

**ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672**  
**8350 SENATE LABOR & COMMERCE**

Debra Cave  
5401 East 30th, #2  
Anchorage, Alaska 99508

April 26, 1993

Senator Tim Kelly  
Alaska State Senate  
State Capitol (MS3100)  
Juneau, Alaska 99801-1182

Reference: HCS CSSB 149

Dear Senator Kelly:

I am writing to ask your support on HCS CSSB 149, part of the package of bills introduced to revamp the banking statute.

The concern of Alaska insurance agents is on page 24 of the bill:

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

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

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

When this version passed the Senate in late March, we were disappointed to see that an additional item INSURANCE SALES AND SERVICE had been included in the list of activities banks were authorized to engage in, through a subsidiary. This bill passed the Senate with a vote of 18-2. However, we were successful in having this item removed when the bill moved through the House committees.

I ask that you make sure INSURANCE SALES AND SERVICE stays out of this legislation. Thank you for your support.

Sincerely,



NOTES TO DRAFT OF BANKING REGULATIONS, TO BE ADOPTED  
TO TAKE EFFECT JANUARY 1, 1994

3 AAC 01.010. ADJUDICATORY HEARINGS.

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

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

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

3 AAC 01.020. FACT-FINDING HEARINGS.

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

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

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

3 AAC 01.905. RECORDS; DISCLOSURE AND LIMITATION ON DISCLOSURE.

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

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

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

Former (c) is repealed; see comments above.

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

3 AAC 01.910. DEFINITIONS.

Technical changes only.

3 AAC 02.010. RETENTION OR DESTRUCTION OF RECORDS.

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

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

3 AAC 02.020. REPORTS TO THE DEPARTMENT.

(a) Specifies that FDIC call reports are the appropriate forms for quarterly bank reports.

(b) Provides for electronic and fax filings.

(c) Requires an annual bank audit.

3 AAC 02.030. EXAMINATIONS.

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

3 AAC 02.110. RESERVES AGAINST DEPOSITS.

(a) New subsection, to set the reserve requirements; the language used is taken directly from former AS 06.05.200. Former AS 06.05.200 set the amounts at 20% of demand deposits and 8% of time and savings. This proposal simplifies this requirement to 15% of all deposits.

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

Other States:

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

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

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

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

(b) Current AS 06.05.200(b), repealed in the new code. Short-term CD's, deposits with the FHLB and FRB, government securities (which presumably are readily marketable), overnight repurchase agreements, and clearings have been added as permissive for calculating reserves, which will make it much easier for the banks to meet these requirements.

(c) Also part of current AS 06.05.200(b), repealed in the recodification and moved here.

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

(e) If reserves fall below 20%, the bank must submit its daily reports to the department at least weekly.

(f) If reserves fall below 15%, the bank must notify the department immediately.

Current (b) - (e) are repealed. (b) & (c) essentially are instructions for Reserve Reports that don't need to be in regulation - they can simply be included with the report forms. (d) & (e) are repealed because we will no longer accept federal reserve requirements, although the state requirements should be easy to meet, given the expansion of the types of acceptable assets.

3 AAC 02.112. DISCLOSURE OF ACCOUNT CHARGES.

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

3 AAC 02.115. NOW ACCOUNTS.

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

3 AAC 02.120. REPORTING LOANS OVER \$100,000.

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

3 AAC 02.122. LENDING STANDARDS.

This is a spin off of AS 06.30.507.

3 AAC 02.125. LOAN LENDING LIMITS.

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

(b) This is to correct a minor mistake in the new act, which arguably eliminates loan loss reserves as a part of the formula for loans to one borrower. We'll adopt this as a wildcard provision for now and attempt to correct the statute next year.

(c) & (d) There are many possible ways to define loans to one borrower, but the OCC regulations seem pretty good. This regulation attempts to paraphrase the OCC's, although in the process there has necessarily been some simplification. Please see 12 C.F.R. sec. 32.5.

3 AAC 02.130. IMPROVED REAL ESTATE.

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

3 AAC 02.135. DISPOSITION OF PROPERTY NOT NEEDED FOR BANKING BUSINESS.

(a) Clarifies that the provision applies to OREO. The language is also clarified -- the 20% write down is 20% of original book value, not remaining value.

FYI: Idaho requires total write-off of any property not disposed of within 2 years.

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

(c) This is a new rule for personal property, which generally requires a faster resale than real property. Key Bank requested that this rule apply only to tangible personal property, but not to things like royalty interests, patent rights, notes, etc. We discussed this issue at length, and it is the dept.'s position that if the bank can show that a particular piece of personal property should not be charged off in the manner prescribed, it should seek a waiver, which the dept. has the authority to do in any case.

3 AAC 02.141. ALTERNATIVE MORTGAGE INSTRUMENTS.

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

3 AAC 02.145. AUTHORIZED ACTIVITIES FOR DOMESTIC BANK HOLDING COMPANIES.

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

(c) Technical change.

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

3 AAC 02.150. PERMIT TO OPERATE A BANK HOLDING COMPANY.

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

3 AAC 02.155. EXTENSION OF CREDIT BY A BANK TO THE BANK'S HOLDING COMPANY OR SUBSIDIARIES OF THE HOLDING COMPANY.

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

(b) Repealed. The limitation to one borrower rule in 3 AAC 02.125 will cover this, to the extent that there is any potential problem.

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

3 AAC 02.160. REQUIREMENTS TO FORM A DOMESTIC BANK HOLDING COMPANY.

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

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

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

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

Repealed; once the department starts issuing permits, there's no reason to have certificates of authority, too.

3 AAC 02.175. CHANGE IN CONTROL OF A BANK HOLDING COMPANY.

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

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

3 AAC 02.185. BANKING RELATED ACTIVITIES.

(a) With our new statute on subsidiaries, AS 06.05.272, arguably a bank cannot engage in activities other than banking. However, the activities listed here, which really involve support services for banking operations, should be considered banking (hence the minor change in (b)).

(b)(3) The changes here clarify that a bank may still engage in what might be considered "insurance," provided that the activity is directly related to the business of banking, like credit insurance.

