

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10322 HOUSE LABOR & COMMERCE

107

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## ANALYSIS OF PUBLIC NEED

The following analysis of the Board of Dental Examiners (board) activities relates to the public need factors defined in the "sunset" review law, AS 44.66.050. These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

***Determine the extent to which the board, commission, or agency has operated in the public interest.***

The board, through regulation of the licensure of dentists and dental hygienists, has provided the public with qualified professionals in the dental industry. The profession has continuing education requirements that require specific hours of patient contact or patient care related courses. The board requires that all persons licensed by the board display their license in the open for the public to see.

The board licenses applicants in two ways, by examination and by credentials. Licensure by credentials requires the applicant demonstrate their previous work history qualifies them for licensure. Prior audits have noted that licensure by this means has been rather difficult. The board adopted or revised regulations concerning licensure by credentials; governing education requirements; enforced the laws for issuing licenses in a uniform manner; and held meetings and administered examinations in accordance with statutory requirements.

In 1998, legislation was adopted that allows dentists and dental hygienists to be licensed to administer nitrous oxide. Previously, only dentists could administer nitrous oxide to a patient.

The board has been active in providing information to the public, professional and state societies and associations. A member of the board attends every association meeting to act as an ambassador to the association. This allows the board to maintain constant updates on state association issues and concerns as well as providing an efficient means of communicating change in state statutes, regulations and licensing requirements.

Annual reports for fiscal years ended June 30, 1997, 1998, and 1999 were submitted in a timely manner to the Division of Occupational Licensing.

***Determine the extent to which the operations of the board has been impeded or enhanced by existing statutes, procedures, and practices, which it has adopted, and any other matter, including budgetary, resource, and personnel matters.***

In reviewing and evaluating the activities of the board, we consider board activities for the last three complete fiscal years – FY 98, FY 99, and FY 00. During the earlier part of this review period, the Office of the Governor left the public member seat vacant for an extended amount of time. The board met five times between September 1997 and May 1998 with a

vacancy on the board set aside for a non-licensed public member. In late May 1998, a public member was appointed, and the individual has attended 11 of the 12 meetings held since that time.

We believe that it is critical that the public member seat on the board be filled. One of the primary ways the legislature can provide greater assurance that professional licensing boards are acting in the public interest is to place non-licensed citizens on the boards. Accordingly, when this seat is left vacant, or the individual does not regularly attend, this aspect of public protection is diminished.

***Determine the extent to which the board has recommended statutory changes that are generally of benefit to the public interest.***

The board supported legislation that was passed in 1998 that redefined, and expanded to a limited extent, the requirements for licensure by examination and credentials.

The board also supported a bill amending state law, subsequently adopted by the legislature, to allow dentists to continue practice even though they were unable to qualify for the necessary certification in cardio-pulmonary resuscitation (CPR) training. The legislation permitted dentists to continue practice, even without CPR certification, as long as they made sure an individual with the requisite CPR training was on the premises of the dental practice.

***Determine the extent to which the board, commission or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of services, economy of service, and availability of services that it has provided.***

The location, date, and time of upcoming board meetings and notices of proposed changes in regulations are published in the *Anchorage Daily News*, the *Fairbanks Daily News-Miner* and the *Juneau Empire*.

The board's meeting agenda sets aside time for the board to take public comment. Minutes from the meetings reflect public participation throughout the meeting. Proposed regulations are often circulated to those affected by the proposed regulations through professional trade journals, public notice advertisement, or direct mail correspondence from the Division of Occupational Licensing.

***Determine the extent to which the board has encouraged public participation in the making of its regulations and decisions.***

Public notices of proposed regulations are published in major newspapers, as previously discussed. Meetings are adequately advertised and time set aside for public testimony.

Major proposed regulation changes were circulated throughout the professional community by either direct response mailing to the affected license holders, or providing the proposed

changes to the state associations for publication in member newsletters. Feedback resulted in changes to the proposed regulations addressing the profession's concerns.

***Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the Office of the Ombudsman have been processed and resolved.***

During the last three fiscal years (FY 98 – FY 00) the Division of Occupational Licensing has received or developed internally 49 complaints or investigations related to activities regulated by the Board of Dental Examiners. Of these 49, 8 have involved one licensed dentist. Of the remaining 41 complaints, the division has completed an investigation and resolved the case in 36 instances.

Of these 36, 24 were resolved without formal board action including 20 where the division determined there was no violation of professional or legal requirements. The remaining 4 were closed through the issuance of warning letters or through various other administrative procedures.

For the 12 complaints and related investigative actions brought before it, the board took the following actions:

1. issued two reprimands,
2. fined two licensees,
3. placed two licensees on probation,
4. suspended the licenses of three licensees, and
5. upheld administrative decisions that three applicants were not sufficiently qualified for licensure.

Much of the Division of Occupational Licensing's investigative efforts have involved numerous cases of a single licensed dentist. In the past three fiscal years, eight complaints have been made or developed involving the dentist. Even though two of these complaints have been closed, six complaints are still being investigated by Division of Occupational Licensing. As a result of these investigative activities, 42 patient files have been subpoenaed and are being analyzed by dental practice experts for evidence of inappropriate practice.

Complaints have originated from reports from other licensed dentists, the State's dental society, a pharmacist, and an on-site inspection conducted by the Division of Occupational Licensing. We are concerned about the length of time the State's investigate effort is taking while this dentist is still being allowed to practice – despite the repeated indications of shortcomings in his practice of dentistry.

As discussed in the Issue Needing Further Study section of this report, we suggest that a separate audit be conducted to review the Division of Occupational Licensing investigative

activities for this and other occupational boards – to evaluate the efficacy of the agency’s investigative efforts.

***Determine the extent to which the board regulates entry into an occupation or profession and whether it has presented qualified applicants to serve the public.***

Listed below is a summary of new licenses and permits issued by the board for the period under review.

<b>New License and Permits Issued (Exclusive of Renewals)</b>	<b>FY 98</b>	<b>FY 99</b>	<b>FY 00</b>	<b>Total</b>	<b>Current as of June 30, 2000</b>
Dentist	23	34	31	88	549
Dental Hygienist	17	24	41	82	482
Dental Specialist	4	7	6	17	90
Parenteral Sedation Permit	1	4	2	7	32
General Anesthetic Permit	2	-	1	3	18
Local Anesthetic Permit	16	16	39	71	376

Overall the application process for licensing appears reasonable and appropriate. The licensing process is neither unduly restrictive nor too lax. Continuing education is required and adequately monitored by the board, to promote a high level of quality performance and to help ensure the integrity of the profession.

Each applicant is required to satisfy requirements for licensing. Board meeting minutes reflect that the board considers each applicant, interviews those applying by credentials, and verifies the licensing requirements are satisfied prior to issuing a license.

***Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board to its own activities and the area of activity or interest.***

The ombudsman received no complaints regarding the Division of Occupational Licensing. We did not find any evidence that the board was not complying with the state personnel practices, including affirmative action in qualifying applicants. In no instances has the board denied an applicant a license based on personal attributes.

***Determine the extent to which statutory, regulatory, budgeting or other changes are necessary to enable the board to better serve the interest of the public and to comply with the factors enumerated in this subsection.***

The board continues to recognize the need to evaluate the Americans with Disabilities Act (ADA), to determine its impact on the profession. The board will consider whether any statutory or regulatory changes are needed to ensure compliance.

## ISSUES NEEDING FURTHER STUDY

Government auditing standards recommend that audit agencies report on issues that are noted during the course of an audit, but due to circumstances are not necessarily addressed with additional audit fieldwork. The standards state the auditor should "refer significant issues needing further audit work" to the appropriate entities, so the issues can be addressed through audit review at some other time.

Investigating and "making a case" against licensed professionals is difficult. Complaints often involve whether a certain procedure or practice was appropriate and consistent with competent care or lawful, ethical practice. Assessing compliance with such care or practice standards often involves having both the Division of Occupational Licensing and the Department of Law consult with other practitioners regarding professional procedural norms. Such consultation takes time. We recognize the value in proceeding cautiously in order to make the best case possible, our concern is that the public may unduly be put at risk due to delays often involved with such an approach.

In that context, we suggest that further study is needed to determine if investigations are being carried out, by the Division of Occupational Licensing with support from the Department of Law, in a timely manner. This issue is not solely related to the Board of Dental Examiners as the Division of Occupational Licensing must prioritize and allocate its resources across all boards and licensing functions. However, we are concerned about the length of time an investigation (including legal support) of a single dentist is taking given the serious nature of the complaints.

A separate review could assess the overall investigative efforts of the Division of Occupational Licensing and the related legal assistance provided by the Department of Law. This assessment will determine if the various boards are receiving the support necessary to enforce professional standards and requirements and ensure adequate public protection.

