

ALASKA LEGISLATURE COMMITTEE FILES 1993-1994 8672

8351 SENATE LABOR & COMMERCE

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

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

Section III, Improve Economic Development Opportunities

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

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

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

Sincerely,



Willis F. Kirkpatrick
Director

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Summary of Senate Bill 149
Recodification of Alaska Banking Code

REVISIONS AND EXPANSIONS OF BANK POWERS

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

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

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

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

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

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

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

3. Revamps the bank lending statutes.

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

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

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

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

REVISIONS TO DEPARTMENT'S REGULATION OF BANKS**1. Changes the capital and reserve requirements for banks.**

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

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

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

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

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

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

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CHANGES TO THE DEPARTMENT'S ENFORCEMENT POWERS

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

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

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

Section 2. Technical change.

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

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

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

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

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

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

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

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

(f) Current (e).

(g) Defines "unsafe or unsound practice."

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

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

the same as in current law. However, this will raise the potential corporate sentences from the current \$20,000 (\$1000 for trust companies) to \$200,000, under AS 12.55.035(c)(B). This subsection supersedes current AS 06.05.065(e), 06.05.090(c), 06.05.210(b), 06.05.235(d), 06.05.520, AS 06.20.320(b), and AS 06.25.320.

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

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

(d). Penalizes receiving a deposit after being notified by the state or federal regulators that the institution is insolvent. Under the Credit Union Act, this is currently a Class A felony (AS 06.45.330). The general criminal law makes defrauding creditors a misdemeanor for up to \$500, a Class C felony for \$500 to \$25,000, and a Class B felony for more than \$25,000 (AS 11.46.730(c)). We have decided to go with the Class C felony for these cases. Supersedes AS 06.05.490 and AS 06.45.330.

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

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

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

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

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

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

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

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

(i). Current AS 06.05.065(e).

Section 8. This is part of current AS 06.01.030(d), which is moved

because it did not belong as part of the section on departmental orders.

Section 9. This section lists most of the department's powers with respect to banks. To the extent the list refers to powers contained elsewhere in the code, the reference here is unnecessary, but it does offer a relatively comprehensive laundry list. In addition, (b)(13) and (14) give the department essentially unlimited authority to issue orders to get compliance with the code.

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

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

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

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

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

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

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

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

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

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

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

teller machine (ATM).

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

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

Section 17. The repealed language is all contained in other subsections -- the three day maximum closure is now contained in (e); the branch bank variance is now in (f). See Section 19, below. The reduction of necessary prior notice of a holiday closure, from 15 to 7 days, was done at the request of Northrim Bank.

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

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

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

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

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

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

Section 23. First, the subsection is modified to apply to all banks -- the distinction of "commercial" banks is meaningless in Alaska law, and there was no reason for the exception for members of the federal reserve system. Second, the subsection has also been changed to provide that reserve requirements will be set by

regulation be based on the bank's liquidity needs (rather than as a means of protecting against capital impairment). There has been confusion in the past over the purpose of the reserve requirements. It should be noted that the Comptroller sets reserve requirements in federal law, but those requirements are not based on a bank's liquidity needs, but rather as a method to manipulate the supply of money in the U.S. Finally, we have changed "reserves" to "reserve fund" to avoid confusion with loan loss reserves.

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

Section 25. This adopts the general lending limits used by the Office of the Comptroller of the Currency (OCC). The definition of "fully secured" will be put in regulation, probably requiring collateral equal to 100% of loan balance. The list of transactions not included in these calculations is generally taken from current subsection (b), with an addition in (3) of loans collateralized with assigned deposit accounts. This list is generally more liberal than OCC regulations, except for the requirement that cannery products and products in transit be insured to be exempt. The definition of "products in transit" in (4) is taken directly from current regulation and is not a change in current law.

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

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

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

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

obsolete.

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

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

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

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

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

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

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

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

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

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

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

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

Section 36. Conforming amendment only.

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

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

Section 39. Conforming amendment.

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

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

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

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

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

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

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

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

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

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

Section 48. Clarifies that these are alternative requirements.

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

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

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

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

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

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

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

AS 10.06.370. Specifically applies only to regulated investment companies.

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

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

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

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

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

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

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

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

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

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

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

AS 10.06.960. Applies only to native corps.

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

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

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

(c). Technical amendments only.

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

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

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

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

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

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

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

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

(c). Current AS 06.05.345(e).

(d). Current AS 06.05.345(f).

(e). Current AS 06.05.345(g).

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

(g). Current AS 06.05.345(i).

(h). Current AS 06.05.345(j).

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

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

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

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

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

Section 60. Current AS 06.05.480.

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

Section 62. Conforming amendment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f). Present AS 06.05.238.

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

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

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

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

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

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

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

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

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

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

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

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

Section 78 - 80. Technical amendments only.

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

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

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

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

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

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

Section 85.

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

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

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

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

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

AS 06.05.474. Current sec. 470(z).

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

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

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

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

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

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

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

(12). From AS 06.01.050(3).

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 87.

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

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

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

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

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

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

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

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

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

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

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

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

AS 06.05.570. This is presently part of AS 06.05.235.

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

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

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

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

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

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

Section 90. Technical amendment.

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

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

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

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

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

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

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

Section 99. Conforming amendment.

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

Section 101. Technical amendment.

Section 102. Repealers:

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

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

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

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

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

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

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

AS 06.05.035. Already covered by AS 06.01.010.

AS 06.05.040. Moved to AS 06.01.015(a).

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

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

(c). Already covered in AS 09.25.110.

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

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

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

AS 06.05.080. Already established in Alaska case law.

AS 06.05.085. Already covered by Alaska case law.

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

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

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

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

AS 06.05.190. See note to previous section.

AS 06.05.195. See note to repeal of AS 06.05.185.

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

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

(e). Already covered under sound lending practices.

(f). Obsolete.

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

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

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

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

AS 06.05.220. Already covered by federal law.

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

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

(d). Covered by comprehensive penalties section.

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

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

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

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

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

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

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

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

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

AS 06.05.300. Covered by AS 10.06.010.

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

(e). Repealed as obsolete.

AS 06.05.325. Covered by the Corporations Code.

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

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

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

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

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

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

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

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

AS 06.05.390. Covered, with minor variations, by AS 10.06.490.
AS 06.05.395. Substance moved to and incorporated in AS 06.05.350(a).

AS 06.05.430. Covered by AS 10.06.405 and 10.06.415.

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

(e). Covered by AS 10.06.465.

AS 06.05.443. Combined with AS 06.05.445.

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

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

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

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

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

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

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

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

(z). Now sec. 474.

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

AS 06.05.485. Moved to new sec. 262.

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

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

AS 06.05.500 - 06.05.520. Covered by comprehensive penalties section.

AS 06.05.525. Covered by AS 06.01.030.

AS 06.05.530. Obsolete.

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

AS 06.25.060. Covered by comprehensive penalties section.

AS 06.25.070. Also covered by comprehensive penalties section.

AS 06.25.320. Also covered by comprehensive penalties section.

AS 06.30. Repeals state Savings Association Act.

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

AS 06.45.320. Covered by comprehensive penalties section.

AS 06.45.330. Also covered by comprehensive penalties section.

Section 103. Transitional provisions.

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

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

Section 104. Notes possible Court Rule change.

Section 105. Effective date 1/1/94.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. CSSB 149 (Fin)

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

Department Affected: Commerce and Economic Development
BRU: Banking, Securities and Corporations
Component: _____
COMPONENT SERIAL NO. 1233

EXPENDITURES/REVENUES:

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

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

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

POSITIONS:

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

Estimate of current year (FY 93) impact: 0

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

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

Phone: 465-2521
Date: _____

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

Date: 3/23/93

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FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. SB 149

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

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

EXPENDITURES/REVENUES:

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

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
FUND SOURCE:	0	0	0	0	0	0

FUNDING:

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

POSITIONS:

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

Estimate of current year (FY 93) impact: _____

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

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

Phone: 465-2521
 Date: March 19, 1993

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

Date: March 19, 1993

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February 3, 1993

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

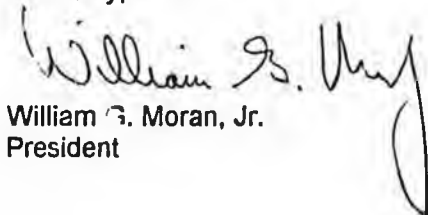
Dear Senator Kelly:

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

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

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

Sincerely,



William B. Moran, Jr.
President



ALPS FEDERAL CREDIT UNION

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

February 11, 1993

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

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

Dear Senator Kelly:

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

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

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

7.H.- Same reason as above.

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

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

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



WHERE YOU BELONG



ALPS FEDERAL CREDIT UNION

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

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

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

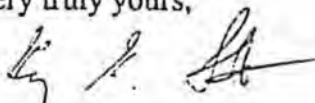
I don't have a problem with director, officer or employee overdrafts, but I do when it comes to an institution's customers. Isn't it the officer's business who is allowed to overdraw and who is not. Aren't we in a better position to determine who is creditworthy and who is not. This is another fee based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

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

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

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

Very truly yours,



Gary G. Sterton
President/CEO



WHERE YOU BELONG



ALPS FEDERAL CREDIT UNION

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

February 21, 1993

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

Subject: Banking Code Revision
Proposed Draft Banking Regulations

Dear Senator Kelly:

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

- 1) 3 AAC 02.110 Reserves Against Deposits
 - b.3. Certificates of deposit that mature in less than 12 months.

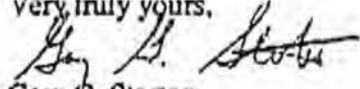
- 2) 3 AAC 02.135 Disposition of Property not Needed for Banking Business

a. Rather than require the institution to write-off 20% of an asset's book value after two years and an additional 20% annually thereafter, I would suggest that the requirement be redrafted as follows: "Once the bank receives title to real property, the asset shall be appraised by an independent fee appraiser. The asset will then be written down to 90% of the appraised value, less any prior encumbrances. Two years from the date of the acquisition, if the property still has not been sold, the property must be re-appraised by an independent fee appraiser and written down to 80% of the appraised value, less any prior encumbrances. Every two years, this practice will continue with the write-off increasing 10% annually, until the book value reaches \$10. The book value will remain \$10 until the property is disposed of by the bank." The present draft seemed a little aggressive to me. There may be problems with the property in question that may take time to correct or there may be timing issues related to the liquidation of the property that are economic, social or zoning in nature. A forced liquidation of the property may not be economically feasible.

b. This section deals with personal property assets and their liquidation. A one year limitation on the disposal of these assets seems a little too restrictive. Some personal property may have a unique market that may require a longer liquidation period. I would modify the draft to allow a two year disposal period prior to write-off. Whenever an asset is acquired that is not necessary to the bank's normal business, it should be appraised and written down to 90% of appraisal.

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

Very truly yours,


Gary G. Stenton
President/CEO



WHERE YOU BELONG



February 3, 1993

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

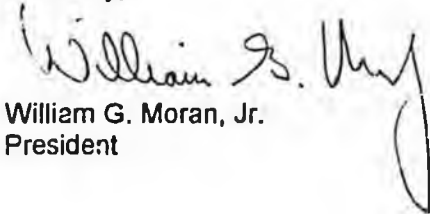
Dear Senator Kelly:

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

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

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

Sincerely,



William G. Moran, Jr.
President



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

February 11, 1993

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

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

Dear Senator Kelly:

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

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

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

7.H.- Same reason as above.

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

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Very truly yours,

Gary G. Sterton
President/CEO



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

February 21, 1993

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

Subject: Banking Code Revision
Proposed Draft Banking Regulations

Dear Senator Kelly:

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

1) 3 AAC 02.110 Reserves Against Deposits

b.3. Certificates of deposit that mature in less than 12 months.