(g) New subsection, to permit banks to offer a courier service to their customers. The OCC recently adopted a rule for messenger services for national banks that is quite detailed. Our rule appears much more liberal than the OCC rule. Briefly, the OCC rule is

(1) a national bank can establish its own messenger service or use an outside service to do any "nonbranching" functions, which generally include securities brokerage and those functions performed by a loan production office;

(2) a national bank may use a third-party messenger service for branching functions (core banking activities such as receiving deposits, making loans, or paying checks) without running afoul of the branching rules; but

(3) where a national bank establishes a messenger service involved in branching functions, it must get approval for the service as a branch.

The dept. does not want to require a bank to get a branch license when it offers a courier service to its customers. Thus, we will simply authorize that activity as a bank-related activity under this section, provided the service gets prior approval of the dept. and subject to any conditions the department may put on the activity.

(h) Former AS 06.05.275(c).

3 AAC 02.190. LETTERS OF CREDIT.

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

3 AAC 02.195. BORROWING.

Technical changes; the existing regulation is incorrectly

worded and doesn't make sense. AG - why USC and CFR authority cites?

3 AAC 02.197. PLEDGE OF ASSETS.

This is to clarify an interpretation of AS 06.05.260 that has already been made by the department.

3 AAC 02.200. BANK SUBSIDIARIES.

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

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

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

3 AAC 02.205. BANK INVESTMENTS.

This is current AS 06.05.270(a) & (b), which must be placed in regulations under the recodification. (a)(8) has been changed from securities rated in the top three categories to top four, consistent with those permitted by the FDIC.

3 AAC 02.209. APPLICATION FOR CERTIFICATE OF INCORPORATION.

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

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

(c)(2) Provides that FDIC insurance is optional (it's subject to dept.'s approval), consistent with the changes in the code.

(c)(9) A projection of capital is appropriate, and consistent with that required for a branch application.

3 AAC 02.210. APPLICATION FOR CERTIFICATE OF AUTHORITY.

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

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

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

3 AAC 02.212. SOLICITATION MATERIALS.

(a) Expanded to apply to any stock subscriptions, even those

that occur to increase capital of an existing bank.

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

3 AAC 02.215. APPLICATION FOR BRANCH OR CHANGE OF LOCATION.

(b) We have made a few technical changes to make this subsection consistent with changes made in the recodification.

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

3 AAC 02.217. APPLICATION FOR A MOBILE FACILITY.

Same changes as in sec. 215.

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

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

3 AAC 02.310. MERGER.

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

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

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

3 AAC 02.320. CONSOLIDATION.

Same changes made here as were made in preceding section.

3 AAC 02.325. CONVERSION.

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

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

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

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

See notes to preceding section.

3 AAC 02.350. APPLICATION FOR CONVERSION, MERGER, OR CONSOLIDATION.

These are generally just technical changes to make sure the section applies to interstate and international bank mergers and consolidations. In (b), we removed the fee requirement, since the statutes do not provide for a fee in the case of a merger; the only exception is for international branching conversions under AS

06.05.555, which would be subject to a \$1000 fee under (b)(7). In (d), since the statutes don't provide when a party must request a hearing in these cases, we decided on 30 days.

3 AAC 02.360. DISSENTING SHAREHOLDER RIGHTS.

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

3 AAC 02.420. DEBT COLLECTION PRACTICES.

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

3 AAC 02.910. DEFINITIONS.

We have eliminated most of the definitions. Former (a)(1), (6), and (9) are terms no longer used in the regs. Former (5) and (7) are now defined in the code. Former (8) is different than the definition adopted in the code. Former (b) has been incorporated into AS 06.05.235. The new definition for a "bankruptcy clause" is taken from the regulations for the credit union act, 3 AAC 03.910(1). [NOTE TO AGO: The Editor's note may no longer be applicable and can probably be removed.]

**Section**

- 10. Adjudicatory hearings
- 20. Fact-finding hearings
- 30. (Repealed)

3 AAC 01.010 is amended to read:

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

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

or

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

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

(c) Notice of Hearing. Except for an emergency hearing under

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

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

(2) the time and place of the hearing;

(3) a statement of matters to be considered;

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

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

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

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

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

and inspect all documentary evidence made a part of the record.

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

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

(2) each party or party's counsel, but not both, may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on matter [MATTERS] relevant to the issues even though that matter was not covered in the direct examination, impeach a witness regardless of which party first called the witness to testify, and rebut [THE] adverse evidence [AGAINST HIMSELF];

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

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

a civil action; the rules of privilege are effective to the same extent that they are recognized in a civil action; irrelevant and unduly repetitious evidence shall [MUST] be excluded;

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

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

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

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

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

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

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

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

(j) [(i)] Final Orders. A final order must be in writing and stated in the record. A final order must include findings of fact and conclusions of law. All findings of fact must be based

exclusively on the evidence presented at the hearing and on matters officially noticed. Findings of fact must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A copy of a final order must be delivered or mailed to all parties and to their counsel of record, if any, within 10 days after the termination of the hearing.

(k) [(j)] Rehearings.

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

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

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

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

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

(2) Nothing in this section prohibits the department from rehearing, reopening, or reconsidering any matter in accordance with other applicable statutory provisions or on the

ground of fraud by the prevailing party or of procurement of the order by perjured testimony or fictitious evidence.

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

Authority: AS 06.01.030

AS 06.05.005(a)(2)

3 AAC 01.020 is repealed and readopted to read:

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

(1) an application for a proposed financial institution or branch under AS 06.05.344(g), 06.05.399(e) or 06.05.555(e);

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

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

(b) A hearing conducted under this section will generally follow the procedures set out in 3 AAC 01.010(c)-(i), and a written determination will be issued by the department taking

into consideration evidence in the department's records and evidence submitted at the hearing. (Eff. 4/4/79, Register 70; am / / ; Register \_\_)

Authority: AS 06.01.030

3 AAC 01.030 is repealed:

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

3 AAC 01.905 is amended to read:

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

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

(2) to representatives of federal agencies, other states, and foreign countries having supervisory authority over the activities of the financial institution or enterprises or

similar financial institutions or enterprises if those representatives are permitted to and do, upon request of the commissioner, disclose similar information respecting those financial institutions under their supervision;

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

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

(b) The commissioner will, in his discretion

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

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

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

(c) [NOTHING IN THIS SECTION PREVENTS ANY PERSON OR A FINANCIAL INSTITUTION COVERED BY THIS CHAPTER FROM HAVING ACCESS TO RECORDS, REPORTS, AND CORRESPONDENCE WHICH APPLY TO HIM OR THE INSTITUTION TO THE EXTENT THAT THE PORTIONS OF THE RECORDS, REPORTS, AND CORRESPONDENCE WHICH DO APPLY MAY BE SEGREGATED FROM THE PORTIONS OF THE RECORDS, REPORTS, AND CORRESPONDENCE WHICH DO

NOT APPLY TO HIM OR THE INSTITUTION.]