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*Alaska*

**Department of Community  
and Economic Development**

**Division of Occupational Licensing**

P.O. Box 110806, Juneau, AK 99811-0806

Telephone: (907) 465-2534 • Fax: (907) 465-2974 • Text Telephone: (907) 465-5437

Email: [license@dced.state.ak.us](mailto:license@dced.state.ak.us) • Website: [www.dced.state.ak.us/occl/](http://www.dced.state.ak.us/occl/)

January 4, 2001

Pat Davidson, Legislative Auditor  
Legislative Budget and Audit Committee  
Division of Legislative Audit  
PO Box 113300  
Juneau, AK 99811

RECEIVED  
JAN 04 2001  
LEGISLATIVE AUDIT

Dear Ms. Davidson:

Thank you for the opportunity to comment on the Board of Dental Examiners preliminary audit. This response is being submitted on behalf of the Division of Occupational Licensing and the Board of Dental Examiners.

The division and the board are pleased that the auditors found the board is doing a satisfactory job and concur that the board should be extended.

**Future Audit of Investigative Activities**

The Division of Occupational Licensing and the Board of Dental Examiners ask the Legislative Budget and Audit Committee to reconsider the recommendation for a future audit of investigative activities.

In 1997, the Division of Legislative Audit conducted a comprehensive audit of Division of Occupational Licensing investigative activities (audit control number: 08-4556-97) and made no recommendations for change. In that process, auditors reviewed 141 investigative case files.

An additional audit of our investigative activities would occupy a significant amount of the investigative unit's time, time that could be spent on investigations.

If the Committee feels that an additional audit is warranted, please consider focusing more narrowly on dental investigations rather than on all professions. The audit recommendation appears to be based on concerns about a single ongoing dental investigation. The other five occupational licensing sunset audits conducted this interim did not raise concern about investigations.

### Dental Statute Changes

The Board of Dental Examiners would like the legislature to make the following dental statute changes during the consideration of board sunset extension.

- 1) Replace the current definition of the practice of dentistry with the American Dental Association definition.
- 2) Increase the maximum fine for violation of the dental statutes. The board believes the current \$5,000 maximum fine is not sufficient incentive to stop transgressions.
- 3) Delete the term "prophylactic" from AS 03.32.110(d) in order to make it clear that dental assistants cannot perform teeth cleaning. Cleaning has always been an exclusive hygienist function, but the current wording may mislead the public.
- 4) Amend AS 08.36.160(e) so the board may accept the Central Regional Dental Testing Service exam as well as the current Western Regional Examining Board exam.
- 5) Amend AS 08.36.234(a)(1)(B) by changing "has been licensed" to "is licensed." The effect of this change would be to require applicants for licensure by credentials to hold a current license in another state, territory or region of the United States.

Thank you for considering our comments.

Sincerely,



Catherine Reardon, director

**HB**

**91**

# Alaska State Legislature

REPRESENTATIVE  
HUGH "BUD" FATE

Mailing Address:

119 N. Cushman, Suite 101  
Fairbanks, Alaska 99701  
(907) 452-4448  
Fax: (907) 456-3346

While in session  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4976  
Fax: (907) 465-3883

House District 33

## House Of Representatives

### Memorandum

DATE: February 7, 2001

TO: Representative Lisa Murkowski  
Chair, House Labor & Commerce Committee

FROM: Representative Hugh Fate *Hugh Fate*

SUBJECT: Teleconference Request, House Bill 91

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I would like to request that the House Labor & Commerce Committee meeting on Monday, February 12, 2001 be teleconferenced. The sites to be connected would be the Anchorage and Fairbanks Legislative Information Office's (LIO). At this time the people to testify would be Mr. Ed Hall, President of the Alaska Academy of Physician Assistants, from the Anchorage LIO and Mr. Tom Wilson PA-C, a physician assistant with Chest Medicine Fairbanks PC, from the Fairbanks LIO. Catherine Reardon, the Director of Occupational Licensing, may testify in committee. I will update the list if anyone else signs up to testify. Please contact my office at 465-4976 if you have any questions.

# Alaska State Legislature

REPRESENTATIVE  
HUGH "BUD" FATE

Mailing Address:  
119 N. Cushman, Suite 101  
Fairbanks, Alaska 99701  
(907) 452-4448  
Fax: (907) 456-3346

While in session  
State Capitol  
Juneau, Alaska  
99801-1182  
(907) 465-4976  
Fax: (907) 465-3883

House District 33

## House Of Representatives

House Bill 91 "An Act relating to the membership and quorum requirements of the State Medical Board."

SPONSOR: Representative Hugh Fate

### SPONSOR STATEMENT:

House Bill 91 is based on a request brought forward by the Alaska Academy of Physician Assistants. The Alaska State Medical Board supports House Bill 91. House Bill 91 adds one licensed physician assistant to the State Medical Board and changes the quorum for meetings, from four to five members.

Currently, there is no representation of physician assistant licensees to the Board even though consideration of physician assistant licensure, regulations and discipline are frequent topics. Physician Assistants are also an increasingly significant factor in providing medical care. Participation of a physician assistant would strengthen and support the State Medical Board and contribute to its decision-making process by providing valuable opinions representing a wider spectrum of medical practitioners in Alaska.



Tom Wilson, P.A.-C  
Chest Medicine Fairbanks

alaska academy of physician assistants

P.O. Box 74187 • Fairbanks, AK 99707-4187  
(800) 478-8684 • (907) 455-4649  
Fax (907) 479-2546 • Email [akapa@mosquitonet.com](mailto:akapa@mosquitonet.com)



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JAN 17 2001

### Addition of One Physician Assistant to State Medical Board

WHEREAS there are 250 physician assistant licensees of the State Medical Board. Physician assistants have been licensees for more than twenty years.

#### Board of Directors

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President  
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President Elect  
Fairbanks, AK

Wendy Hladick  
Past President  
Dillingham, AK

Jim Wojciehowski  
Vice President  
Dillingham, AK

Patricia Brown  
Secretary-Treasurer  
Anchorage, AK

Don Hussen  
2-Year Board Member  
Fairbanks, AK

Mark Restad  
1 Year Board Member  
Homer, AK

WHEREAS there is currently no representation of physician assistant licensees to the State Medical Board.

WHEREAS consideration of physician assistant licensure, regulations and discipline are frequent topics of the State Medical Board and physician assistant participation would strengthen, enhance and support State Medical Board decision-making process.

WHEREAS physician assistants care for over 50,000 Alaskans every month, in a wide variety of institutions, and would therefore provide good representation of their patients (the public) towards matters before the State Medical Board.

WHEREAS physician assistants have proven interest and active participation in State Medical Board business by virtue of their active attendance at State Medical Board meetings for over four years.

WHEREAS physician assistants as licensees of the State Medical Board will contribute valuable opinions which will represent a wider spectrum of medical practitioners in Alaska.

THEREFORE BE IT RESOLVED THAT the Alaska Academy of Physician Assistants wishes to amend Article I State Medical Board, Section 08.64.010, Creation and Membership of State Medical Board, to state "The Governor shall appoint a board of medical examiners, to be known as the State Medical Board, consisting of five physicians, ONE PHYSICIAN ASSISTANT, licensed in the State and residing in as many as separate geographical areas of the State as possible, and two persons with no direct financial interest in the healthcare industry."

VISIT OUR WEBSITE @ [www.mosquitonet.com/~akapa](http://www.mosquitonet.com/~akapa)

The purpose of this Academy is to render loyal and honest service to the medical profession and to the public, to develop and enforce continuing educational programs for the Physician Assistant and the Academy membership to promote the Physician Assistant concept through education of professional and lay people.



Tony Knowles, Governor

**Department of Community  
and Economic Development**

**Division of Occupational Licensing**

P.O. Box 110806, Juneau, AK 99811-0806

Telephone: (907) 465-2534 • Fax: (907) 465-2974 • Text Telephone: (907) 465-5431

Email: [license@dced.state.ak.us](mailto:license@dced.state.ak.us) • Website: [www.dced.state.ak.us/occ/](http://www.dced.state.ak.us/occ/)

*January 19, 2001*

*Ed Hall, PA-C, President  
Alaska Academy of Physician Assistants  
3651 LaTouche Street  
Anchorage AK 99508*

*Mr. Hall, I am pleased to advise you that at its meeting of January 18, 2001, the Alaska State Medical Board voted unanimously to support the Academy in its effort to provide for the inclusion of a physician assistant to the membership of the board.*

*The board appreciates the efforts of the members of the Academy and wishes you every success in pursuing this change to the board*

*Sarah A. Isto, M.D.*

*Sarah A. Isto, MD*

*Chair*

*Alaska State Medical Board*

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80 Hall Street  
Fairbanks, Alaska 99701  
(907) 456-4248  
(907) 452-3064



**JAY QUAKENBUSH**  
Secretary/Treasurer

January 30, 2001

The Honorable Governor Tony Knowles  
P O Box 110001  
Juneau, Alaska 99811

Dear Governor Knowles,

We have become aware that the Alaska Academy of Physician Assistants are lobbying for a Physician Assistant to be appointed to the State Medical Board. The Fairbanks Building and Construction Trade Council would like to express our endorsement of this idea.

Physician Assistants provide valuable medical care to thousands of our Union members and to the public at large. They will provide fair representation of their patients that reside throughout the State, and contribute valuable knowledge and opinions to the State Medical Board.

