POLICY NUMBER: (if any) \_\_\_\_\_ Expires \_\_\_\_\_

TOTAL NUMBER OF PAGES: (Including cover page) 1 DATE: 4-7-93 FROM: Arne Iverson

COMMENTS: Reference Senate Bill #149 and in particular Sec. 06.05.272 relating to Bank  
Subsidiaries and most importantly the section that says "...if the subsidiary  
has the necessary licenses and permits and the operation is not detrimental to  
the bank's business: (2) Insurance Sales and Services."

The Independent Insurance Agents and Brokers Associations Nation-wide have  
been fighting this intrusion into our industry for many years...To think the  
State of Alaska would entertain a proposal to allow banking into the insurance  
business is unconscionable. The opportunities for a banking institution to  
intimidate borrowers to insure through a given bank is not serving the best  
interests of the public.

I strongly urge your committee to stop this bill or at the very least, have  
the section on insurance sales and services deleted.

Respectfully,

Arne Iverson  
CEO

John R. Barry  
President

## shattuck &amp; grummett, inc.

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RUD JAUGSHI

MICHAEL A. GRUMMETT  
ROGER GRUMMETT  
NANCY L. BURNS

## F A X T R A N S M I T T A L M E M O

DATE: APRIL 7, 1993

TO: BILL HUDSON, REPRESENTATIVE  
CHAIRMAN, LABOR & COMMERCE COMM.  
JUNEAU, ALASKA

FAX: 465-6790

FROM: ROGER GRUMMETT

TOTAL PAGES INCL.  
THIS PAGE: 1

FAX: 907-586-3770

RE: SENATE BILL #149

I WOULD APPEAL TO YOU TO REMOVE THE INSURANCE SALES AND SERVICE FROM THIS BILL. THIS PLACES A DISTINCT DISADVANTAGE TO THE INDEPENDENT INSURANCE AGENT WHEN PROSPECTING A POTENTIAL CLIENT WHO IS DEALING WITH A BANK ON HOMEOWNERS AND OTHER PERSONAL INSURANCE NEEDS.

I CAN SPEAK TO THE FACT THAT ALASKA FEDERAL SAVINGS AND LOAN ASSN. WAS ONCE IN THE INSURANCE BUSINESS AND ELECTED TO GET OUT AFTER A COUPLE OF YEARS.

AGAIN, I CAN SEE NO MERIT TO THE BANKS IN THE INSURANCE BUSINESS AND WOULD ASK THAT YOU LOOK AT THIS BILL VERY CLOSELY AND DELETE THAT PORTION.

THANKS

# STATE OF ALASKA

## DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

### DIVISION OF BANKING, SECURITIES AND CORPORATIONS

WALTER J. HICKEL, GOVERNOR

P.O. BOX 110807  
JUNEAU, ALASKA 99811-0807  
Banking & Securities (907) 465-2521  
Corporation Section (907) 465-2530

ANCHORAGE  
Corporation Information (907) 563-2161

March 17, 1993

The Honorable Tim Kelly  
Alaska State Senate  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Kelly:

Re: Senate Bill 149  
The Need for a New Alaska Banking Code

The current Alaska Banking Code (AS 06.05) is critically obsolete. The existing code was taken from Oregon law at the time of Alaska statehood, and has had only minor revisions since then. The Division of Banking, Securities and Corporations (division) has for the past few years been working to identify areas where changes in the code are needed. These changes fall into three basic categories:

- I. obsolescence concerning today's financial institution marketplace;
- II. obsolescence in addressing problems or failing banks; and
- III. the need for a banking law that could provide additional economic development opportunities.

#### Section I, The Marketplace

Since statehood, there have been vast changes in the financial institution marketplace. Interest on deposits is no longer regulated; new competition such as brokerage firms now offer interest on deposits, which also has checking privileges. Credit card issuers have now grown to include a telephone company and an automobile manufacturer. The amended Alaska Banking Code provides more flexibility to change through regulation.

Other amendments address additional banking powers like international banking and international branching, including interstate branching; provisions for bank subsidiaries; and revamps existing lending statutes along with reserves and capital requirements.

Existing law gives the department authority to promulgate regulations in conflict with statutes to provide competitive parity with nationally-chartered banks. The amendments of the banking code bring those prior parity regulations into statutory conformance.

#### Number II, Problem and Failing Institutions

The current Alaska Banking Code is completely out-of-step, when addressing failing financial institutions. One of the most obvious provisions is the

The Honorable Tim Kelly

-2-

March 17, 1993

assessment of stockholders in situations of "impairment of capital." The assessment of shareholders to increase capital of a bank is virtually a 1930's action in a unit-bank system, where banks are closely held in a small community setting. The amendments to the banking code provide a series of administrative action that provide due process for addressing unsafe and unsound conditions. Under due process, the department is given the authority to address violations of the Alaska Banking Code which could if not corrected, carry civil money penalties.

The amendments also provide for methods of bank closure with FDIC as receiver which would allow meaningful action and preserve due process. This corrects a problem area pointed out by the Alaska Supreme Court in Hoffman v. State.

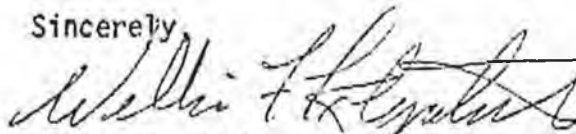
### Section III, Improve Economic Development Opportunities

The current Alaska Banking Code is very restrictive as to what banks can do or invest in. The revised code increases the powers banks will have, especially in subsidiary powers. Investments will be by regulation, rather than a statutory investment menu. The subsidiary provisions will give financial institutions an opportunity to broaden their earning centers, and increase service activities within the community.

The amended banking code could increase potential development by allowing international banks to establish branches in Alaska. This provision alone has been targeted by the department as a need for economic development. Far Eastern financial institutions could establish an operating branch in Alaska, which would be in a beneficial time zone by being equal distance to many money-center markets worldwide. These international offices could also provide capital to develop Alaska resources. This resource development by international branches could be in the form of assisting the bank's customers in processing needed resources from Alaska.

The new code also provides for interstate branching. Alaska is following the State of New York's lead, on the subject of interstate branching. Preemption by Congress would have a detrimental economic impact on the State of Alaska. The amended code provides for the proper vehicle to protect from undue concentrations and some orderly control in instances where there would be interstate branching into Alaska. Through meaningful regulation, interstate branching may then provide some additional available capital to Alaska markets, very much like that of interstate banking brought in 1981.

Sincerely,



Willis F. Kirkpatrick  
Director

WFK/1vs9098t  
031693b

2/19/93 Work draft

RECODIFICATION OF THE ALASKA BANKING CODE  
SECTIONAL ANALYSIS

Section 1. Technical change. Alaska no longer issues a "charter," so references to that term are eliminated throughout the statutes.

Section 2. Technical change.

Section 3. This is current AS 06.05.025 and 06.05.040, mostly with minor technical changes. Recognizing that examiners should not be precluded from merely investing in banks, we have changed the provisions to allow an examiner to own up to 5% of the voting stock of another institution; this will allow simple investments but will not permit an examiner to have a controlling ownership interest in a bank.

Since the department examines all financial institutions, not just banks, the provisions relating to exams have been moved to AS 06.01, the chapter that applies to all financial institutions.

Section 4. Changed to bring the section up to date, given that the list of federal agencies in the current statute is inaccurate. The change will make the statute apply regardless of what changes occur in the future to the names of the federal agencies.

Also, at the banks' request, "corresponding" was removed in (2) to allow the department to equalize competition between financial institutions regardless of what they are called.

Section 5. Current AS 06.05.060(a) and (b). Only change is to clarify that this section applies only to records relating to financial institutions, not all records of DCED.

Section 6. (a) - (c). New cease and desist provisions, to more accurately set out the procedure used by the department; existing law has been confusing. These new subsections are generally taken from the FDIC Act (12 USC 1818(b)(1)) and the Alaska Securities Act (AS 45.55.200(a)), both of which have proven track records.

(d) Current (b), amended to make it clear that public hearings need not be held in cease and desist proceedings.

(e) Current (c) & part of (d), without substantive change; the rest of (d) has been moved to Section 8 of the bill.

(f) Current (e).

(g) Defines "unsafe or unsound practice."

Section 7. This section consolidates all penalty provisions from AS 06 relating to financial institutions. Existing penalty provisions, scattered throughout the code, are repealed in this bill.

(a). The criminal sentences on individuals are generally kept the same as in current law. However, this will raise the potential corporate sentences from the current \$20,000 (\$1000 for trust

companies) to \$200,000, under AS 12.55.035(c)(B). This subsection supersedes current AS 06.05.065(e), 06.05.090(c), 06.05.210(b), 06.05.235(d), 06.05.520, AS 06.20.320(b), and AS 06.25.320.

(b). Supersedes current AS 06.40.160(b).

(c). This is consistent with current AS 06.05.380(c), 06.05.500, and AS 06.25.060; current AS 06.05.510 seems to make it only a misdemeanor for the same violations, but a single consistent penalty is more appropriate in all these cases. Supersedes current AS 06.05.380(c), 06.05.500, 06.05.510, AS 06.25.060, 06.25.070, and AS 06.45.320.

(d). Under the Credit Union Act, this is currently a Class A felony (AS 06.45.330). The general criminal law makes defrauding creditors a misdemeanor for up to \$500, a Class C felony for \$500 to \$25,000, and a Class B felony for more than \$25,000 (AS 11.46.730(c)). We have decided to go with the Class C felony for these cases. Supersedes AS 06.05.490 and AS 06.45.330.

(e) and (f). For intentional violations of the code or the department's orders; taken from Securities Act, AS 45.55.200(b). Note that (e) also applies to people who cause others to violate the code or department orders. A person assessed an administrative penalty would have a right to a hearing under AS 06.01.030. The differential rates for institutions as opposed to individuals is common in other states. See FL and OR below. For point of reference, here is a summary of what some other states allow for administrative fines:

IN allows up to \$15,000 per violation (sec. 28-11-4-9).

GA allows \$1000 per day per violation, until corrected (sec. 7-1-91).

OR allows \$2500 per violation for individuals, \$50,000 for institutions (sec. 708.980).

FL allows \$10,000 per day if the violation is due to recklessness; and \$50,000 per day for individuals, \$500,000 per day for institutions if the violation is intentional (sec. 655.041).

By the way, the FDIC penalties are also very high -- \$25,000 per day for reckless actions, up to \$1 million per day for intentional violations (12 CFR 308.116).