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

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

Authority: AS 06.01.025

AS 06.05.005(a)(2)

AS 06.15.010

AS 06.20.340

AS 06.25.315

[AS 06.30.025]

[AS 06.30.030]

AS 06.40.180

AS 06.45.010

3 AAC 01.910(6) and (7) are amended to read:

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

(7) "division" means the division of banking,

securities [, SMALL LOANS] and corporations. (Eff. 4/4/79, Register 70; am 6/6/82, Register 82; am / / , Register \_\_)

Authority: AS 06.05.005(a)(2)

AS 06.15.010

AS 06.20.340

AS 06.25.315

[AS 06.30.025]

AS 06.40.180

AS 06.45.010

**Article 1. Powers of the Department of  
Commerce and Economic Development**

**Section**

- 10. Retention or destruction of records
- 20. Reports to the department
- 30. Examinations

3 AAC 02.010 is amended to read:

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

**Key to Abbreviations**

P.S. or Opt. - Purpose Served or Optional

D - Destroy

Months - Figure with "mos."

Years - Figures

Permanently - P

## I. ADMINISTRATIVE

### MINUTE BOOKS

Minute books of directors', executive committees', stockholders',  
and other meetings .....P

### AUDITING AND ACCOUNTING

Accrual records .....1

Audit copy of debits & credits to loans and discounts .....1

Audit work papers .....3

Bank call reports .....5 [25]

Bank examiner's reports .....10 [P]

Budget work sheets .....Opt.

Daily reserve computations .....2

Difference records .....6

Earnings and dividends report .....10 [P]

Monthly reports to directors .....P

Reports to executive committees .....10 [P]

Securities vault, in and out tickets .....3

Tax records .....P.S. [25]

CAPITAL

Capital stock certificates, records or stubs .....P

Capital stock ledger .....P

Capital stock transfer register .....P

Dividend checks .....10

Dividend register .....10

Proxies .....2

Register of and cancelled certificates .....P [100]

GENERAL LEDGER

Daily statement of condition .....10 [P]

General journal .....1

General ledger .....10 [25]

General ledger tickets .....10

INSURANCE RECORDS

Bankers' blanket bonds .....3

Expired policies .....3

Records of policies in force .....3

Schedule of fire and other policies, and record of payment of premiums and sums recovered .....3

INVESTMENTS - BANK'S PORTFOLIO

Bond ledger .....10 [P]  
Brokers' confirmations .....3  
Brokers' statements .....3  
Descriptive literature on securities disposed of .....Opt.  
Buy and sell orders .....3

## LOANS AND DISCOUNTS

Audit copy of debits and credits to loans and discounts .....1  
Collateral cards .....10  
Collateral receipts .....10  
Collateral register .....10  
Collateral substitution slips (receipts) .....10  
Credit files (closed) .....Opt.  
Daily reports .....Opt.  
Debit and credit tickets .....10  
Journal .....10  
Liability ledger .....10  
Loan applications .....Opt.  
Loan committee minutes .....P  
Margin cards .....Opt.  
Note or discount register .....10  
Note or discount tickler .....2  
Resolutions (after loan is paid) .....6  
Payment receipts .....6

PERSONNEL

Attendance record (after leaving service) inc. "hours worked"  
.....5

Salary ledger .....5

Salary receipts .....5

Records of employees:

Applications, reference records, reports & results of  
examinations, service record, efficiency tests, etc., after  
leaving service .....25 [P]

II. CASH

DUE FROM BANKS

Advices from correspondents .....1

Affidavits/bonds of indemnity for duplicate drafts issued .....10

Bank statements .....2

Drafts .....10

Draft register .....10

Reconcilements:

    Domestic .....2

    Foreign .....5

Departmental or teller's proof sheets .....2

PROOF OF CLEARINGS

Clearinghouse settlement sheets .....3 mos.

Deposit proof sheets or tapes .....1  
In-clearing proof sheets .....1  
In-clearing tapes .....1  
Out-clearing proof sheets .....1  
Clearinghouse settlement checks .....10

**TELLERS**

Cash item record .....2  
Cash item register .....2  
Receipts for return items .....1  
Return item carbons .....1  
Teller's cash books .....Opt.  
Teller's cash tickets, orig. and carbon .....1  
Teller's recapitulation (with general ledger tickets) .....10  
Teller's scratch sheet or blotter .....3

**TRANSIT**

Outgoing cash letters .....1  
Proof sheets .....1

**INTERNATIONAL**

Daily debits and credits .....7  
Acceptances - Foreign exchange .....10 [50]  
Acceptances purchased books .....10 [50]  
Advice checks drawn for our accounts .....7

Application for postal registration .....7  
Cable copies .....7  
Cable orders .....7  
Miscellaneous checks & drafts .....7  
Collateral Records .....7  
Collections .....7  
Correspondence .....7  
Receipts for cash payments and securities delivered .....7  
Department record of checks & drafts drawn .....7  
Draft requisitions .....7  
Paid foreign drafts .....7  
Record of foreign exchange bought & sold .....7  
Federal reserve reports-Monthly report re foreign exchange  
position .....7  
Letters of credit registers .....7  
Letters of credit dead .....7  
Letters of credit issued .....7  
Incoming payments .....7  
Mail transfers .....P  
Individual liability cards .....7  
Paid credits .....7  
Money order requisitions .....2  
Preliminary contracts .....7  
Remittances .....7  
Bills of exchange .....7

Purchase and sales contracts (Cancelled) .....7  
Foreign drafts issued - Register .....10 [20]  
Telegraph code book .....P  
Travelers letter of credit guarantee .....7  
Teller's blotter .....3  
Contracts and contract cards .....7  
Departmental settlement sheets .....1  
Foreign exchange remittance sheets or books .....7

## SAVINGS ACCOUNTS

Deposits .....7  
Journals .....1  
Ledger cards or sheets .....7  
Control journal tapes .....Opt.  
Window bookkeeping machine control tapes .....Opt.  
Reports of accounts opened and closed .....Opt.  
Resolution (after closed) .....7  
Signature cards (after closed) .....7  
Signatures power of attorney .....7  
Trial balances .....3 mos.  
Affidavits Lost P/B .....7  
Withdrawal .....7\*  
Work sheets interest on time accounts .....Opt.  
\*EDIT - Unless returned to customer after microfilming.