Thank you in advance for your consideration.

Respectfully,

Don Dokken  
President  
Fairbanks Building & Construction Trades Council



## alaska academy of physician assistants

P.O. Box 74187 • Fairbanks, AK 99707-4187  
 (800) 478-8684 • (907) 455-4649  
 Fax (907) 479-2546 • Email [akapa@mosquitonet.com](mailto:akapa@mosquitonet.com)



February 1, 2001

Mr. Jim Jordan  
 Executive Director  
 Alaska State Medical Association  
 4107 Laurel Street  
 Anchorage, AK 99508

### Board of Directors

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 President  
 Anchorage, AK

Jeanne Clark  
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Patricia Brown  
 Secretary-Treasurer  
 Anchorage, AK

Don Hussen  
 2-Year Board Member  
 Fairbanks, AK

Mark Restad  
 1 Year Board Member  
 Homer, AK

Dear Mr. Jordan:

I am with the Alaska Academy of Physician Assistants and am sending you some information regarding adding a Physician Assistant to the State Medical Board. As an academy we have been working towards this for four years. We have committed funds to send selected representatives to the quarterly meetings of the Medical Board. A physician assistant from Fairbanks (Tom Wilson) and myself are the designees to attend these meetings on an alternate basis. We have attended the last two meetings together working on our proposal. I am sending you a copy of our proposal and a letter from the State Medical Board supporting our proposal. At the last board meeting in Juneau, Tom Wilson and myself spent three days lobbying for this change and I am happy to report that it is now a proposed bill in the House and Senate (HB 91 and SB 58). So far we have not come across anyone or any group opposed to the proposal.

We would like to have the support of the Alaska State Medical Society which is my reason for writing you. If you could disseminate this information to the members somehow we would appreciate it. I would be happy to address the next membership meeting if necessary. I would also be willing to meet with you or talk with you if you have any questions. This proposal would create a minimal fiscal note (est. of \$3000). We are hoping to have the support of all those MD's who collaborate with PA's as well as any other MD's who would be willing to write letters to their representatives in support of the bill.

Thank you for your help. I look forward to hearing from you.

Regards,

*Ed Hall PA-C*

Ed Hall PA-C  
 Immediate past president AKAPA  
 13601 Windward Circle  
 Anchorage, AK 99516  
 wk (907) 562-1234  
 hm (907) 345-9365

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The purpose of this Academy is to render loyal and honest service to the medical profession and to the public, to develop and enforce continuing educational programs for the Physician Assistant and the Academy membership, to promote the Physician Assistant concept through education of professional and lay people, and to promote similar interest in the student societies.

# FISCAL NOTE

**STATE OF ALASKA  
2001 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 91  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): 2/09/2001 3:10p.m. Dept. Affected: DCED  
 Title: An Act relating to the membership and quorum requirements of the State Medical Board BRU: Occupational Licensing  
 Component: Occupational Licensing  
 Sponsor: Representative Fate  
 Requester: House Labor and Commerce Component Number: 2360

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel	3.0	3.0	3.0	3.0	3.0	3.0
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>
<b>CAPITAL EXPENDITURES</b>						
<b>CHANGE IN REVENUES ( )</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>

**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 RSS	3.0	3.0	3.0	3.0	3.0	3.0
<b>TOTAL</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>	<b>3.0</b>

Estimate of any current year (FY2001) cost: 0.0

**POSITIONS**

Full-time					
Part-time					
Temporary					

**ANALYSIS:** *(Attach a separate page if necessary)*  
 HB 91 adds one physician assistant to the membership of the State Medical Board. The Board meets four times each year and costs shown on this fiscal note will fund travel for the physician assistant position when attending board meetings throughout the State.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
 Division: Occupational Licensing Date/Time 2/09/2001 3:10p.m.  
 Approved by: Commissioner Deborah B. Sedwick Date 2/9/2001  
 Agency: Department of Community and Economic Development

**HB**

**106**

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HB106

TONY KNOWLES  
GOVERNOR  
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Juneau, Alaska 99801-1182  
Phone: 907-586-3000  
Fax: 907-586-3012

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 2, 2001

The Honorable Brian Porter  
Speaker of the House  
Alaska State Legislature  
State Capitol  
Juneau, AK 99801-1182

Dear Speaker Porter:

This bill I transmit today allows state financial institutions to compete on equal terms with their federal counterparts by removing current restraints on the state's financial industry. These changes are encouraged under the federal Gramm-Leach-Bliley Act which permits the combining of banking institutions with insurance and securities businesses. Previous federal law prohibited this practice.

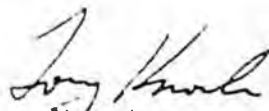
This bill allows the Department of Community and Economic Development to grant state banks those powers enjoyed by national banks in a simplified, efficient process.

The bill is patterned after federal law, but offers greater protection to depositor and consumer financial records. The state would use the more stringent practice of asking depositors and consumers to choose to allow specific disclosure of their records. Conversely, federal law and many other states allow disclosure unless the depositor or consumer specifically requests confidentiality.

The bill also clarifies and updates existing statutes, partly in response to discussions with the financial industry. For example, the bill allows state banks to publish their financial reports in electronic form or in a local newspaper, and simplifies the procedure by which state banks obtain authority to install off-premises automated teller machines. The bill also removes the statutory limitation on the interest rate and fees state banks may charge on credit cards and grants credit unions the authority to issue credit cards. These provisions will keep Alaska banks competitive with out-of-state banks.

As a means of modernizing Alaska's financial institutions, I urge your prompt and favorable action on this measure.

Sincerely,

  
Tony Knowles  
Governor

## **Comments on All Sections of HB 106 (Banking Bill)**

### **Overview**

The Gramm-Leach-Bliley Act (GLBA), enacted on November 12, 1999 is the most sweeping legislation affecting banks and other financial institutions since the Depression. Most believe GLBA will have a major impact on cross- industry mergers and affiliations, and customer privacy.

Many areas of GLBA will supercede existing state law. The purpose of this bill is two-fold with respect to GLBA. First, this bill will make changes to ensure there are no conflicts in the state banking code with GLBA. The second purpose is to ensure that state banks are given comparable powers to the powers granted national banks as a result of the implementation of GLBA.

Specifically, this bill contains provisions to provide for a new type of financial institution, a financial holding company. GLBA allows for a bank holding company to elect status as a financial holding company, and subsequently engage in activities that are financial in nature, or that are incidental or complementary to a financial activity. The state statute restricting a bank's ability to engage in insurance activities will be repealed, as GLBA authorizes this as a permissible activity. We believe our state statute addressing confidentiality of financial institution records to be stricter than, but not inconsistent with GLBA. However, we are modifying it slightly and relocating it from 06.05 (Alaska Banking Code) to 06.01 (Administration) in order to provide this protection to all customers of financial institutions subject to Title 6. The last of the changes in response to GLBA will repeal the provisions of state statute that interfere with interstate branches of national banks.

Additional changes provided for in this bill are a result of the department's request to the industry. Amendments include providing alternate methods of publicizing quarterly financial reports, eliminating the large financial requirement placed on bank directors, and clarifying the legal lending limits for state banks.

Lastly, there are provisions that will allow the department to meet its responsibilities more quickly and with more clarity. This includes amending the "wild card statute" which will allow the department to react faster to changes in federal law in order to maintain parity and competition with national depository institutions. Clarification will be made regarding how confidential customer information may be obtained, and from what institutions an employee of the department may borrow. Finally, the requirements placed upon the department to issue permits and certificates of authority to nationally chartered institutions will be removed.

**Section 1** Gives purpose of the bill

### **Section 2**

#### **Section 06.01.020(a)**

Gives the department authority to respond quicker to parity discrepancies between state and national banks (with some restrictions).

Old law required department to implement an emergency regulation in order to provide parity, which was more cumbersome and less timely.

### **Section 3**

#### **Section 06.01.028**

Provides for confidential treatment of customers/depositors records and clarifies when this information can be released and procedures to do so.

Old law was located in Chapter 5 (Alaska Banking Code) only. By moving this section to Chapter 1 (Administration), it applies to all institutions subject in Title 6.

**Section 4**

**Section 06.01.050(3)**

To provide definition of the term "financial institution."

Old law did not define this term.

**Section 5**

**Section 06.01.050(4)**

To provide definition of the term "state financial institution."

Old law did not define this term.

**Section 6**

**Section 06.05.005**

Amended to insert "state" and "state branches" for clarity.

**Section 7**

**Section 06.05.050**

To provide alternate, cost effective methods for state banks to make public quarterly reports of condition such as posting the report at the bank's Internet web address, in the bank's lobby, or providing copies upon request.

Old law required costly publication in a local newspaper.

**Section 8**

**Section 06.05.065(a)**

Clears up a problem about where an examiner, the director and commissioner can borrow money and not get fired.

The way the old law is written, we could get fired if we borrow money even from a national bank, which severely limits our choices of where to get loans.