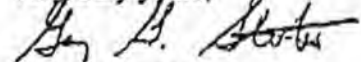
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a. Rather than require the institution to write-off 20% of an asset's book value after two years and an additional 20% annually thereafter, I would suggest that the requirement be redrafted as follows: "Once the bank receives title to real property, the asset shall be appraised by an independent fee appraiser. The asset will then be written down to 90% of the appraised value, less any prior encumbrances. Two years from the date of the acquisition, if the property still has not been sold, the property must be re-appraised by an independent fee appraiser and written down to 80% of the appraised value, less any prior encumbrances. Every two years, this practice will continue with the write-off increasing 10% annually, until the book value reaches \$10. The book value will remain \$10 until the property is disposed of by the bank." The present draft seemed a little aggressive to me. There may be problems with the property in question that may take time to correct or there may be timing issues related to the liquidation of the property that are economic, social or zoning in nature. A forced liquidation of the property may not be economically feasible.

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

Very truly yours,


Gary G. Stenton
President/CEO



WHERE YOU BELONG

City Commerce
CORPORATION

February 15, 1993

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

Re: Draft Legislation revising Title 6

Dear Senator Kelly:

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

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

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

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

The Honorable Tim Kelly
Page two

February 15, 1993.

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

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

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

Thank you for your consideration.

With best regards,

James M. Crawford
President & CEO

Outline of Presentation on Recodification of the Alaska Banking Code
Senate Labor and Commerce Committee, February 23-25, 1993

Corrections to sectional analysis:

1. Page 14 -- Section 87(3) should be removed. This refers to the changes we are proposing in our amendments, not the work draft.
2. Page 17, 9 lines from the bottom: Reference to AS 06.05.521 should be AS 06.05.570.

BANK POWERS

1. Sets up entirely new article on interstate and international banking, to allow foreign and other US banks to enter the Alaska marketplace. Section 88, beginning on page 51.

A. Either interstate or international bank can purchase an Alaska state or national bank. Proposed AS 06.05.550(a).

B. An international bank may establish a new branch in Alaska -- an interstate bank cannot, and must buy an existing Alaska bank or branch. Proposed AS 06.05.550(b).

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

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

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

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

3. Revamps the lending statutes; the highlights:

A. Adopts general lending limits (i.e. the amount that a bank may loan to one person or entity) used by the OCC, which have applied in Alaska for years under a wildcard regulation. Proposed AS 06.05.205(b), section 25. Thus, statutes will be consistent with current practice.

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

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

D. At the request of the banks, we amended AS 06.05.215 (section 33 of the bill) to provide personal liability for directors or officers for loans made in violation of law or bank policies only when gross negligence is proven.

4. Expands the types of property that a bank can own to include (A) property used for promotional purposes, such as a boat, (B) a building in which the bank operates, even if the bank rents out a portion of the property; and (C) real estate for future bank expansion. Proposed AS 06.05.230, section 35.

BANK REGULATION

1. Changes the capital and reserve requirements for banks.

A. Reserves. Proposed AS 06.05.200, sections 23 and 24. Provides that reserve requirements will be set by regulation. Current law provides for reserves of 20% of demand deposits and 8% of time and savings deposits. The current proposed figure is 15% of all deposits (see proposed 3 AAC 02.110(a)). Although this figure is arguably higher than the old numbers, we also propose greatly expanding the list of assets that can be considered for reserve purposes. According to the department's calculations, the new proposal will not significantly raise or lower current requirements. However, if any bank can demonstrate that our calculations are wrong, we are prepared to change -- our intent is simply to find a single figure that approximates the current requirements.

B. Capital. Proposed AS 06.05.305, section 51. Raises minimum capital requirements to \$1 million in general, and \$2 million for banks in Anchorage or Fairbanks. These are minimums -- the department will set the actual requirement in each case. The smallest current Alaska bank has \$7.9 million.

2. Makes the Alaska Corporations Code generally applicable to Alaska state banks. Proposed AS 06.05.301, section 50. This will eliminate the essentially duplicative statutes with respect to bank formation and filing requirements.

3. Sets up a permitting system for bank holding companies. See proposed AS 06.05.235(b), section 38, and AS 06.05.570(a), section 88.

4. Makes FDIC insurance optional, although subject to departmental waiver only. Proposed AS 06.05.355(a), section 62. If waived, presumably there will need to be some alternative protection for depositors (see international banking, for example).

5. Repeals State S&L Act. Current AS 06.30, repealed in the general repealer section. Willis Kirkpatrick will discuss this item.

ENFORCEMENT

1. Consolidates penalty provisions of Title 06 into one section, proposed AS 06.01.035 (section 7 of the bill), and adds new provisions to allow the department to assess administrative penalties for

violations of the code or department regulations or orders. See proposed AS 06.01.035 (e) - (g). See sectional analysis, page 2, for a description of what some other states and the feds do in this area.

2. Revises sections relating to bank liquidations. Proposed AS 06.05.466 - 474, sections 82 - 86. During the 1980's when several Alaska banks closed, the department discovered that its liquidation statutes were generally pretty good, but a few changes were needed. In particular, the Supreme Court held in Hoffman v. State that although the constitution might not require a hearing before the department takes possession of a bank, the statutes do. The changes proposed will clarify that this hearing may be closed to the public (see proposed AS 06.01.030(d)). In fact, it is the department's intention to hold a closed hearing with the board in these cases at a board meeting, much like the board meeting held in the past when a bank was in trouble.

3. Provides that the department may remove a director from a bank's board under certain, enumerated conditions, generally where the director's actions are threatening the soundness of the bank. Proposed AS 06.05.435(g), section 69.

Law Office of Jeff Bush
Senate Building
175 S. Franklin St., Ste. 318
Juneau, AK 99801
(907)463-4150
Fax: 463-4122

February 24, 1993

Mr. Gary G. Sterton
President/CEO
ALPS Federal Credit Union
P.O. Box 1889
Sitka, AK 99835

Dear Mr. Sterton:

I am an attorney in Juneau. Last fall, I was hired by the State Division of Banking, Securities and Corporations to work with them in drafting a new Alaska Banking Code, hopefully to be introduced during this legislative session. Senator Kelly has been kind enough to help us in our effort, and assuming there is a general consensus that the bill is a good idea, he has agreed to have it introduced.

In that regard, I understand he sent you a copy of my January 20 bill draft and asked for your comments. I have been given a copy of your letter of February 11, in which you set out several concerns you have with the bill, and I would like to respond to each of them. I have enclosed a copy of the most recent bill draft, prepared by the Legislative Affairs Agency, and I will refer to the sections as they are numbered in that work draft.

Your first comments relate to the department's enumerated powers in proposed AS 06.05.005(b)(7)(G) and (H), in section 9 of the bill at page 8. First, please note that the language you criticize exists in current law, AS 06.05.015(7) and (8), and has merely been moved to a new location in the recodification. We are aware of no problems or complaints with the implementation of these provisions in the past. Also, you are correct that under certain circumstances a bank might wish to take a so-called blind lien on real property. The provisions to which you refer allow this, but also allow the department, if it believes insurance or evidence of title should be obtained, to require the bank to get it.

You also state that the department should not have the authority to require 50% of an asset to be written off if the asset is classified as "doubtful." See proposed AS 06.05.005(b)(7)(J), section 9 at page 8. Again, this is only an option for the department and certainly will not be implemented in every case. However, where a loan is doubtful and the prospects for repayment are, indeed, questionable, it is not unreasonable for the department to require the bank to write off some portion of that loan.

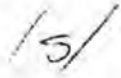
Your comments with respect to proposed AS 06.05.211, section 31 at page 16, are well-taken and are, in fact, the reason that the section is drafted the way it is. Please note that the language that is being *removed* from the present code is the language in brackets. Thus, the proposed version has removed all loan-to-value requirements, appraisal requirements, and minimum payment requirements. In fact, the problems you identify exist in current law, and are one major reason we have proposed a total rewrite of the lending statutes.

You also criticize AS 06.05.212(a), section 32 of the work draft, which restrict certain overdrafts. Again, I must point out that this is simply a restatement of current law, which has not proven to be a problem to date. Please note that the section only prohibits bank personnel from *knowingly, willfully and persistently* allowing someone to overdraw an account; this is a very high standard, and if met, I believe this would constitute an unsafe or unsound practice.

Finally, you mention AS 06.05.215, section 33 of the bill, relating to the liability of officers and directors for certain behavior. First, I call your attention to current AS 06.05.215, which although confusing and poorly written, arguably makes an officer or director liable for mere negligence in lending decisions. This new proposed language, which was requested by and crafted with the assistance of state bank representatives, changes the law to make it clear that directors and officers can only be held liable for bad loans when they made the loan in willful violation of law or bank policy, or with gross negligence. This standard is eminently fair; I should point out that the FDIC is far less generous in its standards of conduct.

Thank you again for your comments. I hope this letter alleviates your concerns. Please call or write me if you have any other suggestions or would like to discuss this further with me.

Sincerely,


Jeffrey W. Bush
Attorney

enclosure: 2/19/93 Work draft

cc: Willis Kirkpatrick, Director
Division of Banking, Securities and Corporations
Senator Tim Kelly

8-LS0495E
Bannister
3/2/93

SENATE BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced:

Referred:

A BILL

FOR AN ACT ENTITLED

1 "An Act revising the laws governing financial institutions and relating to trust
2 companies, the Alaska Small Loans Act, and the Premium Financing Act;
3 amending Alaska Rule of Criminal Procedure 17 and Alaska Rule of Civil
4 Procedure 45(b); and providing for an effective date."

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

6 * Section 1. AS 06.01.010(e) is amended to read:

7 (e) An exam fee or other charge assessed to a state [STATE-CHARTERED]
8 financial institution under this section may not exceed a fee or other charge assessed
9 for the same type of exam or service to a similarly situated federally-chartered
10 financial institution.

11 * Sec. 2. AS 06.01.010(f) is amended to read:

12 (f) In this section "deposit institution" means a state financial [AN] institution
13 [CHARTERED UNDER THIS TITLE] that has obtained authority from the department
14 to receive deposits of the type eligible to be insured by an agency of the federal

1 government.

2 * Sec. 3. AS 06.01 is amended by adding a new section to read:

3 Sec. 06.01.015. EXAMINATIONS. (a) Financial institutions regulated under
4 this title are subject to at least one examination each year. The department may
5 conduct additional examinations at its discretion.

6 (b) The department shall select one or more competent persons to make
7 examinations of financial institutions. The examiner shall take and subscribe an oath
8 that

9 (1) the examiner will honestly and impartially examine into and report
10 the condition of the institution as to assets and liabilities and other information
11 required by the department;

12 (2) the examiner will not disclose the information the examiner obtains
13 through the examination to a person other than the department;

14 (3) at the time of employment, the examiner is not obligated to, or the
15 owner of an interest in, the institution and is not an officer or shareholder of the
16 institution;

17 (4) the examiner does not own more than five percent of the voting
18 shares in another financial institution in the state; and

19 (5) the examiner is not an officer or employee of another financial
20 institution in the state.

21 (c) The department shall promptly call to the attention of the directors of an
22 institution irregularities in the conduct of the financial institution's business and any
23 violations. The department shall send a copy of the report of examination to the
24 institution examined.

25 * Sec. 4. AS 06.01.020(a) is amended to read:

26 (a) Notwithstanding other provisions of this title, the department
27 [COMMISSIONER] may by regulation authorize financial institutions, except licensees
28 subject to AS 06.20 or AS 06.40, to exercise any of the powers conferred upon, or to
29 be subject to any of the limitations imposed upon, a [FEDERALLY CHARTERED
30 BANK, TRUST COMPANY, SAVINGS ASSOCIATION, FEDERALLY
31 CHARTERED CREDIT UNION, OR OTHER] federally chartered financial institution

1 doing business in this state with deposits insured by an agency of the federal
2 government [WHICH IS SUBJECT TO THE REGULATIONS OF THE UNITED
3 STATES COMPTROLLER OF THE CURRENCY, THE FEDERAL RESERVE
4 BOARD, THE FEDERAL HOME LOAN BANK BOARD, THE FEDERAL DEPOSIT
5 INSURANCE CORPORATION, THE NATIONAL CREDIT UNION
6 ADMINISTRATOR, OR THE SUCCESSOR OR SUCCESSORS OF THEM], if the
7 department [COMMISSIONER] finds that the exercise of the power or imposition of
8 the limitation both

9 (1) serves the public convenience and advantage; and

10 (2) equalizes and maintains the quality of competition between state
11 [STATE-CHARTERED] financial institutions and [CORRESPONDING] federally
12 chartered financial institutions.