## III. DEPOSITS

## ACCOUNT ANALYSIS

Analysis work sheets or cards .....Opt.  
Average balance cards .....Opt.  
Interest computation records .....Opt.  
Service charge records .....Opt.

## BANK (DUE TO) DEPOSITS

Advice of debit and credit, and memo entries .....Opt.  
Cash letters .....1  
Cash letters for remittance .....1  
Copies of advices of deposit .....Opt.  
Country bank ledger .....10  
Ledger journal .....1  
Reconcilements .....1  
Reports of accounts, opened and closed .....Opt.  
Resolutions (after account closed) .....7  
Signature cards (after account closed) .....7  
Trial balances .....6 mos.

## CERTIFICATES OF DEPOSIT

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

## COMMERCIAL DEPOSITS, INDIVIDUAL AND FIRM

Bookkeepers daily list of checks charged in total .....	1
Check book orders .....	Opt.
Copies of advices of deposit .....	1
Daily report of overdrafts .....	1
Deposit tickets .....	7*
Duplicate deposit tickets .....	Opt.
Individual ledgers .....	7
Individual ledger journal .....	1
Reports of accounts opened and closed .....	Opt.
Resolutions (after closing) .....	7
Signature cards (after closing) .....	7
Signature power of attorney (after closing) .....	7
Statement mailing order (after closing) .....	3
Statement receipt cards (after closing) .....	3
Statement stubs .....	7
Stop payment orders (after release) .....	1
Trial balances .....	1
Unclaimed deposits .....	P
Undelivered statements and cancelled checks .....	7

## OFFICIAL CHECKS AND DRAFTS

Cashier's checks .....	10
Cashier's check register .....	10
Certified checks .....	10

Certified check register .....10  
Drafts .....10  
Draft stubs .....Opt.  
Draft register .....10  
Expense checks .....10  
Expense check register .....10  
Expense vouchers .....10  
Letters of credit & documents .....10  
Receipts for certified checks .....10  
Requisitions .....Opt.

SAVINGS DEPOSITS

Deposit tickets .....7\*  
Duplicate deposit tickets .....Opt.  
Journal .....1  
Ledger cards or sheets .....7  
Control journal tapes .....1  
Passbooks (closed accounts) .....D  
Reports of accounts opened and closed .....Opt.  
Resolutions (after account closed) .....7  
Signature powers of attorney .....7  
Trial balances .....1  
Withdrawal receipts .....7

CHRISTMAS CLUB

Checks .....7

Check register .....7

Coupons (deposit ticket) .....7

Journal .....3 mos.

Ledger cards or sheets .....7

(a) if paid by cash and receipt taken on card or sheet .....7

(b) if paid by official check .....7

Signature cards (after closed) .....7

Trial balances .....1

Withdrawal receipts .....7\*

\*EDIT - Unless returned to customer after microfilming.

#### IV. MISCELLANEOUS COLLECTIONS

Collection receipts, carbons of .....3

Collection register .....3

Coupon cash letters, outgoing .....3

Coupon envelopes .....Opt.

Customers' file copies .....1

Incoming collection letters .....3

Installment contract or note records (after closing) .....10

#### CUSTOMER SERVICE

Brokers' confirmations .....1

Brokers' invoices .....1  
Brokers' statements .....1  
Escrow records (after closing) .....7  
Safekeeping records & receipts .....10  
Securities buy and sell orders .....7

GENERAL

Affidavits .....10  
Applications for travelers' checks .....1  
Attachments, garnishments .....7  
Attachment releases .....7  
Change of address orders .....1  
Code books (not returned) .....D  
Court order (after case closed) .....10  
Court order memorandum record .....10  
Death notices .....Opt.  
General correspondence .....3  
Incoming mail envelopes .....Opt.  
Night depository records .....1  
Paid bills, statements and invoices .....1  
Protest notices .....Opt.  
Receipts for check books .....Opt.  
Receipts (ordinary) .....7  
Stenographers note books and mechanical device records, and extra  
copies of letters .....Opt.

Telegrams, cable and radiogram copies .....3  
Telegraphic transfer receipts and records .....3  
Trust records .....1  
Vault records, opening and closing .....6 mos.

REGISTERED MAIL

Insurance declarations .....Opt.  
Marine insurance books .....Opt.  
Registered mail (incoming) record .....2  
Registered mail (outgoing) record .....2  
Return receipt cards .....1

SAFE DEPOSIT VAULT

Access tickets (after entry date) .....7  
Leases or contracts (closed) .....7  
Storage receipts .....3  
Ledger record of account .....3  
Rent receipts .....1

V. U.S. SAVINGS BOND

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

U.S. Savings Bond Series E applications .....As required in federal regulations.

(Memo: Applications must show bond

numbers. File alphabetically by years).

## VI. DATA PROCESSING RECORDS

### TAPE & DISK FILES

Computer program tapes/disks - When a change is made, retain old tape or disk one month to verify program.

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

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

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

### Miscellaneous data tapes/discs

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

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

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

### Other master files

Account history tapes - Until it is a Grandfather tape.

Statistical tapes - Until it is a Grandfather tape.

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

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

Grandfather - Monday

Father - Tuesday

Son - Wednesday

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

Authority: [AS 06.05.070(b)]

AS 06.05.005(a)(2)

3 AAC 02 is amended by adding new sections to read:

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

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

may accept a facsimile or an electronic signature in lieu of an original. If a bank files a report under the provisions of this section, the bank shall maintain the original, hard copy version of the report until the next examination by the department.