(g). For non-intentional violations, taken from AS 45.55.200(c); also applies to those who cause others to commit a violation.

(h). Supersedes AS 06.01.010(c) and AS 06.05.505. These figures seem consistent with those used in other states. However, for late call reports the FDIC uses a sliding scale based on the size of the institution and whether the conduct is repetitious, charging from \$100 to \$2000 per day (12 CFR 308.132).

(i). Current AS 06.05.065(e).

Section 8. This is part of current AS 06.01.030(d), which is moved because it did not belong as part of the section on departmental orders.

Section 9. This section lists most of the department's powers with

respect to banks. To the extent the list refers to powers contained elsewhere in the code, the reference here is unnecessary, but it does offer a relatively comprehensive laundry list. In addition, (b)(13) and (14) give the department essentially unlimited authority to issue orders to get compliance with the code.

Current AS 06.05.005(3) has been repealed; neither the department nor the banks could determine what it meant or what was its purpose. Some current sections have been repealed elsewhere and included in this section. They are

(a)(2). AS 06.05.070 is repealed, and here it simply states that the department will provide for bank records retention through regulations.

(b)(1). Current AS 06.05.030, although we have removed the authority of the department to relieve a bank from the examination fee; this seemed appropriate given that fees for specific exams have been replaced with an assessment system. See AS 06.01.010(d).

(b)(6). Current AS 06.05.005(2).

(b)(7). Includes current AS 06.05.015. In (J), we have added authority to require loan loss reserves for loans classified as "doubtful." We also eliminated reference to "FDIC" exams and substituted "federal" exams, to include the Federal Reserve Bank.

Section 10. Amended to make the reporting requirements as to signatures consistent with FDIC requirements, so that the same reports can be used by the banks for both state and federal agencies.

Section 11. Here and in Section 12 of the bill, references to state "charter" have been removed as obsolete. Also, we removed reference to "lending" institutions to make the terminology consistent with that used in the rest of the code.

Section 12. Adds an exemption for mortgage loans existing at the time of hire. This section will no longer disqualify a person from working as a bank examiner if the person has a home mortgage loan with a state bank.

Section 13. Amended to clarify that all actions of the department under this chapter, not just the adoption of regulations, are designed to promote a sound banking system.

Section 14. These changes are primarily stylistic, to clarify the section's meaning.

Section 15. Amended to provide that the notice of charges for new accounts need only be provided where accounts are opened; for example, there is no reason to require this at a bank's automated teller machine (ATM).

We will also clarify in regulation that "clearly post" can include using pamphlets or brochures, provided they are easily accessible and there is some notice or sign indicating their

location.

Section 16. The phrase in current statute, "the extent necessary to meet the needs of customers," might be interpreted either to mean "to meet existing orders" or "to meet anticipated demands." This change, proposed by the banks, clarifies the meaning.

Section 17. The repealed language is all contained in other subsections -- the three day maximum closure is now contained in (e); the branch bank variance is now in (f). See Section 19, below.

Section 18. Many stylistic changes. We changed the notice requirement to be before closure, if possible, and otherwise as soon as possible after closure. Also, we removed the requirement that the Comptroller of the Currency be notified of these closures -- that is a matter that should be left to the comptroller and federal regulation. Finally, at the suggestion of First Bank, we clarified the final sentence in the subsection.

Section 19. (d). This is new, to cover the Key Bank "neighborhood day" situation.

(e). Currently in (a). The three day maximum closure applies not only to holidays, but also to board declared closures, but it does not apply to branch banks operating under a department approved different schedule.

(f). Currently the last sentence in (a).

Sections 20 & 21. At the request of the banks, we have changed this statute to clarify that bank records need not be released pursuant to subpoena. Given that subpoenas can be obtained routinely from the court clerk without judicial review, to permit release of the info in response to a subpoena would amount to an elimination of any customer confidentiality, and has resulted in a huge burden on the banks.

Section 22. This is new, also at the request of the banks. The current cost of responding to information requests is very high, and it is reasonable to provide the banks with reimbursement for these costs.

Section 23. First, the subsection is modified to apply to all banks -- the distinction of "commercial" banks is meaningless in Alaska law, and there was no reason for the exception for members of the federal reserve system. Second, the subsection has also been changed to provide that reserve requirements will be set by regulation be based on the bank's liquidity needs (rather than as a means of protecting against capital impairment). There has been confusion in the past over the purpose of the reserve requirements. It should be noted that the Comptroller sets reserve requirements in federal law, but those requirements are not based on a bank's liquidity needs, but rather as a method to manipulate the supply of

money in the U.S. Finally, we have changed "reserves" to "reserve fund" to avoid confusion with loan loss reserves.

Section 24. This change will give the department more discretion in regulating problem banks. If a bank falls below the reserve requirements, it will not automatically be prohibited from making loans or paying dividends -- that will be up to the department.

Section 25. This adopts the general lending limits used by the Office of the Comptroller of the Currency (OCC). The definition of "fully secured" will be put in regulation, probably requiring collateral equal to 100% of loan balance. The list of transactions not included in these calculations is generally taken from current subsection (b), with an addition in (2) of loans collateralized with assigned deposit accounts. This list is generally more liberal than OCC regulations, except for the requirement that cannery products and products in transit be insured to be exempt.

Section 26. Amended to make loans unconditionally guaranteed by the state, such as AIDEA, also not count toward the loans to one borrower limitations.

Section 27. Expands the prohibition for bank loans to include loans collateralized by stock of any of the bank's holding companies and to unsecured loans used to purchase stock of either the bank or its holding companies. Adds an exception to this rule for situations of bank acquisitions or mergers, with department approval.

Section 28. (g). New provision allowing the department to adopt regulations defining when a loan made in the name of one person or entity will be attributed to another for purposes of calculating the lending limits in this section. This is taken from the recommendations of Montana's advisory committee that reviewed that state's banking code.

(h). New subsection to allow the department to restrict loans of certain classes, based on the type of security (condominium loans, for example). It is not anticipated at this time that this section will be used, but the department needs this authority, particularly if another bank crisis were to arise.

Section 29. (a). Combines existing (a), (c), and (d). Specific loan-to-value (LTV) and term restrictions have been eliminated and replaced with a requirement that real estate loans be made consistent with sound bank policies. Also, the section's application is expanded to apply to all loans where the primary security for the loan is real estate, not just those on improved real estate; thus, current (e) and (f) were eliminated along with AS 06.05.206 and AS 06.05.211. Existing (g) has been eliminated as obsolete.

(b). From current subsection (b); changed to apply to all junior liens, not just seconds.

Section 30. Several changes are proposed to this subsection. First, we clarify that all normal lending restrictions apply to loans to directors, officers and bank employees, in addition to the specific limitations of this section. Second, directors are added to those subject to this section. Third, the threshold for application of the section is raised to \$100,000 in the aggregate, and up to \$250,000 for personal primary residences of directors, officers and employees. We have also repealed the final sentence, since loans are defined in AS 06.05.540 to include overdrafts, making this sentence unnecessary.

There has been some confusion in the past whether a bank's board of directors could act through a committee for the approval of these loans. AS 10.06.468, incorporated under this act, would allow this, except for loans to directors which would still require full board approval.

Section 31. This subsection has been amended to remove specific LTV and term restrictions, and make these loans generally subject to the same restrictions as all real estate loans under AS 06.05.207.

Section 32. Changed to make this merely a prohibition; penalties are provided in AS 06.01.035 for all violations of the code, including this section.

Section 33. This section has been confusing and somewhat controversial in the past. We have rewritten it to make sense. The standard adopted here - knowingly or with gross negligence - is strongly supported by the banks, because they feel that a simple negligence standard might discourage people from becoming bank directors.

Section 34. This section probably could be repealed, since federal law arguably preempts the state law. (We have repealed AS 06.05.220 for this reason.) However, for clarity, this section is left in. The reference to AS 06.05.220 has been changed to refer directly to the applicable federal statute.

Section 35. The section currently is incorrect in its reference to "real estate," since it actually applies to both real and personal property, so this has been fixed. Also, the section has been broadened in several respects, to allow a bank to hold

1) property used for promotional purposes, such as a boat; of course, any asset so held will have to be used exclusively for bank purposes;

2) a building in which bank offices are located, even if only a portion of the building is used for the bank (this is already being done by several Alaska banks, arguably in violation of present law); and

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

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

06.05.272.

Section 36. Conforming amendment only.

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

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

Section 39. Conforming amendment.

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

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

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

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

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

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

Section 46. This bill repeals the list of specific permissible bank investments in statute. These specific investments, as well as others that may be appropriate, will now be set out in the regulations. This is important, because new investment

opportunities seem to come up frequently, and requiring the department to get legislation passed each time has proven burdensome and unpredictable.

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

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

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

Section 48. Clarifies that these are alternative requirements.

Section 49. Prohibits a so-called "nonbank bank" - similar to WY sec. 13-9-302.

Section 50. (a). Makes the Alaska Corporations Code applicable to banks.

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

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

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

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

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

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

AS 10.06.370. Specifically applies only to regulated investment companies.

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

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

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

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

AS 10.06.522 - 10.06.526. Reorganization of corporations in

bankruptcy; this is covered for banks under liquidation provisions.

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

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

**Article 10 (AS 10.06.705 - 10.06.788).** Foreign corporations; covered under new article on interstate and international banking.

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

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

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

**AS 10.06.960.** Applies only to native corps.

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

Section 51. (a). Raises minimum capital requirements to \$2 million for banks in Anchorage and Fairbanks, \$1 million for other communities (to allow possible formation of small community banks). However, this clarifies that these are absolute minimums, and that the actual requirements will be set in each case by the department. (At present, all Alaska banks have capital amounts far greater than these minimums.)

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

(c). Technical amendments only.

Section 52. Present AS 06.05.310 provides for an assessment of shareholders procedure that the department may purportedly order when a bank's capital is impaired. Since this process is essentially unenforceable and, in our experience, unreasonable, this assessment procedure is repealed here and replaced with a simple process for the department to order a bank to increase capital, in whatever manner the bank chooses. This new section is taken from Indiana (sec. 28-13-4-7).

Section 53. Changed to permit bank stock redemptions with departmental approval.

Section 54. Changed to require prior department approval before any significant change in bank ownership or before a change in bank control.

Section 55. Clarified to ensure that all stock sales are subject to this requirement, not just those at the corporate formation stage.

[Note to Revisor: Please amend section title accordingly.]