13 * Sec. 5. AS 06.01 is amended by adding a new section to read:

14 Sec. 06.01.025. RECORDS OF DEPARTMENT. (a) Information in the
15 records of the department obtained through the administration of this title is
16 confidential, is not subject to subpoena, and may be revealed only with the consent of
17 the department.

18 (b) The department shall retain reports of examinations for five years.

19 * Sec. 6. AS 06.01.030 is repealed and reenacted to read:

20 Sec. 06.01.030. ORDERS AND INJUNCTIONS; NOTICE AND HEARINGS.

21 (a) Whenever it appears to the department that a person is engaging, has engaged, or
22 is about to engage in an unsafe or unsound practice in conducting the business of a
23 financial institution, or is violating, has violated, or is about to violate a provision of
24 this title or a regulation adopted or order issued under this title, the department may

25 (1) issue and serve on the person a notice of intent to issue an order
26 directing the person to cease and desist from continuing the act or practice, or
27 imposing a penalty under AS 06.01.035(e) - (g); or

28 (2) bring an action in the superior court to enjoin the act or practice.

29 (b) A notice issued under (a)(1) of this section must contain a statement of the
30 facts constituting the alleged violation or the unsafe or unsound practice, and must give
31 reasonable notice of and an opportunity for a hearing to determine whether an order

1 to cease and desist the act or practice should be issued. If a hearing is not requested
2 within 30 days, or if the person served or the person's representative fails to appear
3 at the hearing, the person is considered to have consented to the issuance of the order,
4 and the department may issue the order to cease and desist. If the department finds
5 at the hearing that a violation or an unsafe or unsound practice has been established,
6 the department may issue the order to cease and desist.

7 (c) A cease and desist order issued under (b) of this section may impose a
8 penalty under AS 06.01.035(e) - (g) and may require the person to cease and desist
9 from the act or practice and to take affirmative action to correct the conditions
10 resulting from the act or practice.

11 (d) Notwithstanding the other provisions of this section, the department may
12 issue a temporary cease and desist order at the same time that the department issues
13 a notice under (a)(1) of this section. The department may not issue a temporary cease
14 and desist order under this subsection without a prior hearing unless the order is issued
15 for the sole purpose of preserving the status quo and preventing damage to a financial
16 institution pending completion of any hearing. A temporary cease and desist order
17 issued under this subsection remains in effect until a final order is issued under (b) of
18 this section or until otherwise terminated by the department, except that the order may
19 not remain in effect for more than 60 days.

20 (e) Except for notices issued under (a)(1) of this section, the department shall
21 give public notice of each proposed action, but the department is not required to hold
22 a hearing before taking the action unless it receives written opposition to the proposed
23 action. Written opposition must be filed with the department within the time specified
24 by the department. In cases involving extraordinary circumstances requiring immediate
25 action, the department may take action without notice and public hearing, but upon
26 application to rescind the action taken, the department shall promptly hold a hearing
27 on the application.

28 (f) Hearings required or authorized under this title are not subject to
29 AS 44.62.330 - 44.62.630, except as required by AS 44.62.560 and 44.62.570. The
30 department shall adopt regulations, consistent with the provisions of this title,
31 establishing procedures for hearings held under this section.

1 (g) For the purpose of hearings, investigations, or other proceedings under this
2 title, and except as otherwise provided in this title, the department or an officer
3 designated by the commissioner may administer oaths and affirmations, subpoena
4 witnesses, compel the attendance of witnesses, take evidence, and require the
5 production of books, papers, correspondence, memoranda, agreements, or other
6 documents or records that the department considers relevant or material to the inquiry.

7 (h) In this section, "unsafe or unsound practice" means

8 (1) operating a bank while it is in an unsafe or unsound condition;

9 (2) doing an act that violates a law or order of the department, or the
10 bank's articles or bylaws; or

11 (3) doing an act reasonably likely to result in a bank's condition
12 becoming unsafe or unsound.

13 * Sec. 7. AS 06.01 is amended by adding a new section to read:

14 Sec. 06.01.035. PENALTIES. (a) A person who knowingly violates, or
15 causes another person to violate, a provision of this title, or a regulation or order of
16 the department under this title, for which a specific remedy is not provided, is guilty
17 of a class A misdemeanor.

18 (b) A person who, without first receiving a license or certificate of authority
19 from the department, participates in an activity that requires a license or certificate of
20 authority under this title, is guilty of a class A misdemeanor.

21 (c) A person is guilty of a class C felony if the person, with intent to deceive
22 the department, the commissioner, or a person authorized to examine the affairs of a
23 financial institution, knowingly

24 (1) makes or causes a false statement or report to be made;

25 (2) enters a false figure, statement, or entry in the books of a financial
26 institution; or

27 (3) makes or circulates a false report or statement about the condition
28 of a financial institution.

29 (d) A director, officer, or employee of a financial institution who receives a
30 deposit, after having been notified by regulatory authorities that the institution is
31 insolvent and without the department's prior approval, is guilty of a class C felony.

1 (e) In addition to other penalties applicable under this section, if a person other
2 than a financial institution knowingly or intentionally violates, or causes another person
3 to violate, a provision of this title, or a regulation or order of the department under this
4 title, the department may issue an order against the person imposing a civil penalty of
5 not more than \$2,500 a day for a single violation, and not more than \$25,000 for
6 multiple violations that constitute a single proceeding or a series of related
7 proceedings.

8 (f) In addition to other penalties applicable under this section, if a financial
9 institution knowingly or intentionally violates a provision of this title, or a regulation
10 or order of the department under this title, the department may issue an order against
11 the institution imposing a civil penalty of not more than \$5,000 a day for a single
12 violation, and not more than \$50,000 for multiple violations that constitute a single
13 proceeding or a series of related proceedings.

14 (g) For violations not covered by (e) or (f) of this section, and in addition to
15 other penalties applicable under this section, if a person, including a financial
16 institution, violates, or causes another person to violate, a provision of this title, or a
17 regulation or order of the department under this title, the department may issue an
18 order against the person imposing a civil penalty of not more than \$500 a day for a
19 single violation, and not more than \$5,000 for multiple violations that constitute a
20 single proceeding or a series of related proceedings.

21 (h) A financial institution that fails to file a report or make payments required
22 by the department within the time specified in this title is subject to a penalty of not
23 more than \$100 a day for each day the report or payment is late. A financial
24 institution is considered to have transmitted a report or payment when the institution
25 mails the report or payment, properly addressed to the department and with the
26 appropriate postage.

27 (i) In addition to other penalties applicable under this section, the department
28 shall dismiss an employee of the department who violates AS 06.05.065(a). An
29 employee dismissed under this subsection is forever disqualified from holding a
30 position in the department relating to the regulation of financial institutions. An
31 employee who is dismissed under this subsection may appeal the dismissal under

1 AS 39.25 (State Personnel Act), unless the employee is in the exempt or partially
2 exempt service under AS 39.25.110 - 39.25.120.

3 * Sec. 8. AS 06.01 is amended by adding a new section to read:

4 Sec. 06.01.048. REGULATIONS. Regulations required or authorized under
5 this title shall be adopted under AS 44.62 (Administrative Procedure Act).

6 * Sec. 9. AS 06.05.005 is repealed and reenacted to read:

7 Sec. 06.05.005. POWERS OF DEPARTMENT. (a) The department shall

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

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

12 (3) review and approve or disapprove applications for new state banks
13 under AS 06.05.345, new bank branches under AS 06.05.399, and international or
14 interstate branch banks under AS 06.05.555;

15 (4) issue permits authorizing bank holding companies to do business
16 in this state under AS 06.05.235 and 06.05.570;

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

19 (6) review and approve transfers of bank ownership under
20 AS 06.05.327;

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

23 (b) The department may

24 (1) relieve a bank from the examination requirements of AS 06.01.015
25 if the bank's deposits are insured by the Federal Deposit Insurance Corporation or
26 another agency of the United States that insures bank deposits;

27 (2) approve under AS 06.05.166(f) the operation of a branch bank on
28 a schedule different than normal banking days;

29 (3) approve under AS 06.05.426 the operation by a state bank of an
30 automated teller machine at a location other than the bank's premises;

31 (4) approve certain bank subsidiaries under AS 06.05.272;

- 1 (5) approve under AS 06.05.205(d) the acceptance by a bank of the
2 bank's stock or of the stock of the bank's holding company as security for a loan in
3 certain circumstances;
- 4 (6) restrict the withdrawal of deposits from a state bank where the
5 department finds that extraordinary circumstances make restriction necessary for the
6 proper protection of depositors;
- 7 (7) require a state bank to
- 8 (A) maintain its capital and reserve accounts in amounts
9 determined appropriate by the department, considering the size of the bank;
- 10 (B) observe the methods and standards that the bank adopts for
11 determining the value of various types of assets;
- 12 (C) charge off part or all of an asset that has not been lawfully
13 acquired;
- 14 (D) write down an asset to its market value;
- 15 (E) record liens and other interests in property;
- 16 (F) obtain a financial statement from a borrower or prospective
17 borrower to the extent that the bank can obtain the statement;
- 18 (G) obtain insurance against damage to real property taken as
19 security;
- 20 (H) search, or obtain insurance of, the title to real property
21 taken as security;
- 22 (I) maintain adequate insurance against other risks as the
23 department determines necessary and appropriate for the protection of
24 depositors and the public;
- 25 (J) charge off that portion of an asset classified as a loss, or
26 charge off or reserve up to 50 percent of loans classified as doubtful, in a state
27 or federal report of examination; or
- 28 (K) charge off all debts owed to the bank in which interest is
29 past due and unpaid for a period of six months, unless the debt principal is
30 adequately secured and the bank is in the process of collection;
- 31 (8) require the board of directors of a bank to hold a meeting under

1 AS 06.05.438(f);

2 (9) order the removal of a board member of a bank under
3 AS 06.05.435(g);

4 (10) order a bank to suspend the payment of dividends under
5 AS 06.05.441(b);

6 (11) require a bank to increase its capital accounts under
7 AS 06.05.305(c);

8 (12) take possession of a bank in the manner provided in
9 AS 06.05.468(c), and operate, reorganize, or liquidate the bank under AS 06.05.470 -
10 06.05.474 after taking possession under this paragraph;

11 (13) issue an order under AS 06.01.030 that the department determines
12 is necessary to ensure compliance with this chapter and regulations adopted under this
13 chapter; and

14 (14) exercise other powers expressly or implicitly granted in this
15 chapter.

16 * Sec. 10. AS 06.05.045(a) is amended to read:

17 (a) Each state bank shall make at least four reports of condition each year to
18 the department on days designated by, and on forms prescribed by, the department.
19 The report shall be signed by a duly authorized officer of the bank, and shall be
20 verified [BY AN OATH OF THE PRESIDENT, VICE PRESIDENT, OR CASHIER
21 AND] by at least three directors who certify [, CERTIFYING AND SUBSCRIBING]
22 under oath that they and each of them have personal knowledge of the facts stated in
23 the report and that the facts are true. The reports shall exhibit in detail and under
24 appropriate heads the resources and liabilities of the bank, and must be received by the
25 department within 30 calendar days after the end of the period covered by the report.

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

27 (a) A bank examiner of the department who deals with the regulation of
28 financial [LENDING] institutions, a special agent selected by the department to do
29 work relating to financial [LENDING] institutions, the commissioner or deputy
30 commissioner, or the director of banking may not be an officer, employee, director,
31 trustee, attorney, shareholder [STOCKHOLDER], or partner of a financial

1 [LENDING] institution, or receive, directly or indirectly, a payment or gratuity from
2 a financial [LENDING] institution. A person subject to this section may not borrow
3 money from a financial [STATE-CHARTERED LENDING] institution that has a
4 certificate of authority under this title, except as provided in this section.