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

Authority: AS 06.05.005(a)(2)

AS 06.05.045

AS 06.05.438(d)

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

Authority: AS 06.01.015

AS 06.05.005(a)(2)

Article 2. Banking Practices

Section

- 110. Reserves against deposits
- 112. Disclosure of account charges
- 115. (Repealed)
- 120. Reporting loans over \$100,000
- 122. Lending standards
- 125. Loan lending limits
- 130. (Repealed)
- 135. Disposition of property not needed for banking business
- 140. (Repealed)
- 141. (Repealed)
- 145. Authorized activities for domestic bank holding companies
- 150. Permit to operate a bank holding company
- 155. Extension of credit by a bank to the bank's holding company  
or subsidiaries of the holding company
- 160. Requirements to form a domestic bank holding company
- 165. (Repealed)
- 170. (Repealed)
- 175. Change in control of a bank holding company
- 180. (Repealed)
- 185. Banking related activities
- 190. Letters of credit
- 195. Borrowing
- 200. Bank Subsidiaries

205. Bank Investments

3 AAC 02.110 is repealed and readopted to read:

3 AAC 02.110. RESERVES AGAINST DEPOSITS. (a) In order to protect liquidity, each state bank shall maintain a reserve fund equal to 15 percent of the bank's total deposits, exclusive of deposits that are secured under AS 06.05.260(a)(1).

(b) Only the following may be used in computing the reserves required under (a) of this section:

- (1) vault cash;
- (2) deposits of the bank held by a federal home loan bank or federal reserve bank;
- (3) certificates of deposit that mature in less than six months;
- (4) unencumbered government securities under 3 AAC 02.205(a)(1)-(6); and
- (5) the amount due from good and solvent banks located in the state or within the United States, the deposits of which are insured by the FDIC, including coin, demand balances with other banks located in the United States, federal funds sold, overnight repurchase agreements, clearings, and cash items in the process of collection.

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

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

(e) If a bank's reserve fund falls below 20 percent of the bank's total deposits, as calculated under this section, the bank shall submit to the department at least once each week copies of the daily records maintained under (d) of this section, until the reserve fund again exceeds 20 percent.

(f) If a bank's reserve fund falls below 15 percent of the bank's total deposits, as calculated under this section, the bank shall notify the department immediately. (Eff. 1/17/69, Register

28; am 12/13/70, Register 36; am 7/30/82, Register 83; am / / ,  
Register \_\_)

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

AS 06.05.200

3 AAC 02 is amended by adding a new section to read:

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

Authority: AS 06.05.005(a)(2)

AS 06.05.120

3 AAC 02.115 is repealed:

3 AAC 02.115. NOW ACCOUNTS. Repealed / / .

3 AAC 02.120 is repealed and readopted to read:

3 AAC 02.120. REPORTING LOANS OVER \$100,000. In each report to the board of directors under AS 06.05.438(c), the reporting officer shall specifically identify each loan made since the last

report that exceeds \$100,000. It is not the purpose of this section to require the reporting of the aggregate liability of a borrower, but to encourage directors to review larger loans to ensure that lending practices are consistent with the bank's established lending policies. (Eff. 1/17/69, Register 28; am 10/2/83, Register 87; am / / , Register \_\_)

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

[AS 06.05.205(a)]

AS 06.05.438(c)

3 AAC 02 is amended by adding a new section to read:

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

Authority: AS 06.05.005(a)(2)

AS 06.05.207

3 AAC 02.125 is repealed and readopted to read:

3 AAC 02.125. LOAN LENDING LIMITS. (a) For purposes of determining compliance with the loan lending limits in AS 06.05.205, the department will consider a loan fully secured if

the fair market value of the collateral for the loan exceeds the total principal, interest and other charges owed to or incurred by the bank on the loan.

(b) For purposes of calculating the maximum amount that may be loaned to one borrower under AS 06.05.205(b), the "total capital accounts of the bank" shall include the bank's capital accounts plus its loan loss reserves.

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

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

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

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

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

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

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Authority: AS 06.01.020  
AS 06.05.005(a)(2)  
AS 06.05.205

3 AAC 02.130 is repealed:

3 AAC 02.130. IMPROVED REAL ESTATE. Repealed / / .

3 AAC 02.135 is amended to read:

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

[(b) TO HOLD ANY PROPERTY NOT NEEDED IN THE CONDUCT OF A BANKING BUSINESS FOR LEASING PURPOSES, ALL PROVISIONS OF THE LEASING CONDITIONS SET OUT BY STATUTE SHALL BE MET.]

(c) The time limit for disposing of personal property not necessary for the convenient transaction or promotion of a banking business, including property acquired to satisfy loans, is one year from the date of the bank receives title to the property, unless the department approves a longer time limit in a particular case. Personal property not disposed of within the time limit of this subsection shall be charged off in its entirety. (Eff. 12/13/70, Register 36; am / / , Register \_\_)

Authority: AS 06.05.005(a)(2)

AS 06.05.230

AS 06.05.240

[AS 06.05.232]

AS 06.05.245

3 AAC 02.141 is repealed:

3 AAC 02.141. ALTERNATIVE MORTGAGE INSTRUMENTS. Repealed

/ / .

3 AAC 02.145 is amended to read:

3 AAC 02.145. AUTHORIZED ACTIVITIES FOR DOMESTIC BANK HOLDING COMPANIES [COMPANY]. (a) A domestic bank holding company may engage in activities of a financial, fiduciary or insurance nature, or other activities permitted for subsidiaries of banks under AS 06.05.272 and this chapter, and it may invest, without

limitation, in the shares of subsidiaries which engage in these activities, subject to the requirements of (c) of this section. The following are considered to be financial or [,] fiduciary [OR INSURANCE] activities: mortgage banking, factoring, leasing of equipment, property management, data processing services, armored car or messenger services, and operation of a credit bureau, travel agency, personal finance company, commercial finance company or trust company.