**Section 9**

**Section 06.05.065(b)**

Permits an employee of the department to retain a pre-existing extension of credit from any institution that was incurred prior to employment as long as it is not renewed.

Old law only allowed for a mortgage loan to be retained.

**Section 10**

**Section 06.05.20<sup>f</sup>**

Provides state banks parity with national banks with respect to loan limits.

Old law did not provide parity.

**Section 11**

**Section 06.05.209(b)**

Permits a state bank to charge a market rate on credit cards it issues and provides an exemption from the legal rate of interest at AS 45.45.010.

Old law imposed a cap of 17% and specific fees for cash advances.

**Section 12**

**Section 06.05.210(a)**

Liberalizes borrowing restrictions and clarifies reporting requirements for executive officers and directors of state banks.

Old law imposed loan limits and reporting requirements on employees who had no influence or decision-making authority regarding management and direction of the bank.

**Section 13**

**Section 06.05.210**

Adds a new section that subjects all employees and directors of a state bank to the loan limits imposed in AS 06.05.205.

Old law did not impose this requirement.

**Section 14**

**Section 06.05.237**

Provides for a bank holding company to elect to become, and have the powers of, a financial holding company.

Old law did not address financial holding companies, a newly created entity as defined in GLBA.

**Section 15**

**Section 06.05.245**

Amended to correspond with a change made to AS 06.05.230 in a prior year, which allows a bank to take title to property when extending a negatively amortizing loan.

Old law conflicted with AS 06.05.230.

**Section 16**

**Section 06.05.272(b)**

Provides parity with national banks on a state bank's investment in subsidiaries.

Old law imposed limits that did not provide parity once GLBA became effective.

**Section 17**

**Section 06.05.301**

Inserted "state banks" for clarity.

**Section 18**

**Section 06.05.350(d)**

Prohibits use of the word "bank" in a business name unless the business is a bank formed under Title 6 or another state or federal agency, unless it is clear the business does not represent a bank (example Food Bank, Blood Bank).

Old law did not allow for use of the word "bank" in a business name where it is clear the business does not represent a bank (example Food Bank, Blood Bank).

**Section 19**

**Section 06.05.350**

Authorizes the department to determine when a person may use other forms of the word "bank" in its name.

Old law did not address other forms of the word "bank" such as banc, or banque.

**Section 20 - 23**

**Section 06.05.426**

Removes application requirement for a state bank to establish an off-premises ATM by giving 30 days prior notice to department.

Old law required approval from the department.

**Section 24**

**Section 06.05.435(c)**

Requires a director to own \$1,000 in par value or market value of stock that controls the bank.

Old law was based on par value of stock.

**Section 25**

**Section 06.05.435**

Permits a director to use his/her equity interest in a bank holding company to satisfy the required investment in AS 06.05.435(c) and provides effective dates to determine value of investment

Old law required approval by the department.

**Section 26**

**Section 06.05.550**

Differentiate between an interstate state bank and an interstate national bank with respect the authority to branch.

Old law used one term, interstate bank, to refer to both.

**Section 27 - 32**

**Section 06.05.555**

Replace the term "interstate bank" with "interstate state bank" with respect to obtaining a certificate of authority to branch in the state.

Old law required both an interstate state bank, and an interstate national bank to obtain a certificate of authority from the department.

**Section 33**

**Section 06.05.557**

Requires an interstate national bank that is branching into the state to file a notice with the department.

Old law required the department to issue a certificate of authority.

**Section 34 - 38**

**Section 06.05.565**

An interstate state bank is subject to Title 6 and corresponding regulations. An interstate national bank is subject to reporting requirements. Also clarifies that an interstate national bank is subject to AS 06.05.532 (limitation on concentration of deposits in the state) and AS 06.05.550 (branching requirements in the state).

Old law provided that an interstate national bank is subject to all of Title 6.

# LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES  
LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

(907) 465-3867 or 465-2450  
FAX (907) 465-2029  
Mail Stop 3101

State Capitol  
Juneau, Alaska 99801-1182  
Deliveries to: 129 6th St., Rm. 329

## MEMORANDUM

April 9, 2001

**SUBJECT:** CSHB 106(L&C) relating to financial institutions  
(Work Order No. 22-GH1026/C)

**TO:** Representative Lisa Murkowski  
Attn: Amy Erickson

**FROM:** <sup>TLB</sup> Theresa L. Bannister  
Legislative Counsel

This memo accompanies a draft of the bill described above.

Delegation issue. The material added as AS 06.01.028(a)(5) may raise an issue to the extent it includes future amended forms of the Fair Credit Reporting Act (by using "as amended"). The issue is whether the legislature improperly delegates its legislative authority when it allows another legislative body (here, the U.S. Congress) to, in effect, change our laws by amending the law in question. I do not know that this would prove to be a significant problem, but I wanted you to be aware that the issue exists.

If I may be of further assistance, please advise.

TLB:jhb  
01-018.jhb

Enclosure

22-GH1026F  
Bannister  
4/19/01

**CS FOR HOUSE BILL NO. 106(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:  
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the authorizations for certain state financial institutions of certain  
2 powers and limitations; relating to confidential records of depositors and customers of  
3 certain financial institutions; relating to the Alaska Banking Code, Mutual Savings  
4 Bank Act, Alaska Small Loans Act, and Alaska Credit Union Act; amending Rule 45,  
5 Alaska Rules of Civil Procedure, Rules 17 and 37, Alaska Rules of Criminal Procedure,  
6 and Rule 24, Alaska Bar Rules; and providing for an effective date."

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 \* Section 1. The uncodified law of the State of Alaska is amended by adding a new section  
9 to read:

10 PURPOSE. The primary purpose of this Act is to implement banking and other  
11 financial institution reforms in AS 06 in response to P.L. 106-102 (Gramm-Leach-Bliley Act)  
12 in order to further this state as an attractive place for investment and other commerce  
13 involving banking and other financial institutions.

1 \* **Sec. 2.** AS 06.01.015(a) is amended to read:

2 (a) Financial institutions regulated under this title are subject to at least one  
3 examination every 18 months [EACH YEAR]. The department may conduct  
4 additional examinations at its discretion.

5 \* **Sec. 3.** AS 06.01.020(a) is amended to read:

6 (a) Notwithstanding other provisions of this title, the department may by  
7 order [REGULATION] authorize state financial institutions, except licensees subject  
8 to AS 06.20 or AS 06.40, to exercise any of the powers conferred upon, or to be  
9 subject to any of the limitations imposed upon, a federally chartered financial  
10 institution doing business in this state with deposits insured by an agency of the  
11 federal government [,] if the department finds that the exercise of the power or  
12 imposition of the limitation both

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

14 (2) equalizes and maintains the quality of competition between state  
15 financial institutions and federally chartered financial institutions.

16 \* **Sec. 4.** AS 06.01 is amended by adding a new section to read:

17 **Sec. 06.01.028. Depositor and customer records confidential.** (a) The  
18 records of financial institutions relating to their depositors and customers and the  
19 information in the records are confidential. A financial institution may not disclose  
20 the records and information to another person except when, and only to the extent that,

21 (1) the disclosure is authorized in writing by the depositor or customer;

22 (2) the disclosure is required by federal or state statute or regulation or  
23 by an order directed to the financial institution and issued by a court or administrative  
24 agency of competent jurisdiction;

25 (3) the disclosure is made to the holder of a negotiable instrument  
26 drawn on the financial institution as to whether the drawer has sufficient funds in the  
27 financial institution to cover the instrument; or

28 (4) an inquiry has been made by a financial institution or by a credit-  
29 reporting agency regulated under 15 U.S.C. 1681-1681u (Fair Credit Reporting Act),  
30 as amended, solely for the express purpose of determining the credit worthiness of the  
31 depositor or customer as an applicant for credit, and the information disclosed by the

1 financial institution or the entity making the inquiry under this paragraph pertains only  
2 to the payment habits of the depositor or customer in connection with loans and other  
3 credit accommodations and does not pertain to records concerning deposit balances in  
4 savings or checking accounts.

5 (b) When disclosure of financial institution records is compelled by a  
6 subpoena, a search warrant, or another court or administrative agency order under  
7 (a)(2) of this section, the court or administrative agency shall provide in the order for  
8 the reimbursement of the financial institution for the reasonable costs incurred in  
9 complying with the order.

10 (c) Unless otherwise provided in this subsection, when disclosure of financial  
11 institution records is required under a court or administrative agency order under  
12 (a)(2) of this section, the financial institution shall notify the depositor or customer of  
13 the disclosure before the disclosure is made. If notification before disclosure is not  
14 possible, the financial institution shall notify the customer or depositor of the  
15 disclosure as soon as practicable after the disclosure is made. However, notification  
16 either before or after disclosure may not be made if disclosure is made under a court or  
17 administrative agency order under (a)(2) of this section and the document requiring  
18 disclosure requires on its face that the financial institution not notify or inform the  
19 depositor or customer, or the document requiring disclosure is, or is accompanied by,  
20 a court order that expressly directs the financial institution not to notify or inform the  
21 depositor or customer.