Section 56. Present AS 06.05.345 is split; new AS 06.05.344 deals with the application for approval process, while AS 06.05.345 retains the provisions relating to articles of incorporation.

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

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

(c). Current AS 06.05.345(e).

(d). Current AS 06.05.345(f).

(e). Current AS 06.05.345(g).

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

(g). Current AS 06.05.345(i).

(h). Current AS 06.05.345(j).

Section 57. Changed to incorporate the Corporations Code, and then eliminates requirements already covered by that code. Also, (2) is clarified to make sure that no-par stock is not allowed, and (3) is clarified to allow articles to say "5 to 25" directors, instead of giving a specific number.

Section 58. Allows amendment of articles by a majority of shareholders, or more -- this is consistent with the Corporations Code, AS 10.06.504 - 10.06.508. As for filing amendments to articles, these will be done in the manner provided in the Corporations Code.

Section 59. Amended to clarify that certificate of incorporation comes first, certificate of authority later. Incorporation allows a bank corporation to set up a facility and get subscriptions paid in, but not to do any banking business. AS 06.05.395 has been merged with this subsection.

Section 60. (b)(1). This is the same as AS 06.05.380(b); the latter has been repealed. Also, the department does not require a bank to carry a specific amount for undivided profits, so that has been removed.

Current (b)(4). This is repealed because we will no longer be requiring FDIC insurance in all cases. See Section 62.

Section 61. Current AS 06.05.480.

Section 62. Changed to make FDIC insurance optional, at the department's discretion. This is primarily designed to allow for the formation of small community banks, and to allow other banks to use alternative insurance if it becomes available. [Note to Revisor: Please correct title to this section.]

Section 63. Conforming amendment.

Section 64. (a). Most of the requirements of this section that are deleted are covered in the Corporations Code, particularly AS 10.06.223.

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

Section 65. These are almost all technical changes, except for (f)(3), which is eliminated because we are eliminating the requirement for FDIC insurance. As for (a), the amounts have been raised for processing an application -- see comments to new AS 06.05.344 in section 56 of the bill. The definition for "mobile facility branch bank" is taken from 3 AAC 02.910(a)(5).

Section 66. ATM's will no longer be subject to general branching laws; there is no reason that the lengthy application process for a branch should apply to a bank's opening of an ATM.

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

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

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

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

Section 67. Repealed language will permit staggered terms for bank directors like that provided in the Corporations Code, AS 10.06.455.

Section 68. Added language will allow the qualifying minimum amount of stock that a director must own to be jointly held, and will allow the department to approve other situations when a director need not meet the minimum ownership requirements, such as where the bank is wholly owned by a bank holding company.

Section 69. (f). From current AS 06.05.437(b).

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

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

Section 70. (a). Repealed language is covered by AS 10.06.483(b). Second sentence is amended to allow the board to pick the best possible person for CEO of the bank, even if that person is not on the board; if the bank chooses a non-board member as CEO, that person becomes an ex officio member of the board, to make sure he/she is kept aware of what the board is thinking and doing.

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

Section 71. Although the department cannot actually order that an employee of a bank be fired -- that is the sole responsibility of the board -- this subsection will allow the department to essentially recommend an employee's removal, if necessary; if the board refuses, the directors risk personal liability should damages occur thereafter due to the fault of the employee. This change was recommended by the Conference of State Bank Supervisors (CSBS).

Section 72. Minor change to clarify that board meetings are held for many purposes, not just to investigate the affairs of the bank.

Section 73. (e). Allows teleconference board meetings; taken from the Corporations Code, AS 10.06.475(a).

(f). Present AS 06.05.238.

Section 74. Clarifies that dividend distributions are subject to possible restrictions under AS 06.05.307(c).

Section 75. Generally just technical changes; clarifies that requirements of this section are in addition to those in AS 06.05.442.

Section 76. Changed to allow a bank, with department approval, to carry a negative balance in the undivided profits (U.P.) account, and prohibits dividends until this negative U.P. account balance is replaced and the surplus account is fully restored.

Section 77. This section has been combined with AS 06.05.443.

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

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

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

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

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

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

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

Section 78. Modernized to allow for the maintenance of this record of shareholders in a form other than a book. Also, clarifies that inspection of the record is available for the department, while shareholders will have access to a list of current shareholders. Before each annual meeting, the bank will also need to comply with AS 10.06.413, which requires preparation of a list of shareholders, including names, addresses and numbers of shares owned.

Section 79 - 81. Technical amendments only.

Section 82. AS 06.05.466 currently set out a procedure for dissolution of a bank before issuing a certificate of authority. The proposed revisions to this section retain the same grounds for dissolution in these situations, but permit such a dissolution to be effected as with any other corporation under the Corporations Code.

Section 83. (a). This is generally taken from current AS 06.05.470(a), although it has been expanded to clarify that the department may close and take possession of a bank for violations of the banking laws or orders of the department.

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

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

Section 84. Repealed language is now contained in sec. 468(c).

Section 85. Clarifies that transfers in anticipation of department takeover for whatever reason, not just due to insolvency, are voidable. New language is taken from current AS 06.05.495, which is repealed.

Section 86.

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

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

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

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

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

AS 06.05.474. Current sec. 470(z).

Section 87. Many of these definitions are taken from the existing code. Ones that have been changed, or are new, are

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

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

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

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

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

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

(12). From AS 06.01.050(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Section 88.

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

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

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

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

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

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

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

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

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

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

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

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

AS 06.05.570. This is presently part of AS 06.05.235.

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

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

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

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

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

Section 90. Technical amendment.

Sections 91 and 92. Makes the Corporation Code applicable to banks.

Section 93. Conforming amendment.

Section 94. Clarifies that the Consumer Protection Act, while exempting transactions regulated under AS 06.05, applies to all other bank transactions, and in particular those between banks and their customers.

Section 95. Technical amendment.

Section 96. Repealers:

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

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

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

(b). The first sentence is already covered by AS 06.01.030 (in this bill, subsection (f)). The rest duplicates common law, except for the last sentence, which is a labor law issue and should not be in the code.

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

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

AS 06.05.035. Already covered by AS 06.01.010.

AS 06.05.040. Moved to AS 06.01.015(a).

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

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

(c). Already covered in AS 09.25.110.

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

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

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

AS 06.05.080. Already established in Alaska case law.

AS 06.05.085. Already covered by Alaska case law.

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

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

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

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

AS 06.05.190. See note to previous section.

AS 06.05.195. See note to repeal of AS 06.05.185.

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

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

(e). Already covered under sound lending practices.

(f). Obsolete.

AS 06.05.206. All special statutory restrictions on real estate loans are repealed in this draft of the code, except those still remaining in AS 06.05.207. Leasehold and development loans are now covered by that section.

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

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

AS 06.05.220. Already covered by federal law.

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

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

(d). Covered by comprehensive penalties section.

(e) and (f). We have split this section in half, moving the provisions relating to out-of-state bank holding companies to new AS 06.05.521<sup>839</sup>7, in the article on interstate banking.

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

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

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

AS 06.05.260(b). This subsection was probably unenforceable,

definitely unclear and ambiguous, and arguably inconsistent with the state's depositor preference.

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

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

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

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

AS 06.05.300. Covered by AS 10.06.010.

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

(e). Repealed as obsolete.

AS 06.05.325. Covered by the Corporations Code.

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

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

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

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

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

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

AS 06.05.380. (a) and (b). are the same as 350(b)(1).

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

AS 06.05.390. Covered, with minor variations, by AS 10.06.490.

AS 06.05.395. Substance moved to and incorporated in AS 06.05.350(a).

AS 06.05.430. Covered by AS 10.06.405 and 10.06.415.

AS 06.05.435. (b). Covered by AS 10.06.223.

(e). Covered by AS 10.06.465.

AS 06.05.443. Combined with AS 06.05.445.

AS 06.05.465. Voluntary liquidations will now be covered under the same procedure as involuntary ones, i.e. under the control of the department. See AS 06.05.468(a) in Section 83 of the bill. Of course, if a bank wishes to voluntarily dissolve and there is no reason for the department to get significantly involved, the department can appoint the existing board as receiver.

AS 06.05.470. This section has been split up to make it more manageable. The substance of this section remains essentially unchanged.

(a). Substance moved to sec. 468(a).

(d). Now sec. 468(d).

(f). Now sec. 471(a).

(j) and (k). Now sec. 471(b) and (c).

(l) - (n). Now sec. 472.

(o) - (y). Now sec. 473.

(z). Now sec. 474.

AS 06.05.480. Moved to sec. 350(d).

AS 06.05.485. Moved to new sec. 262.  
AS 06.05.490. Included in comprehensive penalties section, AS 06.01.035.  
AS 06.05.495. Duplicative; same as sec. 470(g)(2).  
AS 06.05.500 - 06.05.520. Covered by comprehensive penalties section.  
AS 06.05.525. Covered by AS 06.01.030.  
AS 06.05.530. Obsolete.  
AS 06.20.320(b). Covered by new comprehensive penalties section, AS 06.01.035.  
AS 06.25.060. Covered by comprehensive penalties section.  
AS 06.25.070. Also covered by comprehensive penalties section.  
AS 06.25.320. Also covered by comprehensive penalties section.  
AS 06.30. Repeals state Savings Association Act.  
AS 06.40.160(b). Covered by comprehensive penalties section.  
AS 06.45.320. Covered by comprehensive penalties section.  
AS 06.45.330. Also covered by comprehensive penalties section.

Section 97. Transitional provisions.

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

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

Section 98. Notes possible Court Rule change.

Section 99. Effective date 1/1/94.

**City Commerce**  
CORPORATION

February 15, 1993

The Honorable Tim Kelly  
State Capitol  
Juneau, AK 99801-1182

Re: Draft Legislation revising Title 6

Dear Senator Kelly:

First, I thank you for forwarding the proposed draft of legislation revising Title 6 of Alaska Statutes governing banks and financial institutions. I have read through the draft with growing alarm. Specifically, in several instances I find the document to be anti-competitive and far reaching in its proposed scope.

Section 37 regarding the fair market value of loans for property taken subsequent to foreclosure. I would suggest you review the current FASB ruling and their mark to market rules and conform this statute to that new rule.

Section 45 indicates, "No person shall own, operate or acquire an institution which engages in the business of making commercial loans, but does not accept demand deposits, commonly known as a nonbank bank." As you are aware, I own such an institution and find no justification whatsoever for such a provision prohibiting me from lending private money to anyone I choose without the permission of the state of Alaska. The regulatory concern traditionally has been the protection of depositors' money. A nonbank bank carries no depositors' money and can and should be able to lend at will to anyone they choose as long as they comply with the normal rules covering good business. I would certainly recommend and urge your support for deleting this section. To retain this section in the bill would require that I oppose the bill and organize an opposition campaign.