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

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

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

(3) [THE ACTIVITY OR INVESTMENT IS CLOSELY RELATED TO THE BUSINESS OF BANKING OR OF MANAGING OR CONTROLLING BANKS; AND

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

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

[(d) UPON OBTAINING THE WRITTEN APPROVAL OF THE DEPARTMENT, A DOMESTIC BANK HOLDING COMPANY OR SUBSIDIARY MAY ENGAGE IN ANY OF THE ACTIVITIES THAT THE FEDERAL RESERVE BOARD PERMITS OF HOLDING COMPANIES SOLELY SUPERVISED BY THAT BOARD.] (Eff. 7/31/69, Register 31; am 12/13/70, Register 36; am 4/6/79, Register 70; am 1/1/84, Register 88; am / / , Register \_\_)

Authority: [AS 06.01.020]

AS 06.05.005(a)(2)

AS 06.05.235

[AS 06.05.540(9)]

3 AAC 02.150 is amended to read:

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

(b) Before obtaining a permit, and at [AT] the close of each [ITS] accounting year, a [DOMESTIC] bank holding company shall submit a report to the department clearly reflecting its [YEAR-END] financial condition as of the end of its last

accounting year, and a profit-and-loss statement covering operations for the preceding accounting year [12 MONTHS]. The report must disclose the holding company's relationship with and investment in all subsidiaries as well as the nature and financial condition of their respective operations. For domestic bank holding companies, the [THE] report must be accompanied by an opinion of [PREPARED AND CERTIFIED BY] an independent certified public accountant.

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

Authority: AS 06.05.005(a)(2)

AS 06.05.235

AS 06.05.570

3 AAC 02.155 is amended to read:

3 AAC 02.155. EXTENSION OF CREDIT BY A BANK [SUBSIDIARY] TO THE BANK'S [DOMESTIC BANK] HOLDING COMPANY OR SUBSIDIARIES OF THE HOLDING COMPANY. [(a)] A [NO] subsidiary bank may not extend

credit, secured or unsecured, in excess of the bank's legal lending limit [,] to the bank's [DOMESTIC BANK] holding company or any of the holding company's [ITS] subsidiaries.

[(b) THE AGGREGATE OF ALL CREDIT EXTENDED TO A DOMESTIC BANK HOLDING COMPANY AND ITS SUBSIDIARIES BY A SUBSIDIARY BANK MAY NOT EXCEED 20 PERCENT OF THE TOTAL CAPITAL ACCOUNTS OF THE SUBSIDIARY BANK.

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

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

Authority: AS 06.05.005(a)(2)

AS 06.05.205(b)

AS 06.05.235

AS 06.05.570

3 AAC 02.160 is amended to read:

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

(1) THE ARTICLES OF INCORPORATION AND BYLAWS OF THE COMPANY DO NOT CONTAIN PROVISIONS INCONSISTENT WITH THE REGULATIONS IN THIS CHAPTER; AND

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

(b) In this section,

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

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

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

Authority: AS 06.01.025(a)

AS 06.05.005(a)(2)

[AS 06.05.060]

AS 06.05.235

[AS 06.05.240]

3 AAC 02.165 and 170 are repealed:

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

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

3 AAC 02.175 is amended to read:

3 AAC 02.175. CHANGE IN CONTROL OF A [DOMESTIC] BANK HOLDING

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

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

Authority: AS 06.05.005(a)(2)

AS 06.05.235

AS 06.05.570

[AS 06.05.540(9)]

3 aac 02.185 is amended to read:

3 AAC 02.185. BANKING RELATED [NONBANKING] ACTIVITIES. (a) A bank may engage in the activities described in (b) and (c) of this section even though those activities may [ARE] not be included under the definitions of either "banking" in AS 06.05.540(3) or "branch bank" in AS 06.05.540(4).

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

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

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

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

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

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

(2) assembling credit information;

(3) making property inspections and appraisals;

(4) securing title information;

(5) preparing applications for loans, including making any recommendations to the bank for action;

(6) soliciting investors to purchase loans from the bank and seeking to have these investors contract with the bank for servicing of those loans; and

(7) other similar services or activities which may be

allowed by the commissioner.

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

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

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

(g) A bank may operate a courier service, for the purpose of collecting or disbursing funds to customers, provided that

(1) the activities of the courier are directly related to the bank's business;

(2) the courier service is approved by the department before operations begin; and

(3) the bank complies with any restrictions or limitations that the department places on the courier activities.

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

Authority: AS 06.05.005(a)(2)

AS 06.05.075

[AS 06.05.540]

3 AAC 02.190(a) and (c) are repealed, and (d) and (h) are amended, to read:

(a) Repealed / / .

(c) Repealed / / .

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

(h) A letter of credit is not subject to this section [OR AS 06.05.275] if the letter of credit is secured by cash, or a cash equivalent such as a certificate of deposit issued by the bank

that issued the letter of credit. (Eff. 8/18/88, Register 107; am 1/14/89, Register 109; am / / , Register \_\_)

Authority: AS 06.01.015  
[AS 06.01.020]  
AS 06.05.005(a)(2)  
[AS 06.05.275]

3 AAC 02.195 is amended to read:

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

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

Authority: [AS 06.01.020]  
AS 06.05.005(a)(2)  
AS 06.05.255

12 U.S.C. 84(c)(7)

12 C.F.R. 32.103

3 AAC 02 is amended by adding new sections to read:

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

Authority: AS 06.05.005(a)(2)

AS 06.05.260(a)(1)

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

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

subsidiary by the department:

(1) those activities expressly authorized by AS 06.05.272;

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

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

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

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

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

Authority: AS 06.05.005(a)(2)

AS 06.05.272

3 AAC 02.205. BANK INVESTMENTS. (a) In addition to loans, subsidiaries, and acquisitions expressly authorized by AS 06.05

and this chapter, a state bank may deal in, underwrite, and invest in for its own account

(1) direct or guaranteed obligations of the United States, either directly or in the form of securities of, or other interests in, an open-end management type investment company or investment trust registered under 15 U.S.C. 80a-1 - 80a-64 (Investment Company Act of 1940), if

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

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

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

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

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

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

(6) obligations of instrumentalities of the United

States government including, but not limited to Federal Intermediate Credit Banks, Federal Land Banks, the Federal National Mortgage Association, and Banks for Cooperatives;

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

(8) secured corporate obligations ranked or graded in the top four categories by a nationally recognized rating service subject to the limitation of (b) of this section;

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

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

(11) the stocks, bonds, and other securities of  
(A) a corporation licensed under AS 10.13; or  
(B) a corporation attempting to become licensed under AS 10.13 if the corporation intends to use the proceeds to fulfill the tasks necessary to become licensed under AS 10.13.