22 (d) Nothing in (a) - (c) of this section prohibits a financial institution from  
23 disclosing information to a person if

24 (1) the disclosure is necessary to provide the services of the financial  
25 institution to a depositor or customer; and

26 (2) the person receiving the information has a written agreement with  
27 the financial institution to be bound by the requirements of (a) - (c) of this section.

28 (e) A financial institution or any other person who intentionally violates this  
29 section is liable to a depositor or customer in an amount equal to the actual damages  
30 caused by the disclosure of the confidential records or information of the financial  
31 institution pertaining to the depositor or customer. A financial institution or other

1 person who takes an action under this section while relying in good faith on any  
2 provision of this section is not liable under this section to any person for the action.

3 (f) In this section, "financial institution" means a person subject to the  
4 regulation of the department under this title, including a BIDCO licensed under  
5 AS 10.13 (Alaska BIDCO Act).

6 \* Sec. 5. AS 06.01.040 is amended to read:

7 **Sec. 06.01.040. Examination policy.** It shall be the policy of the department  
8 to conduct, whenever reasonably possible, joint examinations with the Federal Deposit  
9 Insurance Corporation or with the National Credit Union Administration of those  
10 institutions subject to this title whose accounts are insured through [THAT  
11 CORPORATION] those agencies.

12 \* Sec. 6. AS 06.01.050(3) is amended to read:

13 (3) "financial institution" means an institution subject to the regulation  
14 of the department under this title; in this paragraph, "institution" includes a  
15 commercial bank, savings bank, credit union, premium finance company, small  
16 loan company, bank holding company, financial holding company, trust company  
17 and savings and loan association.

18 \* Sec. 7. AS 06.01.050 is amended by adding a new paragraph to read:

19 (4) "state financial institution" means a financial institution that is  
20 organized under this title or that is subject to examination by the department under this  
21 title.

22 \* Sec. 8. AS 06.05.005(a) is amended to read:

23 (a) The department shall

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

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

28 (3) review and approve or disapprove applications for new state banks  
29 under AS 06.05.344 [AS 06.05.345], new bank branches under AS 06.05.399, and  
30 international bank branches or interstate state bank branches [BRANCH BANKS]  
31 under AS 06.05.555;

1 (4) issue permits authorizing certain acquisitions by bank holding  
2 companies [TO DO BUSINESS IN THIS STATE] under AS 06.05.235 and  
3 06.05.570;

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

6 (6) review and approve transfers of state bank ownership under  
7 AS 06.05.327;

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

10 \* Sec. 9. AS 06.05.050 is repealed and reenacted to read:

11 **Sec. 06.05.056. Publication of reports.** (a) Condensed forms of all reports  
12 of condition required by AS 06.05.045(a) shall be immediately

13 (1) published by the state bank in a newspaper of general circulation  
14 published in the place where the state bank is located; if a newspaper of general  
15 circulation is not published in that place, the report shall be published in the  
16 newspaper of general circulation published nearest to that place; or

17 (2) posted

18 (A) at the primary Internet website of the state bank; and

19 (B) in the lobby of the principal office and all branches of the  
20 state bank.

21 (b) Notice of the publication or posting of the reports of condition under (a) of  
22 this section shall be posted in the lobby of the principal office and all branches of the  
23 state bank. Upon request, a copy of a report of condition shall be supplied to any  
24 person at no cost.

25 \* Sec. 10. AS 06.05.065(a) is amended to read:

26 (a) A bank examiner of the department who deals with the regulation of  
27 financial institutions, a special agent selected by the department to do work relating to  
28 financial institutions, the commissioner or deputy commissioner, or the director of  
29 banking may not be an officer, employee, director, trustee, attorney, shareholder, or  
30 partner of a financial institution, or receive, directly or indirectly, a payment or  
31 gratuity from a financial institution. A person subject to this section may not borrow

1 money from a state financial institution [THAT HAS A CERTIFICATE OF  
2 AUTHORITY UNDER THIS TITLE], except as provided in this section.

3 \* Sec. 11. AS 06.05.065(b) is amended to read:

4 (b) A person subject to this section may

5 (1) be a depositor in a financial institution;

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

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

9 (4) be indebted to a state financial institution upon an installment debt  
10 incurred by the employee in the purchase of goods for personal use only and  
11 transferred to the financial institution in the regular course of business, including debts  
12 for household goods, mobile homes, motor vehicles, or boats; or

13 (5) retain a preexisting extension of credit that was incurred before  
14 commencement of the employment that subjected the person to this section; any  
15 renegotiation of a preexisting extension of credit shall be treated as a new  
16 extension of credit that is subject to the prohibitions of this section [BE  
17 INDEBTED TO A STATE FINANCIAL INSTITUTION FOR A MORTGAGE  
18 LOAN SECURED BY THE PERSON'S PRIMARY RESIDENCE, IF THE LOAN  
19 CLOSED BEFORE THE PERSON BECAME AN EMPLOYEE SUBJECT TO THIS  
20 SECTION].

21 \* Sec. 12. AS 06.05.205 is repealed and reenacted to read:

22 Sec. 06.05.205. Loans and extensions of credit. (a) The total loans and  
23 extensions of credit by a state bank to a person outstanding at one time and not fully  
24 secured, as determined in a manner consistent with (b) of this section, by collateral  
25 having a market value at least equal to the amount of the loan or extension of credit  
26 may not exceed 15 percent of the unimpaired capital and unimpaired surplus of the  
27 state bank.

28 (b) The total loans and extensions of credit by a state bank to a person  
29 outstanding at one time and fully secured by readily marketable collateral having a  
30 market value, as determined by reliable and continuously available price quotations, at  
31 least equal to the amount of the money outstanding, may not exceed 10 percent of the

1 unimpaired capital and unimpaired surplus of the state bank. The limitation in this  
2 subsection is separate from and in addition to the limitation contained in (a) of this  
3 section.

4 (c) The limitations contained in (a) and (b) of this section are subject to the  
5 following exceptions:

6 (1) loans or extensions of credit arising from the discount of  
7 commercial or business paper evidencing an obligation to the person negotiating it  
8 with recourse are not subject to a limitation based on unimpaired capital and  
9 unimpaired surplus;

10 (2) the purchase of bankers' acceptances described in AS 06.05.275  
11 and issued by other banks are not subject to a limitation based on unimpaired capital  
12 and unimpaired surplus;

13 (3) loans or extensions of credit secured by bills of lading, warehouse  
14 receipts, or similar documents transferring or securing title to readily marketable  
15 staples are subject to a limitation of 35 percent of unimpaired capital and unimpaired  
16 surplus in addition to the general limitations if the market value of the staples securing  
17 each additional loan or extension of credit at all times equals or exceeds 115 percent of  
18 the outstanding amount of the loan or extension of credit; in order to be considered  
19 under this paragraph, the staples must be fully covered by insurance whenever it is  
20 customary to insure those staples;

21 (4) loans or extensions of credit secured by bonds, notes, certificates of  
22 indebtedness, or treasury bills of the United States or by other such obligations fully  
23 guaranteed as to principal and interest by the United States are not subject to a  
24 limitation based on unimpaired capital and unimpaired surplus;

25 (5) loans or extensions of credit to, or secured by unconditional takeout  
26 commitments or guarantees of, any department, agency, bureau, board, commission,  
27 or establishment of the United States or a corporation wholly owned directly or  
28 indirectly by the United States are not subject to a limitation based on unimpaired  
29 capital and unimpaired surplus;

30 (6) loans or extensions of credit secured by a segregated deposit  
31 account in the lending state bank are not subject to a limitation based on unimpaired

1 capital and unimpaired surplus;

2 (7) loans or extensions of credit to a bank or to a receiver, conservator,  
3 superintendent of banks, or other agent in charge of the business and property of that  
4 bank, if approved by the department, are not subject to a limitation based on  
5 unimpaired capital and unimpaired surplus;

6 (8) loans or extensions of credit arising from the discount of negotiable  
7 or non-negotiable installment consumer paper that carries a full recourse endorsement  
8 or unconditional guarantee by the person transferring the paper are subject under this  
9 section to a maximum limitation equal to 25 percent of unimpaired capital and  
10 unimpaired surplus, notwithstanding the collateral requirements set out in (b) of this  
11 section; however, if the state bank's files or the knowledge of its officers of the  
12 financial condition of each maker of that consumer paper is reasonably adequate, and  
13 an officer of the state bank designated for that purpose by the board of directors of the  
14 state bank certifies in writing that the state bank is relying primarily upon the  
15 responsibility of each maker for payment of the loans or extensions of credit and not  
16 upon any full or partial recourse endorsement or guarantee by the transferor, the  
17 limitations of (a) and (b) of this section as to the loans or extensions of credit of each  
18 such maker are the sole applicable loan limitations;

19 (9) loans or extensions of credit secured by shipping documents or  
20 instruments transferring or securing title covering livestock or giving a lien on  
21 livestock when the market value of the livestock securing the obligation is not at any  
22 time less than 115 percent of the face amount of the note covered are subject under  
23 this section, notwithstanding the collateral requirements set out in (b) of this section,  
24 to a maximum limitation equal to 25 percent of unimpaired capital and unimpaired  
25 surplus;

26 (10) loans or extensions of credit, arising from the discount by dealers  
27 in dairy cattle of paper given in payment for dairy cattle and carrying a full recourse  
28 endorsement or unconditional guarantee of the seller, that are secured by the cattle  
29 being sold are subject under this section, notwithstanding the collateral requirements  
30 set out in (b) of this section, to a maximum limitation equal to 25 percent of  
31 unimpaired capital and unimpaired surplus.