Section 46. I think this section needs to be clarified as to what the banking business is. Taken in context, in Section 45 any lending of any variety would be banking, in fact mortgage banking would be banking under any interpretation of this provision. Is this a back door attempt of the department to regulate all lenders within the state and require \$1 million net worth of all lenders prior to their involvement in any lending business?

The Honorable Tim Kelly  
Page two

February 15, 1993.

Section 65, Sub Paragraph 5. You might want to put a time period on this provision for folks on the board, as a number of people have gone through bankruptcy who otherwise might be qualified to serve on the board of directors. The provision as written would bar a person for life. I would think that some statute of limitations should apply as it does in normal credit circumstances.

Section 81. DEFINITIONS. Sub Paragraph 3 "banking". According to this definition, any lender is a bank. Unless this provision specifically excluded other means of non depository lending such as consumer, factoring or long term lending, virtually all current or prospective long term lenders in the state would come directly under this and would be classified as a bank.

In summary, the definitions of lending banks and the inclusion of the non competitive provision regarding nonbank banks would lead me to do everything possible to oppose this bill if introduced. I would ask you not to introduce it as it currently stands as it would diminish the ability of Alaskans to borrow at a time when the opposite is necessary in the market place. In the interests of your constituents, barring amendment to address the above concerns, I would request that you not only not sponsor the bill, but that you oppose it.

Thank you for your consideration.

With best regards,

James M. Crawford  
President & CEO

**Key Bank of Alaska**

A KeyCorp Bank



101 West Benson Boulevard  
Post Office Box 100420  
Anchorage, Alaska 99510-0420  
(907) 564-0250 or (907) 562-6100

February 24, 1993

**Michael J. Burns**  
President and  
Chief Executive Officer

Honorable Tim Kelly  
Chairman  
Senate Labor and Commerce Committee  
State Capitol  
Juneau, Alaska 99801-1182

Re: Alaska Banking Code Revision

Dear Senator Kelly:

I apologize for being unable to attend your meetings of yesterday and tomorrow. Please be assured that our non-attendance does not indicate a lack of enthusiasm for this project. Throughout the past months, Mr. Kirkpatrick has worked closely with the state chartered banks to come to a consensus on what the banking code needs to be to support the State's institution and the growth of the Alaska economy. As with any undertaking between a regulated entity and its regulator, there are bound to be differences. I think that this product is a good balance between these interests.

We are especially pleased by the broad format of the statutes and the inherent acknowledgement that the regulatory needs of the State may change as quickly as the competitive challenges of the banks. Leaving much of the detail to the regulation, as opposed to statutory provisions, is, in our opinion, quite far sighted. It is in this area of proposed regulation that we would offer the following suggestions.

Notwithstanding the above paragraph, I offer one change to the draft legislation. Section 24.AS 06.05.205(d) was amended to prohibit a bank from accepting the bank's parent holding company stock as collateral for a loan, or from lending funds that will be used to purchase stock in the bank or in the holding company. A bank should be allowed to lend for the purpose of purchasing shares in the bank or its holding company as long as there is independent source of repayment and strength or other collateral. In the case of KeyCorp, our parent company, there are over 100 million shares outstanding with a market valuation in excess of \$4 billion. As a stock traded on the New York Stock Exchange, there is a tremendous liquidity and I find it hard to imagine a much stronger source of collateral for us. Again, this suggestion does not impair our strong support for the proposal as a whole.

Senator Tim Kelly  
February 24, 1993  
Page 2

Specific suggestions as to the regulations are as follows:

3AAC 02.020(c)

Currently, Key Bank of Alaska does not get an independent audit. KeyCorp, our parent, has a certified audit of which we are a part. It has been the position of the Division of Banking that this corporate audit is adequate and I am not sure that the regulation, as drafted, continues to accommodate banks that are part of a holding company.

3AAC 02.110

Until 1980, state banks that were not members of the Federal Reserve did not have to maintain reserves with the Fed. It is acknowledged that the Fed maintains reserve requirements as a tool to manage the national monetary supply, and not the individual bank's liquidity position. However, the effect is the same. It is our contention that between the Fed's role and the general safety and soundness powers available to the regulators, that this entire section on liquidity is unneeded at this time. Should the Fed's role or reserve targets change, appropriate regulations could be adopted.

3AAC 02.135(b)

The requirement that the bank dispose of or write off the value of personal property obtained to satisfy a debt within one year may be appropriate for tangible personal property such as autos, trucks, equipment, mobile homes, etc. However, we feel that intangible personal property might have a "bankable" value over time and should not require such an accelerated liquidation or write off. Such assets might be royalty interests, patent rights, assignments of escrows, notes, minority or majority interests in closely held businesses, etc.

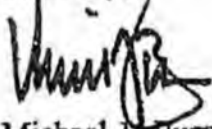
3AAC 02.197

This section authorizes us to pledge assets to secure the assets of certain housing authorities. Other agencies and authorities should be included in this definition.

Senator Tim Kelly  
February 24, 1993  
Page 3

We look forward to working with your committee on this project that is vital to a continued strengthening of the Alaskan economy.

Sincerely,



Michael J. Burns,  
President & C.E.O.

MLB:sd

cc: W. F. Kirkpatrick



February 3, 1993

Senator Tim Kelly  
Alaska State Legislature  
State Capitol  
Juneau, AK. 99801

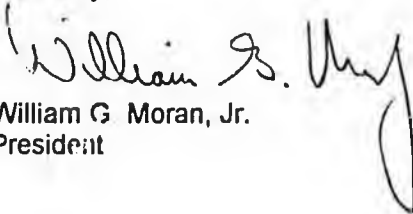
Dear Senator Kelly:

Thank you for the opportunity to comment on the proposed revisions to the Alaska banking code. Over the past few months, we have had the opportunity to work closely with Willis Kirkpatrick and his staff with regard to this legislation and we are pleased to see that it is now working its way through the legislative process.

We are also of the opinion that the current banking code has become outdated and is in need of a general overhaul. The comprehensive changes contemplated in this legislation have been carefully thought out and address all of the issues and concerns that we have with the existing Title 6. As proposed, these revisions will make the state banking system safer, more competitive, and better able to address the evolving financial needs of the people of Alaska.

We are very much in support of the proposed legislation. If you or your staff have any questions or need any additional information with regard to any of the specific provisions in this legislation, please feel free to contact us.

Sincerely,



William G. Moran, Jr.  
President



# ALPS FEDERAL CREDIT UNION

PHONE 747-6262 • P.O. BOX 1889 • SITKA, ALASKA 99835

February 11, 1993

Senator Tim Kelly  
Pouch V, State Capitol  
Juneau, AK 99801-1182

Subject: Proposed Draft  
Title 6, Alaska Statutes  
Banks and Financial Institutions

Dear Senator Kelly:

Thank you for your letter of January 29, 1993 in connection with the subject topic. As you are aware, we are a federally chartered institution, so the revisions would have minimal impact on us individually. But, in the interests of seeing a level playing field between state and federally chartered institutions, I will offer you my comments on the proposed draft.

Specifically, we are discussing the draft of January 20, 1993. On pages 6-7 of the draft, under "Powers of the Department", item number 7, subsections G, H and J, my comments are as follows:

7.G.- It is not uncommon to take a blind lien against a piece of property, either as additional security for possible bankruptcy protection or as a courtesy to the borrower for IRS tax deductibility reasons. In this event, I cannot see why we would want to apply this article as it is written. Some modification to allow for these instances must be made to the proposal.

7.H.- Same reason as above.

7.J.- I don't think that the department should have the authority to require an asset to be written off at 50% if the feds just happen to classify it as doubtful. I have seen entirely too many loans pay in full that were classified as doubtful, whether by ignorance or over zealousness on the behalf of an examiner. I was formally an FDIC Bank Liquidator, so I have a fairly extensive record base to evaluate this position from. I don't have a problem requiring the institution to reserve for the credit, but I don't think we should be requiring write off of the credit in question.

On pages 14-15 of the draft, under "Sec. 06.05.211 Loans Secured by Forest Tracts", items 1-3, my comments are as follows:

1- I don't think the department has any business setting loan to value ratios for any type of loan. That is up to the policy makers of the institution. Next the department will be telling us how long a person has to have a job before he/she can obtain a loan. Asset quality is something that needs to be dealt with each institution individually, not by statute.



WHERE YOU BELONG



# ALPS FEDERAL CREDIT UNION

PHONE 747-6262 • P.O. BOX 1889 • SITKA, ALASKA 99835

2- I don't disagree with requiring appraisals in certain instances, but shouldn't a dollar threshold be used here in determining when it is necessary? I think \$50,000 is a nice starting point. In addition, the loan to value issue rears its ugly head in this section also.

3- Now we are dictating what the annual payments must be? The next step will be telling us they all have to be due on the first of each month. I don't have a problem with the term limitation, but let us have the flexibility to prepare payment schedules that fit the needs of our borrowers, not those of our regulators.

On page 15 of the draft, under "Section 29 AS 06.05.212(a)", my comment is as follows:

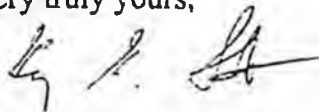
I don't have a problem with director, officer or employee overdrafts, but I do when it comes to an institution's customers. Isn't it the officer's business who is allowed to overdraw and who is not. Aren't we in a better position to determine who is creditworthy and who is not. This is another fee based service provided by the institution.

On page 15 of the draft, under "Sec 06.05.215 Liability of Directors and Officers for Certain Loans", my comment is as follows:

Now we are making officers personally monetarily liable for banking decisions prior to the liquidation and insolvency of an institution? If I permit an overdraft or make a loan to an individual and we subsequently take a loss, I may now have to repay that money? Good luck trying to recruit bankers to work in this state. Now, the only people who are going to get loans are the ones who don't need them and they are going to have to be secured at 150%. I don't have a problem if the transactions are done in violation of an order of the department, but I take exception to the statement "in an unsafe or unsound manner". Typically, that statement is made by an examiner more to cover his backside when he/she doesn't understand the credit. I realize the statute provides that the restitution must be mandated by a court of competent jurisdiction, but this little section might just shut lending down statewide.