5 * Sec. 12. AS 06.05.065(b) is amended to read:

6 (b) A person subject to this section may

7 (1) be a depositor in a financial [LENDING] institution;

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

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

11 (4) be indebted to a state financial [STATE-CHARTERED LENDING]
12 institution upon an installment debt incurred by the employee in the purchase of
13 goods for personal use only and transferred to the financial [LENDING] institution
14 in the regular course of business [BY A SELLER OF GOODS], including debts for
15 [BUT NOT LIMITED TO] household goods, mobile homes, motor vehicles, or boats;
16 or

17 (5) be indebted to a state financial institution for a mortgage loan
18 secured by the person's primary residence, if the loan closed before the person
19 became an employee subject to this section [PURCHASED BY THE EMPLOYEE
20 FOR PERSONAL USE ONLY].

21 * Sec. 13. AS 06.05.075 is amended to read:

22 Sec. 06.05.075. STANDARDS [IN REGULATIONS]. The department, in the
23 exercise of its authority [THE POWER TO ADOPT REGULATIONS] under this
24 chapter, shall act in the interests of promoting and maintaining a sound and
25 competitive banking system, the security of deposits and customers, the
26 [PRESERVATION OF THE] liquid position of banks, and [IN] the prevention of
27 [INTEREST OF PREVENTING] injurious credit expansions and contractions.

28 * Sec. 14. AS 06.05.100 is amended to read:

29 Sec. 06.05.100. DEPOSIT OF MINOR OR PERSON UNDER DISABILITY.
30 Where a deposit is made in a bank by or on behalf of a minor or a person under
31 disability in the [DEPOSITOR'S OWN] name of the minor or person under

1 disability, the bank may pay the money on check or order of that person as in other
2 cases.

3 * Sec. 15. AS 06.05.120 is amended to read:

4 Sec. 06.05.120. NOTICE OF CHARGES. A bank or other financial institution
5 that levies a charge for the establishment or maintenance of personal nonbusiness
6 demand deposit accounts shall clearly post a schedule of the charges in each of its
7 places of business where these accounts are opened.

8 * Sec. 16. AS 06.05.160 is amended to read:

9 Sec. 06.05.160. TRANSMITTING MONEY AND FOREIGN EXCHANGE.
10 A bank may accept for transmission and transmit money, and may buy and sell foreign
11 exchange to the extent necessary to meet the reasonably anticipated needs of
12 customers.

13 * Sec. 17. AS 06.05.166(a) is amended to read:

14 (a) A bank organized under or doing business under the laws of the state or
15 a national bank may remain closed on the legal holidays described in AS 44.12.010 -
16 44.12.025 [AS 44.12.010, 44.12.020 AND 44.12.025, EXCEPT THAT A BANK MAY
17 NOT BE CLOSED FOR MORE THAN THREE CONSECUTIVE DAYS]. The bank
18 shall post a notice of holiday closing in the place of business affected at least seven
19 [15] days in advance. [A BANK MAY OPERATE A BRANCH BANK ON A
20 DIFFERENT SCHEDULE APPROVED BY THE DEPARTMENT IF OPERATION
21 ON A DIFFERENT SCHEDULE WILL PROVIDE BETTER SERVICE.]

22 * Sec. 18. AS 06.05.166(c) is amended to read:

23 (c) In an emergency, [AS DEFINED BY THE DEPARTMENT,] a bank [, IN
24 THE REASONABLE AND PROPER EXERCISE OF ITS DISCRETION,] may elect
25 [DETERMINE] not to open any of its banking offices on a business or banking day
26 [,] or, [IF] having opened, to close any banking office. The [DURING THE
27 OCCURRENCE OF AN EMERGENCY. IF COMMUNICATION FACILITIES ARE
28 OPERATIVE, THE] bank shall notify the department [, OR IN THE CASE OF A
29 NATIONAL BANK THE COMPTROLLER OF THE CURRENCY,] of the
30 nonopening or the closing before taking the action, if possible, and as soon as
31 possible, in any event. Any act relating to the banking office that [HAS NOT BEEN

1 OPENED OR THAT] has been closed for any period of time under this subsection
2 may be performed on the next [SUCCEEDING] business day that the office is open
3 [REOPENED] for business. No liability or loss of rights of any kind on the part of
4 any person, firm, or corporation or of the bank results from the nonopening or closing,
5 and the rights of all parties are suspended during the nonopening or closing.

6 * Sec. 19. AS 06.05.166 is amended by adding new subsections to read:

7 (d) In addition to legal holidays, a bank's board of directors may declare a
8 closing of the bank on any other normal business day, if the department authorizes the
9 closure, the bank posts notice of the closing in the place of business affected at least
10 15 days in advance, and the bank maintains all normal processing and clearing
11 operations on the closed day.

12 (e) Under (a) or (d) of this section, a bank may not be closed for more than
13 three consecutive days.

14 (f) A bank may operate a branch bank on a different schedule approved by the
15 department if the department determines that operation on a different schedule will
16 provide better service or otherwise benefit the public.

17 * Sec. 20. AS 06.05.175(a) is amended to read:

18 (a) The bank records pertaining to depositors and customers are confidential
19 and may not be made public except when

20 (1) [WHEN] the bank, customer, or depositor is compelled to disclose
21 the contents of the records by a court order; [,]

22 (2) [WHEN] their disclosure is required by federal or state law or
23 regulation; [,]

24 (3) [WHEN] disclosure is authorized in writing by the depositor or
25 customer; [,]

26 (4) [WHEN] disclosure is made to the holder of a negotiable instrument
27 drawn on the bank as to whether the drawer has sufficient funds in the bank to cover
28 the instrument; [,] or

29 (5) [WHEN] an inquiry has been made by a bank, savings association,
30 or savings and loan association regulated under this title, or by a credit-reporting
31 agency regulated under 15 U.S.C. 1681-1681t (Fair Credit Reporting Act) solely for

1 the express purpose of determining the credit worthiness of the depositor or customer
2 as an applicant for credit, and the information disclosed by the bank or the entity
3 making the inquiry under this paragraph pertains only to the payment habits of the
4 depositor or customer in connection with loans and other credit accommodations and
5 does not pertain to records concerning deposit balances in savings or checking
6 accounts.

7 * Sec. 21. AS 06.05.175(b) is amended to read:

8 (b) When disclosure of bank records is required or allowed under (a)(1) or (2)
9 of this section, the bank shall notify the depositor or customer of the disclosure. If
10 notification before disclosure is not possible, the bank shall immediately notify the
11 customer or depositor of the disclosure or inquiry. However, notification may not be
12 made if disclosure is made under a search warrant or under a court order
13 [SUBPOENA] issued [BY OR] at the behest of a grand jury.

14 * Sec. 22. AS 06.05.175 is amended by adding a new subsection to read:

15 (d) When disclosure of bank records is compelled by a court order under (a)(1)
16 of this section, the court shall provide in the order for the reimbursement of the bank
17 for the reasonable costs incurred in complying with the order.

18 * Sec. 23. AS 06.05.200(a) is amended to read:

19 (a) A [COMMERCIAL] bank [THAT IS NOT A MEMBER OF THE
20 FEDERAL RESERVE SYSTEM] shall maintain a reserve fund sufficient to
21 maintain liquidity and meet all reasonable demands of depositors, as provided in
22 regulations adopted by the department [TOTAL RESERVES EQUAL TO THE
23 FOLLOWING PERCENTAGES OF THE AGGREGATE AMOUNT OF ITS
24 DEPOSITS, EXCLUSIVE OF DEPOSITS OF THE UNITED STATES, THE STATE
25 OF ALASKA, BOROUGH AND MUNICIPAL GOVERNMENTS AND OTHER
26 DEPOSITS OF PUBLIC MONEY THAT ARE SECURED AS REQUIRED BY LAW:

27 (1) 20 PERCENT OF ITS DEMAND DEPOSITS; AND

28 (2) EIGHT PERCENT OF ITS TIME AND SAVINGS DEPOSITS].

29 * Sec. 24. AS 06.05.200(d) is amended to read:

30 (d) If the reserve fund [RESERVES] of a [COMMERCIAL] bank falls
31 [FALL] below the amount required by the department to be maintained under [BY]

1 this section, the department may prohibit the bank from making [MAY NOT
2 MAKE] any new loans or other investments or paying [PAY] any dividends until the
3 bank's reserve fund has [ITS RESERVES HAVE] been restored to the amount
4 required under this section.

5 * Sec. 25. AS 06.05.205(b) is repealed and reenacted to read:

6 (b) The total outstanding loans of a state bank to a person may not be more
7 than 25 percent of the total capital accounts of the bank, and the total outstanding
8 loans to a person that are not fully secured may not be more than 15 percent of the
9 total capital accounts of the bank. Unearned income may not be included in
10 determining the amount a bank may loan under this subsection. The following are not
11 considered when determining compliance with this subsection:

12 (1) the discount of bills of exchange drawn in good faith against actual
13 existing values;

14 (2) loans secured by gold, gold dust, or bullion;

15 (3) loans secured by the assignment of specifically identified deposit
16 accounts of the bank with a balance equal to or greater than the total balance of the
17 loan;

18 (4) loans secured by fully insured cannery products or other products
19 in transit; in this paragraph, "products in transit" means the following products, unless
20 the products contain substances added for a purpose other than processing or finishing:

21 (A) hard mineral products, including coal, tin, iron, copper, and
22 silver, in the form of ores or smelted ingots;

23 (B) raw or refined liquid material products, including gas, oil,
24 or petrochemicals;

25 (C) agricultural products, including potatoes, grains, carrots,
26 hay, berries, and meat products;

27 (D) timber products, including logs, chips, pulp, lumber, and
28 peat moss;

29 (E) manufactured products using native materials, including
30 animal hides, vegetation, bone products, horn products, and raw or processed
31 animal furs; and

- 1 (F) raw or processed fish or fish products;
2 (5) loans with warehouse receipts as collateral security; and
3 (6) discounted commercial or business paper actually owned by the
4 person negotiating the paper.

5 * Sec. 26. AS 06.05.205(c) is amended to read:

6 (c) The restrictions contained in [(a) AND] (b) of this section do not apply to
7 a loan guaranteed by, or to a commitment or agreement to take over or to purchase by,
8 a department, bureau, board, commission, or establishment of the United States or the
9 state, including a corporation wholly owned, directly or indirectly, by the United
10 States or the state, provided that the guarantee, agreement or commitment is
11 unconditional and to [SHALL] be performed by payment in cash or its equivalent
12 within 60 days after demand.

13 * Sec. 27. AS 06.05.205(d) is repealed and reenacted to read:

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

18 (1) accept as security for a loan the capital stock of

19 (A) the bank; or

20 (B) the bank's parent holding companies, unless the stock of the
21 holding companies is publicly traded on a nationally recognized exchange; or

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

24 * Sec. 28. AS 06.05.205 is amended by adding a new subsection to read:

25 (g) The department shall adopt regulations to determine when a loan made to
26 one person may be attributed to other persons under (b) of this section, taking into
27 consideration the purpose of the loan, the use of the loan proceeds, the anticipated
28 sources of repayment of the loan, the borrower's ownership percentage, and other
29 relevant factors.

30 * Sec. 29. AS 06.05.207 is repealed and reenacted to read:

31 Sec. 06.05.207. REAL ESTATE LOANS. (a) A bank may, subject to the

1 requirements of this chapter, make or acquire a loan secured primarily by a first lien
2 on an interest in improved or unimproved real property, including leases, if

3 (1) the making of the loan is consistent with written lending policies
4 of the bank and regulations adopted by the department;

5 (2) before the loan is made or acquired, the bank secures and maintains
6 in its files, evidence of merchantable title and a determination of the value of the
7 property by a person familiar with the real property values in the vicinity where the
8 real property is located; and

9 (3) insurance against loss from fire on all buildings on the real property
10 that are included in the value of the property is acquired by the borrower or the bank
11 and is not allowed to lapse.

12 (b) A bank may, subject to the requirements of this chapter, make or acquire
13 a loan secured by a junior lien on real property if

14 (1) payments on the loan secured by all senior liens are current and the
15 bank retains in its records a written report of the status and balance of the senior liens
16 as of the date the junior lien loan is made or acquired; and

17 (2) all requirements of (a) of this section are met.