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

5 (1) accept as security for a loan the capital stock of the state bank;

6 (2) accept as security for a loan the capital stock of the state bank's  
7 parent holding companies, unless the stock of the holding companies is publicly traded  
8 on a nationally recognized exchange; or

9 (3) loan money that is to be used to purchase the capital stock of the  
10 state bank or a parent holding company of the state bank.

11 (e) The department may adopt regulations to administer and carry out the  
12 purposes of this section, including, notwithstanding any contrary provision of this  
13 section, regulations to define or further define terms used in this section in order to  
14 establish limits or requirements other than those specified in this section for particular  
15 classes or categories of loans or extensions of credit.

16 (f) For purposes of this section, the department may determine when a loan  
17 putatively made to a person shall be attributed to another person.

18 (g) In this section, "person" means an individual, sole proprietorship,  
19 partnership, joint venture, association, trust, estate, business trust, corporation, or any  
20 similar entity or organization.

21 \* Sec. 13. AS 06.05.209(b) is amended to read:

22 (b) A state bank may issue a credit card or other similar credit granting device  
23 to a customer for obtaining money, goods, services, or anything else of value, and,  
24 notwithstanding AS 45.45.010, the state bank, when credit is extended under this  
25 section, may impose a service charge at a monthly rate as agreed upon by contract  
26 between the state bank and the customer receiving the credit granting device  
27 [THAT RESULTS IN AN ANNUAL RATE NOT IN EXCESS OF 17 PERCENT ON  
28 THE OUTSTANDING BALANCE. HOWEVER, IN ADDITION, WHEN CASH IS  
29 ADVANCED UNDER THIS SECTION, THE BANK MAY IMPOSE A SETUP  
30 CHARGE THAT DOES NOT EXCEED THREE PERCENT OF THE FUNDS  
31 ADVANCED, OR \$12, WHICHEVER IS LESS, EXCEPT THAT ON LOANS OF

1 UNDER \$100 A MINIMUM NOT EXCEEDING \$3 MAY BE CHARGED].

2 \* Sec. 14. AS 06.05.210(a) is amended to read:

3 (a) Subject to the same terms and conditions applicable to other loans, a  
4 director or executive [,] officer [, OR EMPLOYEE] of a state bank may borrow up to  
5 \$100,000, or up to \$250,000 for the director's or executive [,] officer's [, OR  
6 EMPLOYEE'S] primary residence, from the state bank at the discretion of the chief  
7 executive or managing officer of the state bank. A loan to a director or executive [,]  
8 officer [, OR EMPLOYEE] that makes the total amount owed to the state bank by the  
9 director or executive [,] officer [, OR EMPLOYEE] in excess of the limits in this  
10 subsection, or loans of any amount to the chief executive or managing officer of the  
11 state bank, shall have the prior approval of the board of directors, shall be reported to  
12 the department within 30 days, and shall be secured by adequate collateral.

13 \* Sec. 15. AS 06.05.210 is amended by adding a new subsection to read:

14 (c) Notwithstanding (a) of this section, loans to directors, executive officers,  
15 and other officers and employees of a state bank are subject to the lending limits  
16 imposed by AS 06.05.205 and the regulations adopted under that section.

17 \* Sec. 16. AS 06.05 is amended by adding a new section to read:

18 **Sec. 06.05.237. Financial holding companies.** Notwithstanding the  
19 provisions of AS 06.05.235 and regulations adopted under that section, a holding  
20 company formed under this title may apply to the Federal Reserve System for status as  
21 a financial holding company. If the status is granted, the financial holding company  
22 has powers as a financial holding company authorized by the Federal Reserve System  
23 if

24 (1) at the time of application, the holding company provides the  
25 department with a complete copy of the application;

26 (2) the holding company provides the department with copies of all  
27 correspondence concerning the application;

28 (3) the holding company provides the department with a copy of the  
29 approval by the Federal Reserve System within 10 days after the holding company  
30 receives the approval; and

31 (4) the department does not issue a letter denying financial holding

1 company status within 30 days after the approval by the Federal Reserve System.

2 \* Sec. 17. AS 06.05.245 is amended to read:

3 Sec. 06.05.245. Disposition of property not needed in the conduct of a  
4 banking business. All investments in real and personal property, regardless of how  
5 acquired, not permitted [NECESSARY FOR THE CONVENIENT  
6 TRANSACTION OR PROMOTION OF A BANKING BUSINESS] under  
7 AS 06.05.230 that come [COMES] into the possession of a state bank shall be  
8 disposed of as soon as possible. If the real or personal property is not sold within the  
9 time limit set [PRESCRIBED] by the department in regulations, it shall be written off  
10 and may not be carried as an asset of the state bank.

11 \* Sec. 18. AS 06.05.272(b) is amended to read:

12 (b) Under this section, a state bank's total investment in its subsidiaries  
13 may not exceed that which is permissible for a federally chartered bank's total  
14 investment in all subsidiaries as set out in 12 U.S.C. 24a. as amended [BANK  
15 MAY INVEST IN SUBSIDIARIES AN AMOUNT EQUAL TO THE LESSER OF  
16 20 PERCENT OF ITS TOTAL ASSETS OR 50 PERCENT OF ITS TOTAL  
17 CAPITAL ACCOUNTS]. Loans to subsidiaries are considered investments subject to  
18 the limitations of this subsection.

19 \* Sec. 19. AS 06.05.301(a) is amended to read:

20 (a) Except for national banks with a principal place of business in the state,  
21 and interstate state banks and international banks with a certificate of authority under  
22 AS 06.05.555, a corporation may not engage in the banking business unless the  
23 corporation is organized under AS 10.06 (Alaska Corporations Code) and this title.

24 \* Sec. 20. AS 06.05.350(d) is amended to read:

25 (d) Except as authorized under this section, a person may not  
26 (1) engage in the business of receiving deposits, discounting evidences  
27 of indebtedness, or receiving money for transmission;  
28 (2) represent that the person is [, OR ACTS FOR,] a bank; or  
29 (3) use any form of the word "bank" in the person's name unless  
30 the person is a state bank formed under this title or a bank formed under the  
31 authority of another state or an agency of the federal government. or unless it is

1 clear that the use does not represent that the person is a bank; the prohibition in  
2 this paragraph does not apply to a food bank, blood bank, or similar  
3 organization that cannot readily be confused with a bank [AN ARTIFICIAL OR  
4 CORPORATE NAME THAT PURPORTS TO BE OR SUGGESTS THAT IT IS  
5 THE NAME OF A BANK].

6 \* Sec. 21. AS 06.05.350 is amended by adding a new subsection to read:

7 (e) A person prohibited by (d)(3) of this section from using any form of the  
8 word "bank" in its name may apply to the commissioner for authority to use a form of  
9 the word "bank" in its name.

10 \* Sec. 22. AS 06.05.426(b) is amended to read:

11 (b) A state bank may establish, maintain, and operate an automated teller  
12 machine at a location other than bank premises by notifying the department 30 days  
13 before the date of establishment [WITH THE PRIOR APPROVAL OF THE  
14 DEPARTMENT]. An automated teller machine operated off bank premises shall be  
15 made available on a nondiscriminatory basis for use by depositors of other  
16 depository institutions [BANKS] authorized to do business in the state [AND THEIR  
17 CUSTOMERS], upon the agreement of the other depository institutions [BANKS] to  
18 pay a fair and equitable amount for the use of the machine.

19 \* Sec. 23. AS 06.05.426(c) is repealed and reenacted to read:

20 (c) The notice required in (b) of this section must include

21 (1) the location and general description of the surrounding area,  
22 including a description of the business establishment, if any, in which the machine will  
23 be located;

24 (2) the manner of operation and the kinds of transactions that the  
25 machine will perform;

26 (3) the names of the other depository institutions that will share the  
27 machine's services; and

28 (4) other information required by the department.

29 \* Sec. 24. AS 06.05.426(d) is amended to read:

30 (d) A state bank may invest in a corporation organized to operate machines  
31 that perform automated teller services for two or more depository institutions

1 [BANKS, IF EACH BANK OWNS PART OF THE CAPITAL STOCK OF THE  
2 CORPORATION].

3 \* Sec. 25. AS 06.05.426 is amended by adding a new subsection to read:

4 (e) A person may not establish or operate an automated teller machine that  
5 accepts deposits unless those deposits are insured by the Federal Deposit Insurance  
6 Corporation or another agency of the United States that insures deposits.