Thank you for allowing me the opportunity to review this draft. I certainly hope my comments are helpful. Please excuse my sense of humor and exasperation in the dissertation. I have been on both sides of the regulatory fence. The more time I spend on this side, the more frustrated I get with myself for having once been a myopic, tunnel visioned bank regulatory bureaucrat. If I can be of further assistance, please don't hesitate to call me.

Very truly yours,



Gary G. Sterion  
President/CEO



WHERE YOU BELONG



# ALPS FEDERAL CREDIT UNION

PHONE 747-6262 • P.O. BOX 1889 • SITKA, ALASKA 99835

February 21, 1993

Senator Tim Kelly, Chair  
Senate Labor and Commerce Committee  
State Capitol  
Juneau, AK 99801-1182

Subject: Banking Code Revision  
Proposed Draft Banking Regulations


Dear Senator Kelly:

Thank you for the opportunity to comment on the subject regulations. In Mr. Bush's redraft, I only found two items that I felt could be modified. Those modifications are as follows:

- 1) 3 AAC 02.110 Reserves Against Deposits
  - b.3. Certificates of deposit that mature in less than 12 months.
  
- 2) 3 AAC 02.135 Disposition of Property not Needed for Banking Business
  - a. Rather than require the institution to write-off 20% of an asset's book value after two years and an additional 20% annually thereafter, I would suggest that the requirement be redrafted as follows: "Once the bank receives title to real property, the asset shall be appraised by an independent fee appraiser. The asset will then be written down to 90% of the appraised value, less any prior encumbrances. Two years from the date of the acquisition, if the property still has not been sold, the property must be re-appraised by an independent fee appraiser and written down to 80% of the appraised value, less any prior encumbrances. Every two years, this practice will continue with the write-off increasing 10% annually, until the book value reaches \$10. The book value will remain \$10 until the property is disposed of by the bank." The present draft seemed a little aggressive to me. There may be problems with the property in question that may take time to correct or there may be timing issues related to the liquidation of the property that are economic, social or zoning in nature. A forced liquidation of the property may not be economically feasible.
  
  - b. This section deals with personal property assets and their liquidation. A one year limitation on the disposal of these assets seems a little too restrictive. Some personal property may have a unique market that may require a longer liquidation period. I would modify the draft to allow a two year disposal period prior to write-off. Whenever an asset is acquired that is not necessary to the bank's normal business, it should be appraised and written down to 90% of appraisal.

Those are the only issues that I felt needed modification. I hope this assists you in your efforts. If I can be of further assistance, please call me. Thank you for your time and consideration.

Very truly yours,

  
Gary G. Sterton  
President/CEO



WHERE YOU BELONG



**Northrim Bank**

*Human Interest Makes The Difference*

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# NORTHRIM BANK

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COMPANY: \_\_\_\_\_

FROM: Chris K

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## ROUGH DRAFT - NOT FOR DISTRIBUTION

Northrim Bank supports the project to revise the Alaska Banking code. I feel the existing code language needed to be clarified and certain portions modernized. Most of the proposed revisions accomplish this.

I am troubled by some proposed changes to the code that grant more power to the State. The State feels it needs these powers to more effectively carry out its responsibilities. It is basing this need on its experiences during the bank failures of the late 1980s. Those bank failures were caused by economic factors and I don't believe the results would have been any different if the State had the additional enforcement powers it is requesting.

## SECTION 5 AS 06.01

*Sec 7*  
paragraph (d) "a director , officer or employee of a financial institution who receives a deposit knowing that the institution is insolvent and without the department's prior approval, is guilty of a Class C felony."

There is always an element of speculation as to when an institution is insolvent. If this was clarified to state that it would be a class C felony if the above individuals received a deposit after having been notified by the department that the bank was insolvent and that deposits should no longer be received, then it would be acceptable.

paragraphs (e) (f) and (g)

The addition of civil penalties that the State could assess would put state banks in a more adverse position than a national bank. Federal regulators recently received civil penalty powers. A state bank could conceivably be assessed penalties by both Federal and State regulators on the same issue while a national bank would only have to deal with Federal penalties. These duplicative penalties are not needed by the State.

## 17 SECTION 11

Relating to the 15 day notice requirement for holiday closing. The 15 day requirement seems too long in this modern world where customers can access their account via telephone or ATM 24 hours a day seven days a week. How about five days for recognized state holidays and 15 days when the closing would not be on a recognized holiday.

## 28 SECTION 25

paragraph (h) "The department may adopt regulations classifying loans based upon the type of security or collateral and restricting or limiting a bank's authority to make loans to certain classes."

This provision seems to indicate that the State knows more about the economic conditions of each bank's market than do the banks. This provision would provide an opportunity for the State to "micro-manage" a bank to the detriment of the overall economy if the department became prejudiced against a particular line of business. The State currently has significant influence over bank management and directors regarding lending concentrations and this additional power is not appropriate or needed.

**SECTION 29**

paragraph (a) " a director, officer, or employee of a state bank may not knowingly, wilfully and persistently overdraw the director's, officer's, or employee's account or permit a customer to do so"

These is more onerous than it appears on the surface. It is not needed to cover potential abuses by directors, executive officers and principal shareholders of a bank because they are covered under rather strict rules of Regulation O of the Federal Reserve. The State does not need power here because it is adequately covered under federal law. Regarding employee overdrafts and customer overdrafts; this is really a credit decision on the part of the bank and is a judgement call. It would not serve the people of Alaska to have the banks stop paying all NSF checks. There are numerous customers who are relatively sloppy with their checkbook accounting, but do not represent a risk of loss to a bank.

**SECTION 33 AS 06.05.235**

Relates to provisions that would require bank holding companies to obtain a permit and possibly post a bond before they could acquire a bank in the state.

This would be an impediment to business and could hurt the State in the long run. Currently the State must either approve any purchase or is requested to comment on the proposed transactions if a different regulator is involved. There appears to be more than adequate opportunity existing today for the State to look out for the public good in this matter.

**SECTION 47 AS 06.05.305**

51  
paragraph (c) "if a bank fails to maintain its total capital accounts and loan loss reserves in an amount equal to the assets classified as substandard by the FDIC or the state ... the department shall consider the failure as endangering the safety of depositors and may direct the bank's directors to increase the capital accounts in an amount sufficient to cover substandard assets.

The term substandard is commonly used to classify loans by bank regulators, but how they apply it has changed considerably over the last few years. Many news articles about the national "credit crunch" include comments by bankers about the harshness with which regulators classify loans currently. Regulators now commonly classify a loan as "substandard" even when the loan is paying as

agreed, has adequate collateral and does represent a risk of loss to the bank. The proposed provision is too vague and either should be dropped altogether or be more specific about the real issue which is losses inherent in the bank's loan portfolio.

Additionally, federal and international bank regulators have adopted capital standards that uniformly apply to all institutions. They also define when a bank is adequately capitalized and when it is not. We should be careful not to establish a new set of rules in this area that are not needed.

71  
**SECTION 67 AS 06.05.437**

paragraph (c) "if the department determines that any officer... of the bank has been negligent, dishonest, reckless or incompetent, the department may order the board to remove that officer... If the board refuses...it shall be conclusive evidence of negligence of the board.

In effect this provision gives the department the right to fire employees of a bank. This is a clear example of "micro management," the department should regulate banks not manage them.

<sup>550</sup>  
**SECTION 06.05.481 AUTHORITY OF INTERSTATE OR INTERNATIONAL BANK TO BRANCH**

An international bank should be subject to the same rules and restrictions that cover domestic banks. There is a risk that an international bank could collect deposits from customers in the state, but not reciprocate with proportionate lending.

If new powers are granted to international banks, such as the ability to pledge assets to secure deposits, then this should be extended to domestic banks as well.

An international bank should not be granted an easier method to enter the state than is enjoyed by a domestic bank.

2/19/93 Work draft

RECODIFICATION OF THE ALASKA BANKING CODE  
SECTIONAL ANALYSIS

Section 1. Technical change. Alaska no longer issues a "charter," so references to that term are eliminated throughout the statutes.

Section 2. Technical change.

Section 3. This is current AS 06.05.025 and 06.05.040, mostly with minor technical changes. Recognizing that examiners should not be precluded from merely investing in banks, we have changed the provisions to allow an examiner to own up to 5% of the voting stock of another institution; this will allow simple investments but will not permit an examiner to have a controlling ownership interest in a bank.

Since the department examines all financial institutions, not just banks, the provisions relating to exams have been moved to AS 06.01, the chapter that applies to all financial institutions.

Section 4. Changed to bring the section up to date, given that the list of federal agencies in the current statute is inaccurate. The change will make the statute apply regardless of what changes occur in the future to the names of the federal agencies.

Also, at the banks' request, "corresponding" was removed in (2) to allow the department to equalize competition between financial institutions regardless of what they are called.

Section 5. Current AS 06.05.060(a) and (b). Only change is to clarify that this section applies only to records relating to financial institutions, not all records of DCED.

Section 6. (a) - (c). New cease and desist provisions, to more accurately set out the procedure used by the department; existing law has been confusing. These new subsections are generally taken from the FDIC Act (12 USC 1818(b)(1)) and the Alaska Securities Act (AS 45.55.200(a)), both of which have proven track records.

(d) Current (b), amended to make it clear that public hearings need not be held in cease and desist proceedings.

(e) Current (c) & part of (d), without substantive change; the rest of (d) has been moved to Section 8 of the bill.

(f) Current (e).

(g) Defines "unsafe or unsound practice."

Section 7. This section consolidates all penalty provisions from AS 06 relating to financial institutions. Existing penalty provisions, scattered throughout the code, are repealed in this bill.

(a). The criminal sentences on individuals are generally kept the same as in current law. However, this will raise the potential corporate sentences from the current \$20,000 (\$1000 for trust

companies) to \$200,000, under AS 12.55.035(c)(B). This subsection supersedes current AS 06.05.065(e), 06.05.090(c), 06.05.210(b), 06.05.235(d), 06.05.520, AS 06.20.320(b), and AS 06.25.320.

(b). Supersedes current AS 06.40.160(b).

(c). This is consistent with current AS 06.05.380(c), 06.05.500, and AS 06.25.060; current AS 06.05.510 seems to make it only a misdemeanor for the same violations, but a single consistent penalty is more appropriate in all these cases. Supersedes current AS 06.05.380(c), 06.05.500, 06.05.510, AS 06.25.060, 06.25.070, and AS 06.45.320.