18 * Sec. 30. AS 06.05.210(a) is amended to read:

19 (a) Subject to the same terms and conditions applicable to other loans, a
20 director, [AN] officer, or employee of a state bank may borrow up to \$100,000, or
21 up to \$250,000 for the director's, officer's, or employee's primary residence
22 [\$10,000] from the bank at the discretion of the chief executive or managing officer
23 of the bank. A loan to a director, officer, or employee that makes the total
24 amount owed to the bank by the director, officer, or employee [LOANS] in excess
25 of the limits in this subsection [\$10,000], or loans of any amount to the chief
26 executive or managing officer of the bank, shall have the prior approval of the board
27 of directors, shall be reported to the department within 30 days and shall be secured
28 by adequate collateral. [FOR THE PURPOSE OF THIS SECTION, AN OVERDRAFT
29 IS CONSIDERED A LOAN.]

30 * Sec. 31. AS 06.05.211(a) is amended to read:

31 (a) A bank may, subject to the requirements of this chapter, make or acquire

1 a loan secured by a first lien on a forest tract if

2 (1) the making of the loan is consistent with written lending policies
3 of the bank and regulations adopted by the department [AMOUNT OF THE
4 LOAN DOES NOT EXCEED 60 PERCENT OF THE APPRAISED VALUE OF THE
5 GROWING TIMBER, LAND AND IMPROVEMENTS ON IT OFFERED AS
6 SECURITY];

7 (2) before the loan is made or acquired, the bank secures and
8 maintains in its files evidence of a determination of the value of the property
9 [TERMS AND CONDITIONS OF THE LOAN ARE ADEQUATE TO ENSURE
10 THAT THE LOAN BALANCE WILL NOT AT ANY TIME EXCEED 60 PERCENT
11 OF THE ORIGINAL APPRAISED VALUE OF THE PROPERTY REMAINING AS
12 SECURITY]; and

13 (3) [THE TERM OF THE LOAN DOES NOT EXCEED 15 YEARS
14 AND THE ANNUAL PRINCIPAL PAYMENTS EQUAL AT LEAST SIX AND
15 TWO-THIRDS PER CENT OF THE AMOUNT LOANED; AND

16 (4)] the loan is secured by an amortized mortgage, deed of trust, or
17 assignment of a federal or state timber sale contract.

18 * **Sec. 32.** AS 06.05.212(a) is amended to read:

19 (a) A director, officer, or employee of a state bank may not [WHO]
20 knowingly, wilfully, and persistently overdraw [OVERDRAWS] the director's,
21 officer's, or employee's account or permit [WHO PERMITS] a customer to do so [,
22 IS ENGAGED IN AN UNSOUND BANKING PRACTICE AND SUBJECT TO THE
23 PROVISIONS OF AS 06.01.030].

24 * **Sec. 33.** AS 06.05.215 is repealed and reenacted to read:

25 Sec. 06.05.215. LIABILITY OF DIRECTORS AND OFFICERS FOR
26 CERTAIN LOANS. A director, executive officer, managing officer, or issuing officer
27 of a state bank who knowingly or with gross negligence approves or permits the funds
28 of the bank to be lent or overdrafts to be made in an unsafe or unsound manner, or in
29 violation of an order of the department, the bank's lending policies, this title, or a
30 regulation adopted under this title, is personally liable to the bank for all the loans and
31 overdrafts. The bank may enforce the liability against the director or officer by an

1 action in a court of competent jurisdiction.

2 * Sec. 34. AS 06.05.225 is amended to read:

3 Sec. 06.05.225. APPLICATION OF OTHER LAWS TO LOANS INSURED
4 UNDER NATIONAL HOUSING ACT [AS 06.05.220]. The laws [NO LAW] of the
5 state prescribing or limiting interest rates upon loans do not apply [APPLIES] to loans
6 insured [MADE] under 12 U.S.C. 1706c (National Housing Act) [AS 06.05.220].

7 * Sec. 35. AS 06.05.230 is amended to read:

8 Sec. 06.05.230. INVESTMENT IN PROPERTY [REAL ESTATE] AND
9 BANKING PREMISES. A bank may acquire, purchase, hold, and convey [AND
10 HYPOTHECATE] real and personal property for the following purposes only:

11 (1) that which is [REAL PROPERTY] necessary for the convenient
12 transaction of, or the promotion of, its business, including buildings containing
13 banking offices, equipment, furniture and fixtures, art work, leasehold improvements,
14 [AND] parking lots, and, with the prior approval of the department, real property
15 reasonably anticipated to be necessary for future expansion of the bank, if the
16 book asset value of the purchase or investment does not exceed 60 percent of the
17 capital [ACCOUNT] and [THE] surplus [ACCOUNT] of the bank; [THE PURCHASE
18 OR INVESTMENT MAY CONSIST OF STOCK IN A BANK BUILDING
19 CORPORATION, IN WHICH CASE IT MUST INCLUDE ALL OBLIGATIONS OF
20 THE BUILDING CORPORATION TO THE BANK;]

21 (2) the satisfaction of or on account of debts previously contracted in
22 the course of its business;

23 (3) the purchase at sale under judgment, decree, lien, or mortgage
24 foreclosure, against security held by it.

25 * Sec. 36. AS 06.05.231(a) is amended to read:

26 (a) A bank may invest not more than 10 percent of its paid-in and unimpaired
27 capital and surplus in a bank service corporation if

28 (1) the bank submits an application requesting permission to invest in
29 a bank service corporation to the department, accompanied by complete information
30 concerning feasibility, rates and competitive organizations, and the department consents
31 in writing to the investment before it is made; and

1 (2) the total investment under this section and AS 06.05.230(1) [AND
2 06.05.232] does not exceed the combined capital, surplus and undivided profits.

3 * Sec. 37. AS 06.05.235(a) is amended to read:

4 (a) Except as provided in [(b) OR (e) OF] this section or in AS 06.05.570, it
5 is unlawful for a person [COMPANY] to own, control or hold with power to vote 25
6 percent or more of a class of voting securities or other capital stock of one or more
7 state banks or domestic bank holding companies subject to regulation under this
8 chapter. However, when it becomes a bona fide necessity to avoid loss for a creditor
9 to accept shares of stock in one or more state banks or domestic bank holding
10 companies constituting more than 25 percent of the ownership or control of a state
11 bank or domestic bank holding company in payment of indebtedness owing to the
12 creditor, shares of stock may be accepted, but the shares of the one or more state
13 banks or domestic bank holding companies exceeding that 25 percent shall be promptly
14 disposed of under the supervision of the department.

15 * Sec. 38. AS 06.05.235(b) is amended to read:

16 (b) A domestic bank holding company that maintains its principal office and
17 place of business in the state and conducts its principal operations in the state, may
18 acquire and own all or a [ANY] portion of the voting securities or other capital stock
19 of, or all or substantially all of the assets of, one or more banks or bank holding
20 companies. The department may require a domestic bank holding company to post a
21 bond with the department in an amount not more than [EQUAL TO] the paid-in
22 capital and paid-in surplus represented by the proportion of state bank stock directly
23 or indirectly owned, held, or controlled by it, under conditions the department may
24 prescribe, to assure full protection of the public. Before a domestic bank holding
25 company may acquire a bank or bank holding company doing business in the
26 state, the domestic bank holding company shall apply for and obtain a permit
27 from the department. In considering whether to issue a permit, the department
28 shall consider the benefits to the public, the preservation of a competitive banking
29 industry, and the maintenance of a safe and sound bank industry. The domestic
30 bank holding company is subject to an examination by the department or a competent
31 person designated by the department when the department considers it necessary, but

1 not less than once each year. The domestic bank holding company shall pay an
2 examination fee under AS 06.01.010.

3 * Sec. 39. AS 06.05.235(g) is amended to read:

4 (g) For the purpose of this section and AS 06.05.570, a trust company
5 organized under AS 06.25 that is engaged in the business of banking shall be
6 considered a state bank.

7 * Sec. 40. AS 06.05.235 is amended by adding a new subsection to read:

8 (i) The provisions of this section do not apply to a person that

9 (1) acquires or holds voting securities or other capital stock of a bank
10 or bank holding company only for a reasonable period of time in connection with the
11 underwriting of securities;

12 (2) is a state agency;

13 (3) is a trustee or agent of an independent federal financial regulatory
14 agency; or

15 (4) under a plan of financial restructuring that is intended to prevent
16 the failure of a state bank and that is approved by the department,

17 (A) acquires or receives 25 percent or more of a class of voting
18 securities or other capital stock of the bank or bank holding company subject
19 to the plan, and owns, controls, or holds, with the power to vote, the securities
20 acquired or received in excess of 24.99 percent of that class for a period of
21 time that permits the distribution or resale of the securities or other capital
22 stock on a reasonable basis; or

23 (B) purchases or receives securities under the plan and, after the
24 purchase or receipt, owns, controls, or holds, with a power to vote, less than
25 25 percent of a class of voting securities or other capital stock of the bank or
26 bank holding company subject to the plan but subsequently, solely through the
27 action or inaction of others, including the bank or bank holding company,
28 owns, controls, or holds, with a power to vote, 25 percent or more of a class
29 of voting securities or other capital stock of the bank or bank holding company;
30 the exemption in this subparagraph does not apply if the department
31 determines, after notice and opportunity for hearing under AS 06.01.030, that

1 the ownership, control, or holding of the securities or stock exceeding 24.99
2 percent of a class, other than under a plan to promptly dispose of the securities
3 or stock under the supervision of the department, permits the organization in
4 any manner to control the election of a majority of the board of directors or
5 trustees, or to directly or indirectly exercise a controlling influence over the
6 management or policies of the bank or bank holding company.

7 * Sec. 41. AS 06.05.240 is amended to read:

8 Sec. 06.05.240. ACQUISITION OF PROPERTY TO SATISFY OR PROTECT
9 PREVIOUS LOAN. A state bank may take property of any kind [, INCLUDING
10 SHARES OF ITS OWN CAPITAL STOCK,] to satisfy or protect a loan previously
11 made in good faith and in the ordinary course of business. A bank may not take the
12 capital stock of the bank or of the bank's parent holding companies unless it
13 complies with AS 06.05.205(d). The property shall be entered on the books at cost,
14 or fair market value, whichever is less. Property acquired to satisfy or protect previous
15 loans shall be disposed of over periods of time as the department may prescribe
16 [PRESCRIBES] by regulation.

17 * Sec. 42. AS 06.05.245 is amended to read:

18 Sec. 06.05.245. DISPOSITION OF PROPERTY NOT NEEDED IN THE
19 CONDUCT OF A BANKING BUSINESS. All real [ESTATE] and personal property
20 not necessary for the convenient transaction or promotion of a [CONSERVATIVE]
21 banking business under AS 06.05.230 that comes into the possession of a state bank
22 shall be disposed of as soon as possible [UNDER THE REGULATIONS OF THE
23 DEPARTMENT]. If the real [ESTATE] or personal property is not sold within the
24 time limit prescribed by the department in regulations, it shall be written off and may
25 not be carried as an asset of the bank.

26 * Sec. 43. AS 06.05.255(a) is amended to read:

27 (a) The aggregate amount of outstanding liabilities of a state bank for money
28 borrowed exclusive of (1) capital notes and debentures issued under AS 06.05.307, (2)
29 obligations incurred in connection with the purchase of bank premises under
30 AS 06.05.230(1), and (3) agreements to repurchase securities, earlier sold by the
31 bank, at the end of a stated period [BORROWING FOR EMERGENCY

1 PURPOSES AS PERMITTED BY THE DEPARTMENT], may not at any time exceed
2 15 percent of the bank's total assets, [THE TOTAL AMOUNT OF ITS
3 UNIMPAIRED CAPITAL AND ONE-HALF OF ITS UNIMPAIRED SURPLUS] or
4 a larger amount if approved by the department.