7 \* Sec. 26. AS 06.05.435(c) is amended to read:

8 (c) Unless otherwise approved by the department, each director of a state  
9 bank shall own, in the director's own right or jointly with the director's spouse, free of  
10 any encumbrance, common or preferred stock of the state bank or of an entity that  
11 controls the state bank that has an aggregate par value of at least \$1,000. an  
12 aggregate shareholder's equity of at least \$1,000, or an aggregate fair market  
13 value of at least \$1,000 [CAPITAL STOCK OF THE BANK IN AN AMOUNT  
14 EQUAL TO AT LEAST \$1,000 IN PAR VALUE].

15 \* Sec. 27. AS 06.05.435 is amended by adding new subsections to read:

16 (h) In the case of an entity that owns more than one bank, a director may use  
17 the director's equity interest in the controlling entity to satisfy, in whole or in part, the  
18 equity interest requirement for one or all of the controlled banks.

19 (i) The value of the common or preferred stock held by a director of a state  
20 bank or of an entity that controls the state bank is valued as of the date purchased, or  
21 as of the date on which the individual became a director, whichever value is greater.

22 \* Sec. 28. AS 06.05.550 is amended to read:

23 Sec. 06.05.550. Authority of international bank, [OR] interstate state  
24 bank, or interstate national bank to branch. (a) An international bank, [OR] an  
25 interstate state bank, or an interstate national bank whose deposits are insured by  
26 the Federal Deposit Insurance Corporation [,] may acquire a branch bank as the result  
27 of a merger or consolidation of the international bank, [OR] interstate state bank, or  
28 interstate national bank with, or the purchase of all or substantially all of the assets  
29 of, a state bank, a national bank with its principal office in this state, or a branch of the  
30 state bank or national bank, unless the state bank or national bank is a recently formed  
31 bank.

1 (b) An international bank may establish a new branch bank in this state or  
2 acquire a recently formed bank [,] if the department approves the establishment or  
3 acquisition before the establishment or acquisition occurs. An interstate state bank or  
4 interstate national bank may not establish a branch bank in this state unless the  
5 establishment occurs through an acquisition under (a) of this section of a bank located  
6 in the state. An interstate state bank or interstate national bank may not establish a  
7 new branch bank in this state.

8 (c) An interstate state bank, interstate national bank, or international bank  
9 that opens, occupies, or maintains a branch bank in the state has the same powers  
10 under the laws of the state as a state or national bank of the same type.

11 \* Sec. 29. AS 06.05.555(a) is amended to read:

12 (a) Before acquiring a branch bank under AS 06.05.550(a) or establishing a  
13 branch bank under AS 06.05.550(b), an interstate state bank or international bank  
14 shall file an application with the department for and receive a certificate of authority to  
15 operate a branch bank. The application must include

- 16 (1) all information and fees required under AS 06.05.399;
- 17 (2) the name of the bank and the address of its principal office;
- 18 (3) if an international bank, the country under whose laws it is  
19 organized;
- 20 (4) the amount of the bank's capital actually paid in cash and the  
21 amount subscribed for and unpaid;
- 22 (5) a complete and detailed statement of the bank's financial condition;
- 23 (6) the names of all other states and countries in which the bank is  
24 admitted or qualified to do business;
- 25 (7) a copy of the bank's charter, articles of incorporation, and bylaws,  
26 as applicable;
- 27 (8) if an international bank, evidence satisfactory to the department  
28 that the bank is authorized to conduct a banking business under the laws of the country  
29 of its organization, and the nature of the bank's business;
- 30 (9) a properly executed designation of the department as the bank's  
31 agent for service of process in an action or proceeding arising out of a transaction

1 involving the branch bank; the designation must include the name and address of the  
2 officer, agent, or other person to whom the department is to forward the process; and

3 (10) other information necessary or appropriate for the department to  
4 determine whether the bank is entitled to a certificate of authority from the  
5 department.

6 \* Sec. 30. AS 06.05.555(b) is amended to read:

7 (b) The department shall notify the interstate state bank or international bank  
8 of its action on the application. If the application and the accompanying documents do  
9 not comply with the requirements of (a) of this section, the department shall return  
10 them with an explanation of the noncompliance. If the department does not respond  
11 within 30 days of its receipt of the application, the application is considered to be  
12 accepted.

13 \* Sec. 31. AS 06.05.555(c) is amended to read:

14 (c) The interstate state bank or international bank shall publish notice of the  
15 application in the manner provided in AS 06.05.344(d) - (e). The notice must state the  
16 proposed location of the branch bank.

17 \* Sec. 32. AS 06.05.555(d) is amended to read:

18 (d) Upon acceptance of the application, the department shall conduct an  
19 investigation to determine that

20 (1) if an interstate state bank,

21 (A) the laws of the home state of the bank authorize a state  
22 bank of this state to acquire a branch bank in the home state without conditions  
23 or restrictions on the operations of the branch bank; and

24 (B) the bank supervisor of the home state of the bank has  
25 agreed to provide to the department the examination reports that the  
26 department determines sufficient to permit the department to determine on a  
27 current basis the financial condition of the bank;

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

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

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

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

4 \* Sec. 33. AS 06.05.555(e) is amended to read:

5 (e) Not later than 150 days after the department accepts an application by an  
6 interstate state bank or international bank for a certificate of authority to operate a  
7 branch bank, the department shall make a determination whether to approve the  
8 application. Within 30 days after the second publication of the notice referred to in (c)  
9 of this section, a person opposing the pending application may file written objections  
10 with the department. When it approves or denies the application, the department shall  
11 notify the bank and any other person who requested in writing to be notified, and, if  
12 the application is denied, the department shall state the reasons for its decision.

13 \* Sec. 34. AS 06.05.555(f) is amended to read:

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

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

18 (2) the requirements of this chapter are satisfied.

19 \* Sec. 35. AS 06.05 is amended by adding a new section to read:

20 **Sec. 06.05.557. Notice filing for interstate national banks.** An interstate  
21 national bank acquiring a branch in this state under AS 06.05.550 shall file a notice of  
22 the acquisition with the department along with a copy of the application filed with the  
23 agency that primarily regulates the interstate national bank. The notice and copy of  
24 the application shall be filed with the department at the same time the application is  
25 filed with the agency that primarily regulates the interstate national bank.

26 \* Sec. 36. AS 06.05.565(a) is amended to read:

27 (a) An interstate state bank or international bank operating a branch bank in  
28 the state is subject to the provisions of this title [,] and the regulations adopted and  
29 orders issued under this title, except for the residency requirements in  
30 AS 06.05.435(a).

31 \* Sec. 37. AS 06.05.565(c) is amended to read:

1 (c) A branch bank of an interstate state bank or international bank operating  
2 in the state is subject to examination under AS 06.01.015 and assessments under  
3 AS 06.01.010. Assessments under AS 06.01.010(d) are based on the branch bank's  
4 total deposits in the state.

5 \* Sec. 38. AS 06.05.565(d) is amended to read:

6 (d) When the department considers it necessary to protect the public interest,  
7 the department or a competent person designated by the department may examine an  
8 interstate state bank or international bank with a branch in the state. The interstate  
9 state bank or international bank shall pay an examination fee established under  
10 AS 06.01.010.

11 \* Sec. 39. AS 06.05.565(e) is amended to read:

12 (e) The department may require periodic reports from an interstate state  
13 bank or an interstate national bank [OUT-OF-STATE DEPOSITORY  
14 INSTITUTION] that maintains a branch in this state and from a bank holding  
15 company that controls the interstate state bank or interstate national bank [OUT-  
16 OF-STATE DEPOSITORY INSTITUTION]. The reports shall be made under oath  
17 and filed as frequently as required by the department. The reports must contain the  
18 information and detail that the department determines to be appropriate to assure  
19 continuing compliance of the interstate state bank or interstate national bank  
20 [OUT-OF-STATE DEPOSITORY INSTITUTION] with the provisions  
21 [PROVISION] of this title.

22 \* Sec. 40. AS 06.05.565 is amended by adding a new subsection to read:

23 (g) An interstate national bank operating a branch bank in this state is subject  
24 to the provisions of AS 06.05.548 and 06.05.550 and the regulations adopted and  
25 orders issued under those sections.