(d). Under the Credit Union Act, this is currently a Class A felony (AS 06.45.330). The general criminal law makes defrauding creditors a misdemeanor for up to \$500, a Class C felony for \$500 to \$25,000, and a Class B felony for more than \$25,000 (AS 11.46.730(c)). We have decided to go with the Class C felony for these cases. Supersedes AS 06.05.490 and AS 06.45.330.

(e) and (f). For intentional violations of the code or the department's orders; taken from Securities Act, AS 45.55.200(b). Note that (e) also applies to people who cause others to violate the code or department orders. A person assessed an administrative penalty would have a right to a hearing under AS 06.01.030. The differential rates for institutions as opposed to individuals is common in other states. See FL and OR below. For point of reference, here is a summary of what some other states allow for administrative fines:

IN allows up to \$15,000 per violation (sec. 28-11-4-9).

GA allows \$1000 per day per violation, until corrected (sec. 7-1-91).

OR allows \$2500 per violation for individuals, \$50,000 for institutions (sec. 708.980).

FL allows \$10,000 per day if the violation is due to recklessness; and \$50,000 per day for individuals and \$500,000 per day for institutions if the violation is intentional (sec. 655.041).

By the way, the FDIC penalties are also very high -- \$25,000 per day for reckless actions, up to \$1 million per day for intentional violations (12 CFR 308.116).

(g). For non-intentional violations, taken from AS 45.55.200(c); also applies to those who cause others to commit a violation.

(h). Supersedes AS 06.01.010(c) and AS 06.05.505. These figures seem consistent with those used in other states. However, for late call reports the FDIC uses a sliding scale based on the size of the institution and whether the conduct is repetitious, charging from \$100 to \$2000 per day (12 CFR 308.132).

(i). Current AS 06.05.065(e).

Section 8. This is part of current AS 06.01.030(d), which is moved because it did not belong as part of the section on departmental orders.

Section 9. This section lists most of the department's powers with

respect to banks. To the extent the list refers to powers contained elsewhere in the code, the reference here is unnecessary, but it does offer a relatively comprehensive laundry list. In addition, (b)(13) and (14) give the department essentially unlimited authority to issue orders to get compliance with the code.

Current AS 06.05.005(3) has been repealed; neither the department nor the banks could determine what it meant or what was its purpose. Some current sections have been repealed elsewhere and included in this section. They are

(a)(2). AS 06.05.070 is repealed, and here it simply states that the department will provide for bank records retention through regulations.

(b)(1). Current AS 06.05.030, although we have removed the authority of the department to relieve a bank from the examination fee; this seemed appropriate given that fees for specific exams have been replaced with an assessment system. See AS 06.01.010(d).

(b)(6). Current AS 06.05.005(2).

(b)(7). Includes current AS 06.05.015. In (J), we have added authority to require loan loss reserves for loans classified as "doubtful." We also eliminated reference to "FDIC" exams and substituted "federal" exams, to include the Federal Reserve Bank.

Section 10. Amended to make the reporting requirements as to signatures consistent with FDIC requirements, so that the same reports can be used by the banks for both state and federal agencies.

Section 11. Here and in Section 12 of the bill, references to state "charter" have been removed as obsolete. Also, we removed reference to "lending" institutions to make the terminology consistent with that used in the rest of the code.

Section 12. Adds an exemption for mortgage loans existing at the time of hire. This section will no longer disqualify a person from working as a bank examiner if the person has a home mortgage loan with a state bank.

Section 13. Amended to clarify that all actions of the department under this chapter, not just the adoption of regulations, are designed to promote a sound banking system.

Section 14. These changes are primarily stylistic, to clarify the section's meaning.

Section 15. Amended to provide that the notice of charges for new accounts need only be provided where accounts are opened; for example, there is no reason to require this at a bank's automated teller machine (ATM).

We will also clarify in regulation that "clearly post" can include using pamphlets or brochures, provided they are easily accessible and there is some notice or sign indicating their

location.

Section 16. The phrase in current statute, "the extent necessary to meet the needs of customers," might be interpreted either to mean "to meet existing orders" or "to meet anticipated demands." This change, proposed by the banks, clarifies the meaning.

Section 17. The repealed language is all contained in other subsections -- the three day maximum closure is now contained in (e); the branch bank variance is now in (f). See Section 19, below.

Section 18. Many stylistic changes. We changed the notice requirement to be before closure, if possible, and otherwise as soon as possible after closure. Also, we removed the requirement that the Comptroller of the Currency be notified of these closures -- that is a matter that should be left to the comptroller and federal regulation. Finally, at the suggestion of First Bank, we clarified the final sentence in the subsection.

Section 19. (d). This is new, to cover the Key Bank "neighborhood day" situation.

(e). Currently in (a). The three day maximum closure applies not only to holidays, but also to board declared closures, but it does not apply to branch banks operating under a department approved different schedule.

(f). Currently the last sentence in (a).

Sections 20 & 21. At the request of the banks, we have changed this statute to clarify that bank records need not be released pursuant to subpoena. Given that subpoenas can be obtained routinely from the court clerk without judicial review, to permit release of the info in response to a subpoena would amount to an elimination of any customer confidentiality, and has resulted in a huge burden on the banks.

Section 22. This is new, also at the request of the banks. The current cost of responding to information requests is very high, and it is reasonable to provide the banks with reimbursement for these costs.

Section 23. First, the subsection is modified to apply to all banks -- the distinction of "commercial" banks is meaningless in Alaska law, and there was no reason for the exception for members of the federal reserve system. Second, the subsection has also been changed to provide that reserve requirements will be set by regulation be based on the bank's liquidity needs (rather than as a means of protecting against capital impairment). There has been confusion in the past over the purpose of the reserve requirements. It should be noted that the Comptroller sets reserve requirements in federal law, but those requirements are not based on a bank's liquidity needs, but rather as a method to manipulate the supply of

money in the U.S. Finally, we have changed "reserves" to "reserve fund" to avoid confusion with loan loss reserves.

Section 24. This change will give the department more discretion in regulating problem banks. If a bank falls below the reserve requirements, it will not automatically be prohibited from making loans or paying dividends -- that will be up to the department.

Section 25. This adopts the general lending limits used by the Office of the Comptroller of the Currency (OCC). The definition of "fully secured" will be put in regulation, probably requiring collateral equal to 100% of loan balance. The list of transactions not included in these calculations is generally taken from current subsection (b), with an addition in (2) of loans collateralized with assigned deposit accounts. This list is generally more liberal than OCC regulations, except for the requirement that cannery products and products in transit be insured to be exempt.

Section 26. Amended to make loans unconditionally guaranteed by the state, such as AIDEA, also not count toward the loans to one borrower limitations.

Section 27. Expands the prohibition for bank loans to include loans collateralized by stock of any of the bank's holding companies and to unsecured loans used to purchase stock of either the bank or its holding companies. Adds an exception to this rule for situations of bank acquisitions or mergers, with department approval.

Section 28. (g). New provision allowing the department to adopt regulations defining when a loan made in the name of one person or entity will be attributed to another for purposes of calculating the lending limits in this section. This is taken from the recommendations of Montana's advisory committee that reviewed that state's banking code.

(h). New subsection to allow the department to restrict loans of certain classes, based on the type of security (condominium loans, for example). It is not anticipated at this time that this section will be used, but the department needs this authority, particularly if another bank crisis were to arise.

Section 29. (a). Combines existing (a), (c), and (d). Specific loan-to-value (LTV) and term restrictions have been eliminated and replaced with a requirement that real estate loans be made consistent with sound bank policies. Also, the section's application is expanded to apply to all loans where the primary security for the loan is real estate, not just those on improved real estate; thus, current (e) and (f) were eliminated along with AS 06.05.206 and AS 06.05.211. Existing (g) has been eliminated as obsolete.

(b). From current subsection (b); changed to apply to all junior liens, not just seconds.

Section 30. Several changes are proposed to this subsection. First, we clarify that all normal lending restrictions apply to loans to directors, officers and bank employees, in addition to the specific limitations of this section. Second, directors are added to those subject to this section. Third, the threshold for application of the section is raised to \$100,000 in the aggregate, and up to \$250,000 for personal primary residences of directors, officers and employees. We have also repealed the final sentence, since loans are defined in AS 06.05.540 to include overdrafts, making this sentence unnecessary.

There has been some confusion in the past whether a bank's board of directors could act through a committee for the approval of these loans. AS 10.06.468, incorporated under this act, would allow this, except for loans to directors which would still require full board approval.

Section 31. This subsection has been amended to remove specific LTV and term restrictions, and make these loans generally subject to the same restrictions as all real estate loans under AS 06.05.207.

Section 32. Changed to make this merely a prohibition; penalties are provided in AS 06.01.035 for all violations of the code, including this section.

Section 33. This section has been confusing and somewhat controversial in the past. We have rewritten it to make sense. The standard adopted here - knowingly or with gross negligence - is strongly supported by the banks, because they feel that a simple negligence standard might discourage people from becoming bank directors.

Section 34. This section probably could be repealed, since federal law arguably preempts the state law. (We have repealed AS 06.05.220 for this reason.) However, for clarity, this section is left in. The reference to AS 06.05.220 has been changed to refer directly to the applicable federal statute.

Section 35. The section currently is incorrect in its reference to "real estate," since it actually applies to both real and personal property, so this has been fixed. Also, the section has been broadened in several respects, to allow a bank to hold

1) property used for promotional purposes, such as a boat; of course, any asset so held will have to be used exclusively for bank purposes;

2) a building in which bank offices are located, even if only a portion of the building is used for the bank (this is already being done by several Alaska banks, arguably in violation of present law); and

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

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

06.05.272.

Section 36. Conforming amendment only.

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

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

Section 39. Conforming amendment.

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

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

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

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

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

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

Section 46. This bill repeals the list of specific permissible bank investments in statute. These specific investments, as well as others that may be appropriate, will now be set out in the regulations. This is important, because new investment

opportunities seem to come up frequently, and requiring the department to get legislation passed each time has proven burdensome and unpredictable.

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

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

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

Section 48. Clarifies that these are alternative requirements.

Section 49. Prohibits a so-called "nonbank bank" - similar to WY sec. 13-9-302.

Section 50. (a). Makes the Alaska Corporations Code applicable to banks.

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

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

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

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

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

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

AS 10.06.370. Specifically applies only to regulated investment companies.

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

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

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

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

AS 10.06.522 - 10.06.526. Reorganization of corporations in

bankruptcy; this is covered for banks under liquidation provisions.

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

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

**Article 10 (AS 10.06.705 - 10.06.788).** Foreign corporations; covered under new article on interstate and international banking.