5 * Sec. 44. AS 06.05.260(a) is amended to read:

6 (a) A bank may not give preference to a depositor or creditor by pledging any
7 of the assets of a bank as collateral security except

8 (1) to the state to secure state funds, or to a municipal corporation or
9 other public corporation, municipal utility or municipal utility board, or political
10 subdivision of the state to secure its funds, and to the United States as may be required
11 to make the bank a depository for United States funds;

12 (2) to secure a mortgage or deed of trust in connection with the
13 purchase of banking premises as provided in AS 06.05.230, if the only property
14 pledged is property purchased in the transaction; or

15 (3) to a federal reserve bank or federal home loan bank in the
16 manner required by the applicable laws, regulations, and rules of the federal
17 reserve bank or federal home loan bank, as applicable.

18 * Sec. 45. AS 06.05 is amended by adding a new section to read:

19 Sec. 06.05.262. UNAUTHORIZED ASSUMPTION OF LIABILITY. Except
20 as expressly permitted in this chapter, a state bank may not assume liability as an
21 insurer or as a guarantor or endorser of a security instrument or obligation unless the
22 bank has a property interest in or with respect to the instrument or obligation. This
23 section does not apply to warranty deeds issued by a bank.

24 * Sec. 46. AS 06.05.270(a) is amended to read:

25 (a) In addition to loans and acquisitions expressly authorized by this chapter,
26 a state bank may deal in, underwrite, and invest in for its own account the obligations
27 that the department by regulation authorizes the bank to deal in, underwrite, or
28 invest in for its own account

29 [(1) DIRECT OR GUARANTEED OBLIGATIONS OF THE UNITED
30 STATES, EITHER DIRECTLY OR IN THE FORM OF SECURITIES OF, OR
31 OTHER INTERESTS IN, AN OPEN-END MANAGEMENT TYPE INVESTMENT

1 COMPANY OR INVESTMENT TRUST REGISTERED UNDER 15 U.S.C. 80a-1 -
2 80a-64 (INVESTMENT COMPANY ACT OF 1940), IF

3 (A) THE PORTFOLIO OF THE INVESTMENT COMPANY
4 OR INVESTMENT TRUST IS LIMITED TO OBLIGATIONS OF THE
5 UNITED STATES GOVERNMENT AND REPURCHASE AGREEMENTS
6 FULLY COLLATERALIZED BY THE OBLIGATIONS; AND

7 (B) THE INVESTMENT COMPANY OR INVESTMENT
8 TRUST TAKES DELIVERY OF THE COLLATERAL DIRECTLY OR
9 THROUGH AN AUTHORIZED CUSTODIAN;

10 (2) GENERAL OBLIGATIONS OF THE STATE OF ALASKA AND
11 ITS POLITICAL SUBDIVISIONS;

12 (3) GENERAL OBLIGATIONS OF A STATE OF THE UNITED
13 STATES OR ITS POLITICAL SUBDIVISIONS;

14 (4) REVENUE OBLIGATIONS OF THE STATE OF ALASKA OR
15 ITS POLITICAL SUBDIVISIONS SUBJECT TO THE LIMITATION OF (b) OF
16 THIS SECTION;

17 (5) REVENUE OBLIGATIONS OF A STATE OF THE UNITED
18 STATES OR ITS POLITICAL SUBDIVISIONS SUBJECT TO THE LIMITATION
19 OF (b) OF THIS SECTION;

20 (6) OBLIGATIONS OF INSTRUMENTALITIES OF THE UNITED
21 STATES GOVERNMENT INCLUDING, BUT NOT LIMITED TO FEDERAL
22 INTERMEDIATE CREDIT BANKS, FEDERAL LAND BANKS, THE FEDERAL
23 NATIONAL MORTGAGE ASSOCIATION, AND BANKS FOR COOPERATIVES;

24 (7) COMMERCIAL PAPER OF PRIME OR EQUIVALENT
25 QUALITY AS RATED BY A RECOGNIZED NATIONAL RATING SERVICE
26 SUBJECT TO THE LIMITATION OF (b) OF THIS SECTION;

27 (8) SECURED CORPORATE OBLIGATIONS RATED WITHIN THE
28 THREE HIGHEST GRADES OF A NATIONAL RATING SERVICE SUBJECT TO
29 THE LIMITATION OF (b) OF THIS SECTION;

30 (9) OBLIGATIONS OF THE INTERNATIONAL BANK FOR
31 RECONSTRUCTION AND DEVELOPMENT, THE INTER-AMERICAN

1 DEVELOPMENT BANK, OR THE AFRICAN DEVELOPMENT BANK, SUBJECT
2 TO THE LIMITATION OF (b) OF THIS SECTION;

3 (10) STOCK IN THE FEDERAL NATIONAL MORTGAGE
4 ASSOCIATION, A FEDERAL RESERVE BANK, OR A FEDERAL HOME LOAN
5 BANK;

6 (11) ~~THE~~ STOCKS, BONDS, AND OTHER SECURITIES OF
7 (A) A CORPORATION LICENSED UNDER AS 10.13; OR
8 (B) A CORPORATION ATTEMPTING TO BECOME
9 LICENSED UNDER AS 10.13 IF THE CORPORATION INTENDS TO USE
10 THE PROCEEDS TO FULFILL THE TASKS NECESSARY TO BECOME
11 LICENSED UNDER AS 10.13].

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

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

- 17 (1) real property ownership, development, and leasing;
18 (2) insurance sales and service;
19 (3) securities brokerage;
20 (4) other activities authorized in regulations adopted under this section;

21 or

- 22 (5) other activities approved by the department.

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

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

29 * Sec. 48. AS 06.05.275(b) is amended to read:

30 (b) A bank may discount, invest in, negotiate, and issue trade acceptances and
31 bank acceptances if

1 (1) the terms of the draft require presentation for payment within 180
2 days of issuance, exclusive of days of grace, and it is drawn to finance the purchase
3 of goods with maturity and payment in accordance with the terms of the purchase
4 agreement;

5 (2) the terms of the draft require presentation for payment within 180
6 days of issuance, exclusive of days of grace, and it is secured by shipping documents
7 transferring or securing title to goods, or by receipt of a licensed or bonded warehouse
8 securing title to readily marketable goods; or

9 (3) the draft is drawn by a bank outside the continental limits of the
10 United States for the purpose of furnishing dollar exchange for trade and its terms
11 require presentation for payment within 90 days of issuance.

12 * Sec. 49. AS 06.05 is amended by adding a new section to read:

13 Sec. 06.05.301. APPLICABILITY OF CORPORATIONS CODE. (a) Except
14 for national banks with a principal place of business in the state, and interstate and
15 international banks with a certificate of authority under AS 06.05.555, a corporation
16 may not engage in the banking business unless the corporation is organized under
17 AS 10.06 (Alaska Corporations Code) and this title.

18 (b) The provisions of AS 10.06 (Alaska Corporations Code) apply to state
19 banks, except those provisions inconsistent with this chapter. The provisions
20 inconsistent with this chapter include AS 10.06.010(4) - (8), 10.06.105(a), 10.06.325,
21 10.06.356, 10.06.358 - 10.06.360, 10.06.370, 10.06.385 - 10.06.388, 10.06.420(i),
22 10.06.430, 10.06.453, 10.06.460(b), 10.06.485, 10.06.522 - 10.06.868, 10.06.915,
23 10.06.960, and 10.06.990(30) and (36).

24 * Sec. 50. AS 06.05.305 is amended to read:

25 Sec. 06.05.305. CAPITAL STRUCTURE. (a) A corporation may not
26 commence and operate a banking business in the state in a community with a
27 population of 35,000 or more unless the corporation has paid-in capital in an amount
28 acceptable to the department, but not less than \$2,000,000, [OF AT LEAST
29 \$250,000] and paid-in surplus equal to 20 percent of paid-in capital. A corporation
30 may not commence and operate as a bank in the state in a community with a
31 population less than 35,000 unless the corporation has paid-in capital in an

1 amount acceptable to the department, but not less than \$1,000,000, and paid-in
2 surplus equal to 20 percent of paid-in capital. A bank may not operate any
3 branches unless it has an aggregate paid-in capital and paid-in surplus in amounts
4 acceptable to the department [OF AT LEAST \$800,000].

5 (b) The capital [STOCK] of a state bank may not be reduced to an amount less
6 than is required by the department [IN THIS CHAPTER] for capital under (a) of
7 this section. A reduction of capital [STOCK, CANCELLATION OF STOCK
8 CERTIFICATES,] or [REDUCING OF] the liability of the shareholders
9 [STOCKHOLDERS] is not valid until it is approved by the department.

10 (c) If a state bank fails to maintain its total [ADJUSTED] capital accounts and
11 loan loss reserves in an amount equal to the [SUBSTANDARD] assets classified as
12 substandard [AS REPORTED] by the Federal Deposit Insurance Corporation or by
13 the state in the [A] bank's latest report of examination, the department shall consider
14 the failure as endangering the safety of depositors [THE DEPOSITOR] and may direct
15 the bank's directors to increase the capital accounts in an amount sufficient to cover
16 substandard assets.

17 * Sec. 51. AS 06.05.310 is repealed and reenacted to read:

18 Sec. 06.05.310. CORRECTION OF IMPAIRMENT OF CAPITAL. If the
19 department determines that the order is necessary for the protection of depositors, the
20 department may issue an order under AS 06.01.030 to require a state bank to increase
21 its capital accounts or to reduce its deposits. In making a decision whether to issue
22 an order under this section, the department shall consider the

- 23 (1) quality of management;
24 (2) quality and liquidity of assets;
25 (3) history of earnings and retention of earnings;
26 (4) quality and character of ownership;
27 (5) potential volatility of deposit structure;
28 (6) quality and cost of bank operations; and
29 (7) capacity to meet present and future needs of the area served,

30 considering the bank's competition.

31 * Sec. 52. AS 06.05.320 is amended to read:

1 Sec. 06.05.320. BANK PURCHASES OF OWN SHARES [PROHIBITED].
2 Except in accordance with written approval of the department, a [A] bank may not
3 purchase its own capital stock.

4 * Sec. 53. AS 06.05.327 is amended to read:

5 Sec. 06.05.327. CHANGE IN OUTSTANDING VOTING SHARES [STOCK].
6 Before [IF] a change may occur [OCCURS OR IS ABOUT TO OCCUR] in the
7 outstanding voting shares [STOCK] of a state bank that will result in a change in the
8 control of the bank, or before [IF] any sales or transfers by or to a person, corporation
9 or other legal entity of the aggregate of 10 percent or more of the voting shares
10 [STOCK] of a state bank may be made. the transaction must be approved by [ARE
11 ABOUT TO BE CONSUMMATED, THE PRESIDENT OR OTHER CHIEF
12 EXECUTIVE OFFICER OF THE BANK IMMEDIATELY UPON OBTAINING
13 KNOWLEDGE OF THE CHANGE IN THE CONTROL OF THE BANK OR THE
14 CONTEMPLATED OR CONSUMMATED SALE OR TRANSFER OF STOCK,
15 SHALL REPORT THESE FACTS TO] the department.

16 * Sec. 54. AS 06.05.342(a) is amended to read:

17 (a) Subscription agreements and accompanying prospectuses or offering
18 circulars, whether for a proposed state bank or for an increase in capital of an existing
19 state bank, shall be submitted to the department for approval before their use. The
20 department shall determine whether the subscription agreements or offering circulars
21 provide full and accurate disclosure of the material terms of the offering. The
22 department may order the incorporators not to accept any stock subscriptions or to
23 cease accepting subscriptions if the department [IT] determines that the incorporators
24 are not acting lawfully or in good faith.

25 * Sec. 55. AS 06.05 is amended by adding a new section to read:

26 Sec. 06.05.344. APPLICATION FOR APPROVAL OF STATE BANK. (a)
27 Before the department issues a certificate of incorporation under AS 10.06.910 for a
28 state bank, the incorporators of a proposed state bank shall obtain the approval of the
29 department. In applying for the approval, the incorporators shall file with the
30 department

31 (1) an application in the form and containing the information the

1 department requires, including

2 (A) for each incorporator and proposed director, and for each
3 preincorporation subscriber of more than five percent of the capital stock, any
4 past and present connection with a bank other than as a customer on terms
5 generally available to the public;

6 (B) the name, residence, and occupation of each
7 preincorporation subscriber and the number of shares subscribed for by the
8 subscriber;

9 (C) the address of the proposed place of business of the bank
10 or, if an address is not available, a legal description of the proposed place of
11 business; and

12 (2) the proposed articles of incorporation; and

13 (3) all applicable fees, payable to the department, for the filing.