(b) A state bank may not underwrite or invest for its own account an amount exceeding 15 per cent of its combined capital, surplus and undivided profits in any one issue of securities

authorized in (a)(4) and (5) of this section or with any one obligor of the securities authorized in (a)(7), (8), (9) and (11) of this section. (Eff. / / , Register \_\_)

Authority: AS 06.05.005(a)(2)

AS 06.05.270

### Article 3. Organization and Corporate Functions of Banks

#### Section

209. Application for a certificate of incorporation

210. Application for a certificate of authority

212. Solicitation materials

215. Application for a branch or change of location

217. Application for a mobile facility

219. (Repealed)

220. (Repealed)

230. (Repealed)

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

(1) a notice of intent to incorporate a bank;

(2) an application for a certificate of incorporation;  
and

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

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

(1) is signed by each incorporator;

(2) contains the proposed name to be reserved for the proposed bank;

(3) specifies the proposed location of the bank;

(4) indicates the residence address, mailing address, and occupation of each incorporator; and

(5) indicates the individual selected by the incorporators to accept notice from the department on behalf of all incorporators.

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

(1) all information required under AS 06.05.344(a);

(2) a completed FDIC new bank application, which may be obtained directly from the FDIC, if the bank intends to become a member of the FDIC;

(3) a copy of the proposed bylaws;

(4) a check or money order for \$2000 made payable to

the State of Alaska as a partial prepayment of investigation expenses incurred by the department in accordance with AS 06.01.010;

(5) a list of the services to be offered by the proposed bank;

(6) the names and addresses of potential large commercial customers of the proposed bank;

(7) an economic analysis to support the need and feasibility of the proposed bank;

(8) a proposed list of the amounts of stock to be subscribed and paid for by each incorporator;

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

(10) any additional information requested by the department.

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

(e) Expense Fund. An expense fund over which the department has withdrawal control must be established by the incorporators. All organizational expenses incurred in establishing the proposed

bank will be paid out of the expense fund, after being approved by the department. The expense fund must be established with the minimum balance required by the department before any withdrawals for pre-incorporation or other expenses are made. (Eff. / / , Register \_\_)

Authority: AS 06.01.010

AS 06.05.005(a)(2)

AS 06.05.344

AS 06.05.345

3 AAC 02.210(a) - (e) are repealed, and (f) is amended, to read:

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

(a) Repealed / / .

(b) Repealed / / .

(c) Repealed / / .

(d) Repealed / / .

(e) Repealed / / .

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

(1) a statement [STATEMENTS] as to whether the proposed bank will operate [be] on owned or leased property [WITHIN WHICH

IT WILL CONDUCT ITS BUSINESS] and, if leased, a [FULLY EXECUTED] copy of all lease documents, which must contain a bankruptcy clause;

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

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

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

(5) THE ITEMIZED BOOK VALUE OF] the proposed bank's investment in land, building, leasehold improvements, furniture, fixtures and equipment, [INVESTMENT IN STOCK OF A BANK BUILDING CORPORATION,] investment in other assets indirectly representing bank premises, and any proposed amount and method of depreciation [TO BE REFLECTED ON THE BOOKS OF THE PROPOSED BANK;]

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

(6) [(7)] an organization chart of the proposed bank showing the line of authority to be used by the proposed bank in

providing its services;

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

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

(9) additional information as requested by the department. (Eff. 12/13/70, Register 36; am 4/6/79, Register 70; am / / , Register \_\_)

Authority: [AS 06.01.010]

AS 06.05.005(a)(2)

AS 06.05.230

[AS 06.05.340]

[AS 06.05.345]

AS 06.05.350

[AS 06.05.380]

AS 06.05.385

[AS 06.05.395]

3 AAC 02.212 is amended to read:

3 AAC 02.212. SOLICITATION MATERIALS. (a) If a public solicitation of shareholders [STOCKHOLDERS] for a proposed bank or for an increase in capital of an existing bank is contemplated, all written material to be used for solicitation

must be submitted to the division for review and approval before use.

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

(c) Upon approval of the written material, the incorporators of a proposed bank may solicit subscribers until the capital stock is fully subscribed.

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

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

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

(g) When the subscriptions are fully paid and deposited in the escrow account, the incorporators on at least 20 days'

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

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

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

Authority: [AS 06.01.010]

AS 06.05.005(a)(2)

AS 06.05.345

AS 06.05.385

AS 10.06.223

3 AAC 02.215 is amended to read:

3 AAC 02.215. APPLICATION FOR A BRANCH OR CHANGE OF LOCATION. (a) The bank must apply to the division for a certificate of authority to operate a branch office or to change the location of the home office or branch office.

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

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

(2) a check or money order for \$1000 [\$500] made payable to the State of Alaska as a partial prepayment of investigation expenses incurred by the department in accordance with AS 06.01.010;

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

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

(5) the amount of fire and liability insurance coverage to be carried for the proposed office location and equipment, who will pay the premium, and, if paid by the

bank, the amount of payment[, ] and the annual premium for the coverage at the time of the application;

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

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

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

(9) a daily statement and statement of income and expenses for the bank current as of a [THE] date within thirty days preceding [OF] the application, provided there has been no material change in the bank's condition since the statements were prepared;

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

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

the proposed office;

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

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

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

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

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

(17) other materials as requested by the department.

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

(d) Upon written request from a bank [THE DEPARTMENT], after reviewing the past reports of examination of the bank [REQUIRED UNDER AS 06.05.025] and finding that the bank is in compliance with the department's recommendations in those reports, the department will, in its discretion, waive any of the application requirements set out in (b)(1) and (b)(3) - (15) of this section.  
(Eff. 12/13/70, Register 36; am 4/6/79, Register 70; am 12/31/80,

Register 76; am / / , Register \_\_)

Authority: AS 06.05.005(a)(2)

AS 06.05.399

AS 06.05.555

3 AAC 02.217 is amended to read:

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

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

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

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

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

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

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

(4) the proposed schedule indicating the time of day and days of the week that the proposed mobile facility would

provide banking services at the indicated locations and whether operated on a year-round or seasonal basis;

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

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

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

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

(9) other materials as requested by the department.