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

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

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

**AS 10.06.960.** Applies only to native corps.

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

Section 51. (a). Raises minimum capital requirements to \$2 million for banks in Anchorage and Fairbanks, \$1 million for other communities (to allow possible formation of small community banks). However, this clarifies that these are absolute minimums, and that the actual requirements will be set in each case by the department. (At present, all Alaska banks have capital amounts far greater than these minimums.)

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

(c). Technical amendments only.

Section 52. Present AS 06.05.310 provides for an assessment of shareholders procedure that the department may purportedly order when a bank's capital is impaired. Since this process is essentially unenforceable and, in our experience, unreasonable, this assessment procedure is repealed here and replaced with a simple process for the department to order a bank to increase capital, in whatever manner the bank chooses. This new section is taken from Indiana (sec. 28-13-4-7).

Section 53. Changed to permit bank stock redemptions with departmental approval.

Section 54. Changed to require prior department approval before any significant change in bank ownership or before a change in bank control.

Section 55. Clarified to ensure that all stock sales are subject to this requirement, not just those at the corporate formation stage.

[Note to Revisor: Please amend section title accordingly.]

Section 56. Present AS 06.05.345 is split; new AS 06.05.344 deals with the application for approval process, while AS 06.05.345 retains the provisions relating to articles of incorporation.

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

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

(c). Current AS 06.05.345(e).

(d). Current AS 06.05.345(f).

(e). Current AS 06.05.345(g).

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

(g). Current AS 06.05.345(i).

(h). Current AS 06.05.345(j).

Section 57. Changed to incorporate the Corporations Code, and then eliminates requirements already covered by that code. Also, (2) is clarified to make sure that no-par stock is not allowed, and (3) is clarified to allow articles to say "5 to 25" directors, instead of giving a specific number.

Section 58. Allows amendment of articles by a majority of shareholders, or more -- this is consistent with the Corporations Code, AS 10.06.504 - 10.06.508. As for filing amendments to articles, these will be done in the manner provided in the Corporations Code.

Section 59. Amended to clarify that certificate of incorporation comes first, certificate of authority later. Incorporation allows a bank corporation to set up a facility and get subscriptions paid in, but not to do any banking business. AS 06.05.395 has been merged with this subsection.

Section 60. (b)(1). This is the same as AS 06.05.380(b); the latter has been repealed. Also, the department does not require a bank to carry a specific amount for undivided profits, so that has been removed.

Current (b)(4). This is repealed because we will no longer be requiring FDIC insurance in all cases. See Section 62.

Section 61. Current AS 06.05.480.

Section 62. Changed to make FDIC insurance optional, at the department's discretion. This is primarily designed to allow for the formation of small community banks, and to allow other banks to use alternative insurance if it becomes available. [Note to Revisor: Please correct title to this section.]

Section 63. Conforming amendment.

Section 64. (a). Most of the requirements of this section that are deleted are covered in the Corporations Code, particularly AS 10.06.223.

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

Section 65. These are almost all technical changes, except for (f)(3), which is eliminated because we are eliminating the requirement for FDIC insurance. As for (a), the amounts have been raised for processing an application -- see comments to new AS 06.05.344 in section 56 of the bill. The definition for "mobile facility branch bank" is taken from 3 AAC 02.910(a)(5).

Section 66. ATM's will no longer be subject to general branching laws; there is no reason that the lengthy application process for a branch should apply to a bank's opening of an ATM.

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

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

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

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

Section 67. Repealed language will permit staggered terms for bank directors like that provided in the Corporations Code, AS 10.06.455.

Section 68. Added language will allow the qualifying minimum amount of stock that a director must own to be jointly held, and will allow the department to approve other situations when a director need not meet the minimum ownership requirements, such as where the bank is wholly owned by a bank holding company.

Section 69. (f). From current AS 06.05.437(b).

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

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

Section 70. (a). Repealed language is covered by AS 10.06.483(b). Second sentence is amended to allow the board to pick the best possible person for CEO of the bank, even if that person is not on the board; if the bank chooses a non-board member as CEO, that person becomes an ex officio member of the board, to make sure he/she is kept aware of what the board is thinking and doing.

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

Section 71. Although the department cannot actually order that an employee of a bank be fired -- that is the sole responsibility of the board -- this subsection will allow the department to essentially recommend an employee's removal, if necessary; if the board refuses, the directors risk personal liability should damages occur thereafter due to the fault of the employee. This change was recommended by the Conference of State Bank Supervisors (CSBS).

Section 72. Minor change to clarify that board meetings are held for many purposes, not just to investigate the affairs of the bank.

Section 73. (e). Allows teleconference board meetings; taken from the Corporations Code, AS 10.06.475(a).

(f). Present AS 06.05.238.

Section 74. Clarifies that dividend distributions are subject to possible restrictions under AS 06.05.007(c).

Section 75. Generally just technical changes; clarifies that requirements of this section are in addition to those in AS 06.05.442.

Section 76. Changed to allow a bank, with department approval, to carry a negative balance in the undivided profits (U.P.) account, and prohibits dividends until this negative U.P. account balance is replaced and the surplus account is fully restored.

Section 77. This section has been combined with AS 06.05.443.

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

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

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

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

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

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

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

Section 78. Modernized to allow for the maintenance of this record of shareholders in a form other than a book. Also, clarifies that inspection of the record is available for the department, while shareholders will have access to a list of current shareholders. Before each annual meeting, the bank will also need to comply with AS 10.06.413, which requires preparation of a list of shareholders, including names, addresses and numbers of shares owned.

Section 79 - 81. Technical amendments only.

Section 32. AS 06.05.466 currently set out a procedure for dissolution of a bank before issuing a certificate of authority. The proposed revisions to this section retain the same grounds for dissolution in these situations, but permit such a dissolution to be effected as with any other corporation under the Corporations Code.

Section 83. (a). This is generally taken from current AS 06.05.470(a), although it has been expanded to clarify that the department may close and take possession of a bank for violations of the banking laws or orders of the department.

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

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

Section 84. Repealed language is now contained in sec. 468(c).

Section 85. Clarifies that transfers in anticipation of department takeover for whatever reason, not just due to insolvency, are voidable. New language is taken from current AS 06.05.495, which is repealed.

Section 86.

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

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

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

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

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

AS 06.05.474. Current sec. 470(z).

Section 87. Many of these definitions are taken from the existing code. Ones that have been changed, or are new, are

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

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

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

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

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

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

(12). From AS 06.01.050(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Section 88.

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

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

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

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

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

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

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

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

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

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

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

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

AS 06.05.570. This is presently part of AS 06.05.235.

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

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

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

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

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

Section 90. Technical amendment.

Sections 91 and 92. Makes the Corporation Code applicable to banks.

Section 93. Conforming amendment.

Section 94. Clarifies that the Consumer Protection Act, while exempting transactions regulated under AS 06.05, applies to all other bank transactions, and in particular those between banks and their customers.

Section 95. Technical amendment.

Section 96. Repealers:

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

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

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

(b). The first sentence is already covered by AS 06.01.030 (in this bill, subsection (f)). The rest duplicates common law, except for the last sentence, which is a labor law issue and should not be in the code.

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

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

AS 06.05.035. Already covered by AS 06.01.010.

AS 06.05.040. Moved to AS 06.01.015(a).

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

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

(c). Already covered in AS 09.25.110.

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

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

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

AS 06.05.080. Already established in Alaska case law.

AS 06.05.085. Already covered by Alaska case law.

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

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

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

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

AS 06.05.190. See note to previous section.

AS 06.05.195. See note to repeal of AS 06.05.185.

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

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

(e). Already covered under sound lending practices.

(f). Obsolete.

AS 06.05.206. All special statutory restrictions on real estate loans are repealed in this draft of the code, except those still remaining in AS 06.05.207. Leasehold and development loans are now covered by that section.

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

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

AS 06.05.220. Already covered by federal law.

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

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

(d). Covered by comprehensive penalties section.

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

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

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

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

AS 06.05.260(b). This subsection was probably unenforceable,

definitely unclear and ambiguous, and arguably inconsistent with the state's depositor preference.

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

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

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

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

AS 06.05.300. Covered by AS 10.06.010.

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

(e). Repealed as obsolete.

AS 06.05.325. Covered by the Corporations Code.

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

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

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

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

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

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

AS 06.05.380. (a) and (b). are the same as 350(b)(1).

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

AS 06.05.390. Covered, with minor variations, by AS 10.06.490.

AS 06.05.395. Substance moved to and incorporated in AS 06.05.350(a).

AS 06.05.430. Covered by AS 10.06.405 and 10.06.415.

AS 06.05.435. (b). Covered by AS 10.06.223.

(e). Covered by AS 10.06.465.

AS 06.05.443. Combined with AS 06.05.445.

AS 06.05.465. Voluntary liquidations will now be covered under the same procedure as involuntary ones, i.e. under the control of the department. See AS 06.05.468(a) in Section 83 of the bill. Of course, if a bank wishes to voluntarily dissolve and there is no reason for the department to get significantly involved, the department can appoint the existing board as receiver.

AS 06.05.470. This section has been split up to make it more manageable. The substance of this section remains essentially unchanged.

(a). Substance moved to sec. 468(a).

(d). Now sec. 468(d).

(f). Now sec. 471(a).

(j) and (k). Now sec. 471(b) and (c).

(l) - (n). Now sec. 472.

(o) - (y). Now sec. 473.

(z). Now sec. 474.

AS 06.05.480. Moved to sec. 350(d).

AS 06.05.485. Moved to new sec. 262.  
AS 06.05.490. Included in comprehensive penalties section, AS 06.01.035.  
AS 06.05.495. Duplicative; same as sec. 470(g)(2).  
AS 06.05.500 - 06.05.520. Covered by comprehensive penalties section.  
AS 06.05.525. Covered by AS 06.01.030.  
AS 06.05.530. Obsolete.  
AS 06.20.320(b). Covered by new comprehensive penalties section, AS 06.01.035.  
AS 06.25.060. Covered by comprehensive penalties section.  
AS 06.25.070. Also covered by comprehensive penalties section.  
AS 06.25.320. Also covered by comprehensive penalties section.  
AS 06.30. Repeals state Savings Association Act.  
AS 06.40.160(b). Covered by comprehensive penalties section.  
AS 06.45.320. Covered by comprehensive penalties section.  
AS 06.45.330. Also covered by comprehensive penalties section.

Section 97. Transitional provisions.