14 (b) Investigation expenses incurred by the department in processing an
15 application for approval of a proposed bank shall be charged to and paid by the
16 applicant under AS 06.01.010. When submitting the application to the department, the
17 applicant shall pay to the department \$2,000 in partial payment of the investigation
18 expenses incurred by the department. If the investigation expenses incurred by the
19 department are less than \$2,000, the department shall promptly refund the excess to
20 the applicant.

21 (c) The department shall notify the incorporators of its decision whether to
22 accept an application for a proposed state bank. If the application and accompanying
23 documents required by (a) of this section do not conform to the requirements of this
24 chapter and the regulations adopted under this chapter, the department shall return the
25 documents with an explanation of the defects. If the department does not act within
26 30 days of receipt of the application, the application is considered to be accepted.
27 Acceptance of the application does not constitute approval.

28 (d) The incorporators shall publish notice of the department's acceptance of
29 the application for a proposed state bank and acceptance of the articles of incorporation
30 once each week for two successive weeks in a newspaper of general circulation
31 published in the community proposed as the bank's principal place of business. If

1 there is no newspaper of general circulation in the community, the notice shall be
2 published in a newspaper of general circulation near the community. The first
3 publication of the notice must appear within 15 days after the application and articles
4 of incorporation have been accepted by the department. The notice must state

5 (1) the name of the proposed state bank;

6 (2) that the proposed bank is to be incorporated under this chapter and
7 AS 10.06;

8 (3) the purpose of the proposed bank; and

9 (4) the names and addresses of the incorporators and the initial board
10 of directors as the names and addresses appear in the articles of incorporation.

11 (e) To prove that the publication required by (d) of this section was made, the
12 incorporators shall file with the department an affidavit of the publisher of the
13 newspaper in which the notice was published.

14 (f) Upon acceptance of an application for approval of a proposed state bank,
15 the department shall conduct an investigation to determine whether

16 (1) the convenience and needs of the public will be served by the bank;

17 (2) the population density and economic characteristics of the area
18 primarily to be served by the bank afford reasonable promise of adequate support for
19 the bank;

20 (3) the character and fitness of the incorporators and the members of
21 the initial board of directors command the confidence of the community and warrant
22 the belief that the business of the bank will be honestly and efficiently conducted;

23 (4) the proposed capital structure of the bank meets the requirements
24 set by the department under AS 06.05.305;

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

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

30 (7) other relevant facts and circumstances exist that bear on the bank
31 and its relation to the community.

1 (g) The department shall approve or deny an application within six months
2 after the application for approval has been accepted. The time may be extended by
3 up to six additional months when the department determines that an extension is
4 warranted by exceptional circumstances. Within 60 days after the second publication
5 of the notice required by (d) of this section, a person opposing approval of the
6 application may file written objections with the department. When it approves or
7 denies the application, the department shall notify the incorporators and a person who
8 requested in writing to be notified, and, if the application is denied, the department
9 shall state the reasons for its decision and return all copies of the articles of
10 incorporation.

11 (h) If the department approves the application, the department shall endorse
12 the approval on the articles of incorporation, file the articles of incorporation, and issue
13 a certificate of incorporation under AS 10.06.910.

14 * Sec. 56. AS 06.05.345(a) is amended to read:

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

18 (1) [THE NAME ASSUMED BY THE BANK;

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

21 (2) [(3) THE NATURE OF ITS BUSINESS;

22 (4)] the amount of its capital stock, which shall be divided into shares
23 having a par value of not less than \$1 each;

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

26 (4) [(6)] the period for which the bank is organized, if limited.

27 * Sec. 57. AS 06.05.345(l) is repealed and reenacted to read:

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

1 * **Sec. 58.** AS 06.05.350(a) is repealed and reenacted to read:

2 (a) At any time after receiving a certificate of incorporation, a bank may apply
3 to the department for a certificate of authority to engage in the banking business.
4 Before receiving a certificate of authority, a bank may not perform an act other than
5 to perfect its organization, obtain and equip a place of business, obtain subscriptions
6 and payment for its shares, and otherwise prepare to do business. If a bank violates
7 this subsection by transacting business before it receives a certificate of authority, the
8 directors and officers who wilfully authorized or participated in the action are
9 personally, jointly, and severally liable for the debts and liabilities of the bank incurred
10 before the certificate of authority is issued.

11 * **Sec. 59.** AS 06.05.350(b) is amended to read:

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

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

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

21 (3) bylaws of the corporation [HAVE BEEN ADOPTED AND FILED
22 WITH THE DEPARTMENT];

23 (4) evidence satisfactory to the department that the bank has
24 [RECEIVED APPROVAL OF ITS APPLICATION FOR INSURANCE FROM THE
25 FEDERAL DEPOSIT INSURANCE CORPORATION;

26 (5) THE BANK HAS] complied with all the requirements of this
27 chapter and any conditions imposed by the department and has advised the department
28 in writing of any changes that have occurred in the facts reflected in the material it
29 filed under AS 06.05.344 [AS 06.05.345].

30 * **Sec. 60.** AS 06.05.350 is amended by adding a new subsection to read:

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

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

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

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

6 * Sec. 61. AS 06.05.355(a) is repealed and reenacted to read:

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

10 * Sec. 62. AS 06.05.355(c) is amended to read:

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

15 * Sec. 63. AS 06.05.385 is amended to read:

16 Sec. 06.05.385. ORGANIZATIONAL MEETING [FIRST MEETING OF
17 STOCKHOLDERS AND DIRECTORS]. (a) A state bank may not call an
18 organizational meeting under AS 10.06.223 until all [AFTER THE] capital and
19 surplus have been fully paid [, THE INCORPORATORS SHALL CALL A MEETING
20 OF THE STOCKHOLDERS ON 10 DAYS' NOTICE TO ELECT DIRECTORS AND
21 ADOPT BYLAWS, AND DIRECT THE CALL, ON FIVE DAYS' NOTICE, OF THE
22 FIRST MEETING OF DIRECTORS FOR THE ELECTION OF OFFICERS].

23 (b) Bylaws shall be adopted and may be amended by a vote of the holders of
24 a majority of the outstanding voting shares voted at a meeting of the shareholders
25 [STOCKHOLDERS]. If not provided in the articles of incorporation, the bylaws
26 must indicate the organizational structure of the bank and specifically designate
27 the offices that will be held by the executive or managing officers of the bank.
28 The bank shall file with the department copies of the original bylaws of the bank
29 and any amendments adopted for the bylaws [THE BYLAWS MAY PROVIDE
30 FOR THEIR AMENDMENT BY THE BOARD OF DIRECTORS OF ANY
31 PROVISIONS OTHER THAN THOSE RELATING TO THE DUTIES, TERM OF

1 OFFICE, REMUNERATION, REIMBURSEMENT OR INDEMNIFICATION OF A
2 DIRECTOR].

3 * Sec. 64. AS 06.05.399 is amended to read:

4 Sec. 06.05.399. APPLICATION FOR CERTIFICATE OF AUTHORITY FOR
5 BRANCH BANK OR CHANGE OF LOCATION. (a) Before operating a branch
6 bank at [AS] a permanent location or a mobile facility branch bank, or changing the
7 location of the principal office or [OF] a branch of the bank at a permanent location,
8 a state bank must apply to the department [COMMISSIONER] for a certificate of
9 authority to do so. The application must be in the form and contain the information
10 the department [COMMISSIONER] requires to enable the department
11 [COMMISSIONER] to determine whether a certificate of authority should be issued,
12 including [BUT NOT LIMITED TO] the address at which the state bank or branch at
13 a permanent location will operate. Investigation expenses incurred by the department
14 in processing applications shall be charged to and paid by the applicant as provided
15 in AS 06.01.010. At the time of submitting the application to the department
16 [COMMISSIONER], the applicant shall pay to the department \$1,000 [\$500] in partial
17 payment of those investigation expenses incurred by the department. If the
18 investigation expenses incurred by the department do not exceed \$1,000 [\$500], the
19 remainder shall be promptly refunded to the applicant. In this subsection, "mobile
20 facility branch bank" means a branch bank that moves from one location to
21 another to provide banking services and that is located in or serves remote areas
22 of the state not being adequately served by permanently located banks or bank
23 branches.

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

30 (c) The state bank shall publish notice of [THE ACCEPTANCE BY THE
31 DEPARTMENT OF] the application for a branch bank or for a [APPROVAL TO]

1 change in location in the manner provided in AS 06.05.344(d) - (e) [AS 06.05.345(f)
2 AND (g)]. The notice shall state the proposed location for the facility.

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

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

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

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

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

17 (e) No later than 150 days after the application for a certificate of authority
18 to operate a branch bank or to change location has been accepted, the department shall
19 make a determination whether to approve the application. Within 30 days after the
20 second publication of the notice referred to in (c) of this section, a [ANY] person
21 opposing the pending application may file written objections with the department.
22 When it approves or denies the application, the department shall notify the bank and
23 any other person who requested in writing to [THAT THE PERSON] be notified; and
24 if the application is denied, the department shall state the reasons for its decision.

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

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

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

30 (3) APPROVAL OF THE APPLICATION FOR INSURANCE HAS
31 BEEN RECEIVED FROM THE FEDERAL DEPOSIT INSURANCE

1 CORPORATION].

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

4 * Sec. 65. AS 06.05 is amended by adding a new section to article 4 to read:

5 Sec. 06.05.426. AUTOMATED TELLER MACHINES. (a) A state bank may
6 establish, maintain, and operate an automated teller machine on the premises of the
7 main office or a branch office of the bank.

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

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

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

20 (2) the name of the manufacturer and owner of the machine;

21 (3) the manner of operation, including whether the machine is on-line
22 and the kinds of transactions the machine will perform;

23 (4) the names of the other banks that will share the machine's services;
24 and

25 (5) other information required by the department.

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

29 * Sec. 66. AS 06.05.435(a) is amended to read:

30 (a) The affairs of every bank incorporated under this chapter shall be managed
31 by not less than five directors, nor more than 25 [, WHO SHALL BE ELECTED BY

1 THE STOCKHOLDERS AND HOLD OFFICE FOR ONE YEAR AND UNTIL
2 THEIR SUCCESSORS ARE ELECTED AND HAVE QUALIFIED]. A majority of
3 the board of directors shall be bona fide residents of the state and a majority
4 constitutes a quorum for the transaction of business.

5 * Sec. 67. AS 06.05.435(c) is amended to read:

6 (c) Unless otherwise approved by the department, each [EACH] director
7 of a bank shall own₁ in the director's own right or jointly with the director's spouse,
8 free of any encumbrance₂ capital stock of the bank in an amount equal to at least
9 \$1,000 in par value.

10 * Sec. 68. AS 06.05.435 is amended by adding new subsections to read:

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

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

16 (1) due to the competence, experience, character, or integrity of the
17 person, it is not in the best interests of the depositors or the public for the person to
18 be or remain on the board;

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

21 (3) the person has persistently violated this title, the regulations adopted
22 under this title, or the orders of the department under this title or under the regulations
23 adopted under this title;

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

26 (5) the person has filed a petition in bankruptcy either in an individual
27 capacity or in the name of a corporation in which the person owns a majority of the
28 shares.

29 * Sec. 69. AS 06.05.437 is amended to read:

30 Sec. 06.05.437. OFFICERS. (a) The officers of a bank shall be chosen
31 [ELECTED] by the board of directors. An officer may not be appointed to serve

1 [ELECTED] for a period longer than one year. If a [AN OFFICER MAY BE
2 REMOVED BY THE BOARD OF DIRECTORS AT ANY TIME BUT REMOVAL
3 DOES NOT PREJUDICE ANY RIGHTS THAT THE OFFICER MAY HAVE TO
4 DAMAGES FOR BREACH OF CONTRACT OF EMPLOYMENT. THE] president
5 of a bank or other chief officer responsible for the management of the bank is not a
6 director, the officer must be an ex officio [A] member of the board of directors
7 without the power to vote.