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

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

(d) Upon written request from a bank the department, after reviewing the past reports of examination of the bank [REQUIRED

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

Authority: AS 06.05.005(a)(2)

AS 06.05.399

3 AAC 02.219 is repealed:

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

#### Article 4. Liquidation, Dissolution, and Reorganization

##### Section

310. Merger

320. Consolidation

325. Conversion

330. (Repealed)

340. (Repealed)

350. Application for conversion, merger, or consolidation

360. Dissenting shareholder rights

3 AAC 02.310 (a) and (b) are amended, and (c) is repealed, to read:

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

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

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

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

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

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

(5) other provisions as required by the department.

(c) Repealed / / . (Eff. 4/6/79. Register 70; am / / , Register \_\_)

Authority: AS 06.05.005(a)(2)

AS 06.05.462

AS 06.05.555

3 AAC 02.320(a) and (b) are amended, and (c) is repealed, to read:

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

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

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

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

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

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

06.05.345; and

(5) other provisions as required by the department.

(c) Repealed / / . (Eff. 4/6/79, Register 70; am / / ; Register \_\_)

Authority: AS 06.05.005(a)(2)

AS 06.05.345

AS 06.05.462

AS 06.05.555

3 AAC 02.325(a) and (b) are amended, and (c) is repealed, to read:

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

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

- (1) the name of the bank proposing to convert;
- (2) the name of the bank into which it proposes to convert, referred to in this chapter as the "converted bank";
- (3) the terms and conditions of the proposed conversion;
- (4) the manner and basis of converting the shares of

the national bank into shares, other securities, cash, other property, or obligations, in whole or in part, of the converted bank or of any other bank or corporation;

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

(6) other provisions as required by the department.

(c) Repealed / / . (Eff. 5/1/80, Register 74; am / / , Register \_\_)

Authority: AS 06.05.005(a)(2)

AS 06.05.075

[AS 06.05.452]

AS 06.05.462

3 AAC 02.330 and 340 are repealed:

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

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

3 AAC 02.350 is amended to read:

3 AAC 02.350. APPLICATION FOR CONVERSION, MERGER, OR CONSOLIDATION. (a) The boards [CHAIRPERSON OF THE BOARD OR THE BOARD REPRESENTATIVE] of each bank proposing to convert, merge,

or consolidate shall jointly or independently submit to the department an application for permission to implement the plan.

(b) The application must include

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

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

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

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

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

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

(7) [(6)] if the transaction is a merger or consolidation involving an international or interstate bank, all

information required under AS 06.05.555(a) [A CHECK OR MONEY ORDER FOR \$1,000 MADE PAYABLE TO THE STATE OF ALASKA AS A PARTIAL PREPAYMENT OF THE DEPARTMENT'S INVESTIGATION EXPENSES]; and

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

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

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

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

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

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

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

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

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

(6) the title to or interest in real estate vested in the converted, surviving, or new bank does not revert nor is it

in any way impaired by a conversion, merger, or consolidation;

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

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

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

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

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

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

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

Authority: [AS 06.01.010]

AS 06.01.030

AS 06.05.005(a)(2)

AS 06.05.075

AS 06.05.462

AS 06.05.555

3 AAC 02.360 is repealed and readopted to read:

3 AAC 02.360. DISSENTING SHAREHOLDER RIGHTS. If a shareholder of an Alaska state bank objects to a consolidation, merger or conversion of the bank, the dissenting shareholder's rights shall be exercised under and governed by AS 10.06.574 - 10.06.582. (Eff. 4/6/79, Register 70; am 5/1/80, Register 74; am / / , Register \_\_.

Authority: [AS 06.01.010]

[AS 06.01.030]

AS 06.05.005(a)(2)

AS 06.05.075

AS 06.05.462

## **Article 5. Prohibited Practices and Sanctions**

### **Section**

410. Embezzlement by officers or employees

420. (Repealed)

3 AAC 02.420 is repealed:

3 AAC 02.420. DEBT COLLECTION PRACTICES. Repealed / / .

3 AAC 02.910 is repealed and readopted to read:

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

(1) "bankruptcy clause" means the following statement:

Notwithstanding any other provision in this lease, if the tenant or its successors or assigns becomes insolvent or bankrupt, or makes an assignment for the benefit of creditors, or if it or their interest in this lease is levied upon or sold under execution or other legal process, or if the bank to be operated on the demised premises is closed or taken over by a banking authority or the state or other supervisory authority, the landlord may terminate this lease only with the concurrence of the supervisory authority, and that supervisory authority will have the election to either continue or terminate the lease; however, if the lease is terminated, the maximum claim of the landlord for damages or indemnity for injuries resulting from the termination of the unexpired lease may not exceed the rent payable under this lease.

(2) "department" means the Department of Commerce and

Economic Development;

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

(4) "FDIC" means Federal Deposit Insurance Corporation;

(5) "FFIEC" means the Federal Financial Institutions Examination Council;

(6) "FHLBB" means the Federal Home Loan Bank Board. (Eff. 4/6/79, Register 70; am 3/29/80, Register 73; am 12/23/87, Register 105; em am 8/18/88 - 12/15/88, Register 107; am / / , Register \_\_)

Authority: [AS 06.01.020]

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

[AS 06.05.075]

[AS 06.05.235]

[AS 06.05.462(c)]

AS 06.05.540

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

# Alaska State Legislature

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



STATE CAPITOL, SUITE 101  
JUNEAU, ALASKA 99801-1182  
PHONE: (907) 465-3822  
FAX: (907) 465-3756

## SENATE LABOR AND COMMERCE COMMITTEE

3111 C STREET, SUITE 550  
ANCHORAGE, ALASKA 99503  
(907) 561-7612

### MEMORANDUM

**TO:** All Senators

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

**DATE:** March 31, 1993

**RE:** SB 149 - Banking Code Revision

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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 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.

Thank you.

# 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 99911-0807  
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