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

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

Section 98. Notes possible Court Rule change.

Section 99. Effective date 1/1/94.

## NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF THE DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

Notice is given that the Department of Commerce and Economic Development, Division of Banking, Securities and Corporations, under the authority of AS 06.01.020, 06.05.005, 06.15.010, 06.20.340, 06.25.315, 06.30.025, 06.40.180, and 06.45.010, proposes to adopt, amend, and repeal regulations in Title 3 of the Alaska Administrative Code, dealing with regulations governing financial institutions, and relating to trust companies, Alaska small loan companies and premium finance companies. These proposals serve to implement, interpret, and make specific Ch. 26 SLA 1993, the Recodification of the Banking Code, AS 06, as follows:

1. 3 AAC 01.010 ADJUDICATORY HEARINGS (a) is amended to be made consistent with new AS 06.01.030. (d) is a new subsection adopted from the FDIC. (g) contains technical changes bringing it closer to the Administrative Procedure Act, AS 44.62.460.
2. 3 AAC 01.020 FACT-FINDING HEARINGS is repealed and reenacted to clarify that hearings are subject to the department's discretion.
3. 3 AAC 01.030 NOTICE OF FACT FINDING ACTION BY THE DEPARTMENT is repealed.
4. 3 AAC 01.905 RECORDS; DISCLOSURE AND LIMITATION ON DISCLOSURE (a)(4) is amended to ensure records relating to a particular person or institution are kept confidential. (b)(1) is repealed. (b)(2) is amended to clarify that it authorizes the release of general information and not specific information. (c) is repealed and (a)(4) is added. (e) is new to authorize a state chartered bank to release a copy of the department's exam to the bank's auditors.
5. 3 AAC 01.910 DEFINITIONS is amended for technical changes.
6. 3 AAC 02.010 RETENTION OR DESTRUCTION OF RECORDS (a) is amended to adjust retention schedule. (b) is new to permit state chartered banks to retain records by microfilm/microfiche.
7. 3 AAC 02.020 REPORTS TO THE DEPARTMENT is new to make specific appropriate forms for bank reports and provides for electronic and fax filings.

8. 3 AAC 02.030 EXAMINATIONS is new to accept an FDIC exam instead of conducting the department's own.
9. 3 AAC 02.110 RESERVES AGAINST DEPOSITS is repealed and readopted to set reserve requirements.
10. 3 AAC 02.112 DISCLOSURE OF ACCOUNT CHARGES is new to make specific posting of notices requirements.
11. 3 AAC 02.115 NOW ACCOUNTS is repealed.
12. 3 AAC 02.120 REPORTING LOANS OVER \$100,000 is repealed and reenacted to require the board to specifically identify each loan over \$100,000.
13. 3 AAC 02.122 LENDING STANDARDS is new to make specific the determination and documentation of a loan.
14. 3 AAC 02.125 LOAN LENDING LIMITS is repealed and reenacted to allow state chartered banks to lend in parity with national banks.
15. 3 AAC 02.130 IMPROVED REAL ESTATE is repealed.
16. 3 AAC 02.135 DEFINITION OF PROPERTY NOT NEEDED FOR BANKING BUSINESS (a) is amended to clarify that the provision applies to OREO. (b) is repealed. (c) is a new rule for personal property, which requires a faster resale than real property.
17. 3 AAC 02.141 ALTERNATIVE MORTGAGE INSTRUMENTS is repealed.
18. 3 AAC 02.145 AUTHORIZED ACTIVITIES FOR DOMESTIC BANK HOLDING COMPANIES (a) and (b) is amended to restrict activities of a domestic Bank Holding Company and its subsidiaries. (c) is amended for a technical change. (d) is repealed.
19. 3 AAC 02.150 PERMIT TO OPERATE A BANK HOLDING COMPANY is amended to provide for a one-time permit for a bank holding company with continued annual financial reports.
20. 3 AAC 02.155 EXTENSION OF CREDIT BY A BANK TO THE BANK'S HOLDING COMPANY OR SUBSIDIARIES OF THE HOLDING COMPANY (a) is amended to cover all holding companies, not just domestic ones. (b) and (c) are repealed and covered in 3 AAC 02.125.
21. 3 AAC 02.160 REQUIREMENTS TO FORM A DOMESTIC BANK HOLDING COMPANY (a) is amended to be consistent with the new Banking Code.

22. 3 AAC 02.165 EXISTING CORPORATION QUALIFYING AS A DOMESTIC BANK HOLDING COMPANY is repealed and covered in 3 AAC 02.150(b).
23. 3 AAC 02.170 CERTIFICATE OF AUTHORITY OF A DOMESTIC BANK HOLDING COMPANY is repealed.
24. 3 AAC 02.175 CHANGE IN CONTROL OF A BANK HOLDING COMPANY (a) is amended to require the department to approve changes in control of a domestic BHC. (b) is amended to require immediate subsequent notice for change in control of an out-of-state BHC.
25. 3 AAC 02.185 BANKING RELATED ACTIVITIES (a) and (b) are amended to be consistent with the new AS 06.05.272. (g) is new to permit state chartered banks to offer a courier service to their customers.
26. 3 AAC 02.190 LETTERS OF CREDIT (a) is amended to relax regulatory control. (c) was deleted.
27. 3 AAC 02.195 BORROWING is amended for technical changes.
28. 3 AAC 02.197 PLEDGE OF ASSETS is new to clarify AS 06.05.260.
29. 3 AAC 02.200 BANK SUBSIDIARIES is new to clarify permissible activities for state chartered bank subsidiaries.
30. 3 AAC 02.205 BANK INVESTMENTS is new and makes specific the new AS 06.05.270 (a) and (b).
31. 3 AAC 02.209 APPLICATION FOR CERTIFICATE OF INCORPORATION is new, splitting the old 3 AAC 02.210 into 2 sections - this new section and the new 02.210.
32. 3 AAC 02.210 APPLICATION FOR CERTIFICATE OF AUTHORITY (a)-(e) are repealed and contained in the preceding section and (f) and (g) have been amended to become (a) and (b).
33. 3 AAC 02.212 SOLICITATION MATERIALS (a) is amended to apply to any stock subscriptions. Minor changes have been made to information that must be disclosed to the department.
34. 3 AAC 02.215 APPLICATION FOR BRANCH OR CHANGE OF LOCATION (b) is amended for technical changes and is added to apply to international branching.
35. 3 AAC 02.217 APPLICATION FOR A MOBILE FACILITY is amended for technical changes.

36. 3 AAC 02.219 OFF-PREMISES CUSTOMER-BANK COMMUNICATION TERMINALS is repealed.
37. 3 AAC 02.310 MERGER (a) is amended to also apply to the situation where an interstate or international bank branches in Alaska through the purchase of an Alaska bank. (b) is amended to remove specific directives relating to internal corporate actions. (c) is deleted and moved to the application section.
38. 3 AAC 02.320 CONSOLIDATION is amended with revisions similar to the preceding section on Mergers.
39. 3 AAC 02.325 CONVERSION is amended with technical changes similar to the preceding section.
40. 3 AAC 02.330 ADOPTION OF CONVERSION, MERGER OR CONSOLIDATION PLANS and 3 AAC 02.340 ARTICLES OF CONVERSION, MERGER OR CONSOLIDATION are repealed.
41. 3 AAC 02.340 ARTICLES OF CONVERSION, MERGER OR CONSOLIDATION are repealed.
42. 3 AAC 02.350 APPLICATION FOR CONVERSION, MERGER, OR CONSOLIDATION is amended for technical changes to make the section apply to interstate and international bank mergers and consolidations.
43. 3 AAC 02.360 DISSENTING SHAREHOLDER RIGHTS is repealed and reenacted to simplify the process and adopt the corporation code process by reference.
44. 3 AAC 02.420 DEBT COLLECTION PRACTICES is repealed.
45. 3 AAC 02.910 DEFINITIONS is amended to simplify the definitions.

Notice is also given that any person interested may present written statements or arguments relevant to the proposed action by writing to:

Division of Banking, Securities and Corporations  
P.O. Box 110807  
Juneau, Alaska 99811-0807

so that they are received no later than AUGUST 20, 1993.

If you are a person with a disability who may need a special modification in order to comment on the proposed regulations, please contact Kristi Peel at (907) 465-2521 no later than August 13, 1993 to make any necessary arrangements.

This action is not expected to require an increased appropriation. Copies of the proposed regulations may be obtained by writing to the above or by telephoning (907) 465-2521.

The Department of Commerce and Economic Development, after the deadline stated above, will either adopt these or other proposals dealing with the same subject without further notice, or decide to take no action on them.



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Willis F. Kirkpatrick  
Director

DATE: 4-13-13

ADDITIONAL REGULATIONS NOTICE INFORMATION  
AS 44.62.190(d)


1. **Adopting agency:** Division of Banking, Securities, and Corporations
2. **General subject of regulation:** Implement, interpret and make specific SLA 1993, Ch. 26, the Recodification of the Banking Code.
3. **Citation of regulation:** 3 AAC 01.010; 01.020; 01.030; 01.905; 01.910; 02.010; 02.020; 02.030; 02.110; 02.112; 02.115; 02.120; 02.122; 02.125; 02.130; 02.135; 02.141; 02.145; 02.150; 02.155; 02.160; 02.165; 02.170; 02.175; 02.185; 02.190; 02.195; 02.197; 02.200; 02.205; 02.209; 02.210; 02.212; 02.215; 02.217; 02.219; 02.310; 02.320; 02.325; 02.330; 02.340; 02.350; 02.360; 02.420; 02.910.
4. **Reason for the proposed action:**
  - ( ) compliance with federal law
  - (X) compliance with new, or changed, state statute
  - ( ) development of program standards
  - ( ) other:
5. **Cost of implementation to the state agency and available funding (in thousands of dollars)**

	Initial Year FY	Subsequent Years
Cost	\$ -0-	\$ -0-
General funds	\$ -0-	\$ -0-
Federal funds	\$ -0-	\$ -0-

6. **Contact person for the regulations:**

Kristi Peel  
Administrative Assistant  
Division of Banking, Securities,  
and Corporations  
P.O. Box 110807  
Juneau, AK 99811-0807  
(907) 465-2521

7. **Origin of the proposed action:**
  - (X) staff of state agency
  - ( ) federal government
  - ( ) general public
  - ( ) petition for regulation change
  - ( ) other:

8.   
Willis F. Kirkpatrick, Director  
Division of Banking, Securities, and Corporations

Date: 7-12-93