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

11 * Sec. 70. AS 06.05.437 is amended by adding a new subsection to read:

12 (c) If the department determines that an officer or employee of the bank has
13 been negligent, dishonest, reckless, or incompetent in the performance of official
14 duties, the department may order the board to remove the officer or employee from
15 office, after giving the board and the officer or employee an opportunity for a hearing
16 under AS 06.01.030. If the board neglects or refuses to remove the officer or
17 employee from office and if losses due to the negligence, dishonesty, recklessness, or
18 incompetence of the officer or employee accrue to the bank after the neglect or refusal,
19 the order of the department is conclusive evidence of the negligence of the board under
20 this subsection in an action brought against the board, or a member of the board, for
21 recovery of the losses.

22 * Sec. 71. AS 06.05.438(a) is amended to read:

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

26 * Sec. 72. AS 06.05.438 is amended by adding new subsections to read:

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

31 (f) The department may require a meeting of the board of directors of a state

1 bank to be held in the manner and at the time and place the department directs when,
2 in the judgment of the department, a violation of this title has occurred or is about to
3 occur. A report of an examination required or allowed by this title, the conclusions
4 drawn from the examination by the department, recommendations made by the
5 department, and other matters concerning the operation and condition of the bank may
6 be presented to the board of directors by the department. If the department presents
7 a report of examination or other information is presented to the board, each member
8 of the board of directors shall furnish to the department a statement, on forms to be
9 supplied by the department, that the member has read and is familiar with the
10 recommendations of the department.

11 * Sec. 73. AS 06.05.440 is amended to read:

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

16 * Sec. 74. AS 06.05.441 is amended to read:

17 Sec. 06.05.441. CONDITIONS PRECEDENT TO DIVIDEND
18 DECLARATION AND PAYMENT. (a) Before a bank dividend is declared [,] or the
19 net profits for the period covered by the dividend disposed of, and after the
20 restoration of any undivided profits or surplus under AS 06.05.442, not less than
21 one-fifth of these net profits shall be carried to the bank surplus account until the
22 surplus account equals [AMOUNTS TO] 100 percent of the paid-in capital of the
23 bank.

24 (b) The department may require a bank to suspend the payment of any
25 dividends until all orders or requirements of this section and AS 06.05.442 [MADE
26 BY THE DEPARTMENT] have been complied with.

27 * Sec. 75. AS 06.05.442 is amended to read:

28 Sec. 06.05.442. RESTORATION OF SURPLUS BEFORE PAYMENT OF
29 DIVIDENDS. A loss sustained by a bank in excess of its undivided profits and any
30 capital contingency reserves [RESERVE] shall be charged to its surplus account or,
31 with the approval of the department, carried as negative undivided profits. The

1 bank's undivided profits and [. ITS] surplus account shall thereafter be reimbursed
2 from earnings, and no dividends may be declared or paid by the bank [IN EXCESS
3 OF ONE-HALF OF ITS NET EARNINGS] until any negative undivided profits are
4 eliminated and the surplus account is restored to at least the amount from which the
5 surplus was originally reduced [OR AN AMOUNT EQUAL TO 100 PERCENT OF
6 PAID-IN CAPITAL].

7 * Sec. 76. AS 06.05.445 is repealed and reenacted to read:

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

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

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

15 (2) interest accrued but not collected on loans or other credits upon
16 which the interest due is more than 90 days delinquent;

17 (3) interest collected but not earned;

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

20 (5) the appreciation of any asset above its actual cost to the bank; and

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

22 * Sec. 77. AS 06.05.450 is amended to read:

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

1 * Sec. 78. AS 06.05.462(a) is amended to read:

2 (a) A national [CHARTER] bank located in the state may convert to a state
3 [CHARTER] bank or merge or consolidate with a state [CHARTER] bank, and a state
4 [CHARTER] bank may merge or consolidate with another state [CHARTER] bank, if
5 the merger or consolidation is consistent with federal and state law and approved by
6 the department.

7 * Sec. 79. AS 06.05.462(c) is amended to read:

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

14 * Sec. 80. AS 06.05.462(d) is amended to read:

15 (d) A state [CHARTER] bank converting to or merging or consolidating with
16 a national [CHARTER] bank shall submit a copy of the application for national charter
17 or application to convert, merge, or consolidate to the department at the time those
18 documents are forwarded to the comptroller of the currency.

19 * Sec. 81. AS 06.05.466 is repealed and reenacted to read:

20 Sec. 06.05.466. DISSOLUTION BEFORE COMMENCEMENT OF
21 BUSINESS. If the department discovers, after it approves the articles of incorporation
22 for a bank but before it issues a certificate of authority to the bank, a reason why a
23 bank should not have been incorporated, or if a certificate of authority is not issued
24 within the later of one year after the issuance of the certificate of incorporation or the
25 time the department allows for satisfaction of conditions precedent to the issuance of
26 a certificate of authority, the bank shall voluntarily dissolve under AS 10.06.605 -
27 10.06.625 or may be involuntarily dissolved by the department under AS 10.06.633.

28 * Sec. 82. AS 06.05 is amended by adding a new section to read:

29 Sec. 06.05.468. CEASE AND DESIST; OPPORTUNITY FOR HEARING;
30 DEPARTMENT TAKEOVER. (a) A state bank may be closed and the department
31 may take possession of the bank if the bank voluntarily places its affairs and assets

1 under the department's control, or if the department finds

2 (1) the bank has violated an order of the department;

3 (2) the bank has violated a provision of this chapter or a regulation of
4 the department adopted under this chapter;

5 (3) the bank's capital is impaired or the bank is otherwise in an unsafe
6 or unsound condition;

7 (4) the bank's business is being conducted in an unlawful, unsafe, or
8 unsound manner;

9 (5) the bank is insolvent;

10 (6) the bank is unable to continue normal operations;

11 (7) a department examination of the bank is obstructed or impeded;

12 (8) the bank holding company that controls the bank refuses to permit
13 an examination as provided in AS 06.05.235; or

14 (9) the bank has lost, or received notice of the termination or
15 suspension of, its membership in the Federal Deposit Insurance Corporation or has
16 relinquished its membership in the Federal Deposit Insurance Corporation without the
17 consent of the department.

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

24 (c) If a bank fails to comply with an order issued under (b) of this section, the
25 department may take possession of the bank by posting upon the bank premises a
26 notice stating that the department is assuming possession under this chapter.
27 Department possession begins when the notice is posted. The notice shall also be filed
28 in the superior court of the judicial district in which the bank is located. The
29 department shall notify the local federal reserve bank if the bank is a member of the
30 Federal Reserve System.

31 (d) Notwithstanding the provisions of this section and AS 06.01.030, if, in the

1 opinion of the department, an emergency exists that will result in serious losses to the
2 depositors, the department may take possession of a bank without prior hearing.
3 Within two days after the department takes possession under this subsection, an
4 interested party may file with the department an application for an order vacating the
5 possession. The department shall grant the application if the department finds that the
6 department's action was not authorized under this chapter.

7 * Sec. 83. AS 06.05.470(b) is amended to read:

8 (b) [THE DEPARTMENT SHALL TAKE POSSESSION UNDER (A) OF
9 THIS SECTION BY POSTING UPON THE BANK PREMISES A NOTICE
10 STATING THAT IT IS ASSUMING POSSESSION UNDER THIS CHAPTER. ITS
11 POSSESSION IS CONSIDERED TO COMMENCE AT THE TIME OF POSTING OF
12 THE NOTICE. THE NOTICE SHALL ALSO BE FILED IN THE SUPERIOR
13 COURT OF THE JUDICIAL DISTRICT IN WHICH THE BANK IS LOCATED.
14 THE DEPARTMENT SHALL NOTIFY THE FEDERAL RESERVE BANK IF THE
15 BANK IN THE POSSESSION OF THE DEPARTMENT IS A MEMBER OF THE
16 FEDERAL RESERVE SYSTEM.] When the department has taken possession of a
17 state bank, it is vested with the full and exclusive power of management and control,
18 including the power [TO ASSESS OUTSTANDING CAPITAL STOCK UNDER
19 AS 06.05.310,] to continue or discontinue the business, to stop or limit the payment
20 of the bank's [ITS] obligations, to employ necessary assistants, to execute any
21 instrument in the name of the bank, to commence, defend, and conduct in the bank's
22 [ITS] name any action or proceeding in which the bank [IT] may be a party, to
23 terminate the [ITS] possession by restoring the bank to its board of directors, and to
24 reorganize or liquidate the bank under [IN ACCORDANCE WITH] this chapter. As
25 soon as practicable after taking possession, the department shall make an inventory of
26 the assets and file a copy of the inventory [IT] with the superior court.

27 * Sec. 84. AS 06.05.470(g) is amended to read:

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

31 (1) any lien or attachment, other than an attorney's or mechanic's lien,

1 obtained upon any asset of the bank during the department's possession or within four
2 months before commencement of that possession, may [SHALL] be vacated, except
3 liens created by the department while in possession; and

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

8 * Sec. 85. AS 06.05 is amended by adding new sections to read:

9 Sec. 06.05.471. REORGANIZATION. (a) If the department decides to
10 reorganize a state bank, the department, after according a hearing to all interested
11 parties, shall enter an order proposing a reorganization plan. The department shall
12 send a copy of the plan to each depositor and creditor who will not receive payment
13 of a claim in full under the plan, and a notice that, unless within 30 days the plan is
14 disapproved in writing by persons holding one-third or more of the aggregate amount
15 of the claims, the department will reorganize the bank.

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

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

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

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

26 (4) any exchange of new common stock for obligations or stock of the
27 bank will be made

28 (A) in the inverse order of the priorities in liquidation of the
29 classes that will retain an interest in the bank; and

30 (B) upon terms that adjust in a fair manner any change in the
31 relative interest of the respective classes that will be produced by the exchange;

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

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(6) any merger or consolidation provided by the plan complies with this chapter.

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

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Sec. 06.05.472. LIQUIDATION. (a) In liquidating a state bank, the department may exercise any power incidental to liquidating a bank, but it may not, without the approval of the superior court,

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

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

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(3) make full payment on a claim, other than a claim upon an obligation incurred by the department, before preparing and filing a schedule of the department's determinations under AS 06.05.473(d)(3).

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(b) Within six months after beginning the liquidation of a bank, the department may terminate an executory contract for services or advertising to which the bank is a party or an obligation of the bank as a lessee. A lessor who receives 60 days' notice of the department's decision to terminate a lease does not have a claim for rent, other than rent accrued to the date of termination, or for damages due to the termination.

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

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Sec. 06.05.473. CLAIMS. (a) As soon as practical after beginning the liquidation of a state bank, the department shall

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

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

6 (3) publish notice that the department determines to be appropriate for
7 the proceedings.

8 (b) The department shall mail with the notice sent under (a)(1) of this section
9 a statement of the amount shown on the bank's books to be the claim of the depositor
10 or creditor. The notice must also include a demand that a person who is entitled to
11 property held by the bank as bailee or in a safe deposit box of the bank withdraw the
12 property within 30 days. The notice must direct those depositors and creditors who
13 claim amounts different from the amounts in the notice to file their claims with the
14 bank under the procedure described in the notice and before a specified date. The
15 specified day may not be less than 60 days from the date of the first publication of the
16 notice.

17 (c) A safe deposit box whose contents have not been removed within 30 days
18 after demand shall be opened. The department shall retain the contents of the box and
19 the other unclaimed property held by the bank as bailee until the conclusion of the
20 liquidation proceedings. At the conclusion of the liquidation proceedings, the property
21 held by the department under this subsection is considered abandoned, and the
22 department shall turn the property over to the Department of Revenue for handling
23 under AS 34.45.110 - 34.45.780.

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

27 (1) reject a claim that it determines to be invalid;

28 (2) determine the amount, if any, owing to each known creditor or
29 depositor and the priority class of the person's claim under this chapter;

30 (3) prepare a schedule of its determinations for filing in the superior
31 court;