26 \* Sec. 41. AS 06.05.570(a) is amended to read:

27 (a) An out-of-state bank holding company may acquire and own all or a  
28 portion of the voting securities or other capital stock of, or all or substantially all of the  
29 assets of, one or more state banks, domestic bank holding companies, or national  
30 banks conducting a banking business in the state, unless the state bank or national  
31 bank is a recently formed bank. Before an out-of-state bank holding company may

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

14   \* Sec. 42. AS 06.05.990(13) is amended to read:

15               (13) "financial institution" means an institution subject to the  
16       regulation of the department under this title; in this paragraph, "institution"  
17       includes a commercial bank, savings bank, credit union, premium finance  
18       company, small loan company, bank holding company, financial holding  
19       company, trust company, and savings and loan association;

20   \* Sec. 43. AS 06.05.990(19) is repealed and reenacted to read:

21               (19) "loan" includes an extension of credit resulting from direct or  
22       indirect negotiations between a lender and a debtor;

23   \* Sec. 44. AS 06.05.990(22) is amended to read:

24               (22) "recently formed bank" means a state bank or national bank that  
25       conducts a banking business in the state and that commenced the banking business in  
26       the state on or after July 1, 1982, and that has not been in existence and continuously  
27       operating in the state for a period of three years or more; "recently formed bank" does  
28       not include

29                       (A) a bank organized solely for the purpose of facilitating  
30       acquisition of a bank that either has been in existence and continuously  
31       operating in the state as a bank for a three-year period, or was conducting a

1 banking business in the state on or before June 30, 1982;

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

8 (C) a national bank that the board of governors of the Federal  
9 Reserve System, or their designee, determines is not chartered directly or  
10 indirectly by an acquiring out-of-state bank holding company, and that does  
11 not have the capacity to conduct its business independently in a manner  
12 consistent with the public interest of depositors, creditors, and shareholders;

13 \* Sec. 45. AS 06.05.990(24) is amended to read:

14 (24) "state financial institution" means a financial institution that is  
15 organized under this title or that is subject to examination by the department  
16 under this title;

17 \* Sec. 46. AS 06.05.990 is amended by adding new paragraphs to read:

18 (29) "extension of credit" means a negotiable instrument, and includes  
19 promissory notes, acknowledgments of advance, due bills, invoices, overdrafts,  
20 acceptances, and similar written or oral obligations or evidence of debt whether  
21 secured or unsecured; in this paragraph, "negotiable instrument" has the meaning  
22 given in AS 45.03.104;

23 (30) "financial holding company" means an existing, or newly formed,  
24 domestic bank holding company that has been approved as a financial holding  
25 company by the Federal Reserve System and not denied that status by the department  
26 under AS 06.05.237;

27 (31) "interstate national bank" means a national bank whose principal  
28 office, as designated in its articles of incorporation, is not located in this state;

29 (32) "interstate state bank" means a person organized under the laws of  
30 another state and holding a charter, license, or certificate of authority from another  
31 state to engage in a banking business.

1 \* Sec. 47. AS 06.15.100 is repealed and reenacted to read:

2 **Sec. 06.15.100. Prohibited conduct of trustees.** A trustee may not

3 (1) receive remuneration as trustee except reasonable fees for  
4 attendance at meetings of trustees or for services as a member of a committee of  
5 trustees;

6 (2) use the position as trustee, or knowingly allow it to be used, to  
7 obtain preferential terms in dealings with the mutual bank for which the person is  
8 trustee;

9 (3) use the position as trustee, or knowingly allow it to be used, to  
10 induce an actual or prospective borrower from the mutual bank for which the person is  
11 trustee to purchase goods or services at a direct or indirect profit to the trustee.

12 \* Sec. 48. AS 06.15 is amended by adding a new section to read:

13 **Sec. 06.15.105. Trustee borrowing.** A person may borrow money from the  
14 mutual bank for which the person is trustee to the same extent that a director may  
15 borrow money under AS 06.05.210.

16 \* Sec. 49. AS 06.20.010 is amended by adding a new subsection to read:

17 (b) A person who is doing business under and as permitted by any law of the  
18 state or of the United States relating to banks, savings banks, trust companies, building  
19 and loan associations, or credit unions and who is exempt from the licensing  
20 requirement in (a) of this section shall comply with all other provisions of this chapter.

21 \* Sec. 50. AS 06.45.020(a) is amended to read:

22 (a) Seven or more natural persons who desire to form a credit union shall  
23 subscribe before an officer competent to administer oaths, articles of incorporation in  
24 duplicate that must state

25 (1) the name of the credit union;

26 (2) the location of the credit union and the territory in which it will  
27 operate;

28 (3) the names and addresses of the subscribers to the certificate and the  
29 number of shares each subscribed;

30 (4) the par value of the shares, which must [SHALL] be a minimum  
31 of \$5 each;

1 (5) the proposed field of membership specified in detail;

2 (6) the term of the existence of the credit union, which may be  
3 perpetual; and

4 (7) the fact that the articles of incorporation are adopted to enable the  
5 persons to avail themselves of the advantages of this chapter.

6 \* Sec. 51. AS 06.45.060(5) is amended to read:

7 (5) make loans, the maturities of which may not exceed 20 [12] years  
8 except as provided in this chapter, and extend lines of credit to its members, to other  
9 credit unions, and to credit union organizations and participate with other credit  
10 unions, credit union organizations, or financial organizations in making loans to credit  
11 union members in accordance with the following:

12 (A) loans to members shall be made in conformity with  
13 regulations adopted by the commissioner, except that

14 (i) a residential real estate loan that [WHICH] is made  
15 to finance the acquisition of a one- to four-family dwelling for the  
16 principal residence of a credit union member that [WHICH] is secured  
17 by a first lien on the dwelling may have a maturity not exceeding 30  
18 years;

19 (ii) a loan to finance the purchase of a mobile home  
20 that [, WHICH] is secured by a first lien on the mobile home, to be  
21 used as the residence of a credit union member, or for the repair,  
22 alteration, or improvement of a residential dwelling that is the residence  
23 of a credit union member must [SHALL] have a maturity not to exceed  
24 20 [15] years unless the loan is insured or guaranteed under (iii) of this  
25 subparagraph;

26 (iii) a loan secured by the insurance or guarantee of the  
27 federal government, of a state government, or an agency of either may  
28 be made for the maturity and under the terms and conditions specified  
29 in the law under which the insurance or guarantee is provided;

30 (iv) a loan or aggregate of loans to a director or member  
31 of the supervisory or credit committee of the credit union making the

1 loan that [WHICH] exceeds \$20,000 [\$5,000] plus pledged shares shall  
2 be approved by the board of directors;

3 (v) loans to other members for which directors or  
4 members of the supervisory or credit committee act as guarantor or  
5 endorser shall be approved by the board of directors when the loans  
6 standing alone or when added to an outstanding loan or loans of the  
7 guarantor or endorser exceed \$20,000 [\$5,000];

8 (vi) the rate of interest may not exceed the greater of 15  
9 percent a year or the rate specified in AS 45.45.010(b);

10 (vii) the taking, receiving, reserving, or charging of a  
11 rate of interest greater than is allowed by this paragraph, when  
12 knowingly done, is considered a forfeiture of the entire interest that the  
13 note, bill, or other evidence of debt carries with it, or that has been  
14 agreed to be paid on the note, bill, or other evidence of debt; if a greater  
15 rate of interest has been paid, the person by whom it has been paid or  
16 the person's legal representatives may recover back from the credit  
17 union taking or receiving it the entire amount of interest paid, but the  
18 action must be commenced within two years from the time the usurious  
19 collection was made;

20 (viii) a borrower may repay a loan before maturity in  
21 whole or in part on any business day without penalty;

22 (ix) loans shall be paid or amortized under regulations  
23 adopted by the commissioner that consider the needs or conditions of  
24 the borrowers, the amounts and duration of the loans, the interests of  
25 the members and the credit union, and other factors established in  
26 regulations adopted by the commissioner;

27 (x) the total dollar amount of real estate loans and  
28 mobile home loans outstanding may not exceed 25 percent of the assets  
29 of the credit union without the written approval of the commissioner;

30 (xi) a credit union with assets of less than \$3,000,000  
31 may make real estate loans with maturities in excess of 15 years only

1 with the approval of the commissioner;

2 (B) a self-replenishing line of credit to a borrower may be  
3 established to a stated maximum amount on terms and conditions that may be  
4 different from terms and conditions established for another borrower;

5 (C) loans to other credit unions require the approval of the  
6 board of directors of the loaning credit union;

7 (D) loans to credit union associations require the approval of  
8 the board of directors of the credit union and may not exceed one percent of  
9 the paid-in and unimpaired capital and surplus of the credit union;

10 (E) participation loans with other credit unions, credit union  
11 associations, or financial organizations shall be made in accordance with  
12 written policies of the board of directors of the credit union, except that a credit  
13 union that originates a loan for which participation arrangements are made in  
14 accordance with this section shall retain an interest not less than 10 percent of  
15 the face amount of the loan;

16 \* Sec. 52. AS 06.45.060(7) is amended by adding new subparagraphs to read:

17 (L) in bankers' acceptances issued by a financial institution  
18 whose accounts are insured by an agency of the federal government;

19 (M) in stock of a federal home loan bank; the investment must  
20 be limited to the minimum amount of stock required for membership in the  
21 federal home loan bank, plus any additional stock purchase required to obtain  
22 an advance of funds from a federal home loan bank;

23 (N) in obligations of, or issued by, a state or political  
24 subdivision of the state, except that a credit union may not invest more than 10  
25 percent of its unimpaired capital and surplus in the obligations of any one  
26 issuer, exclusive of general obligations of the issuer; in this subparagraph,  
27 "political subdivision of the state" includes an agency, corporation, or  
28 instrumentality of a state or political subdivision;

29 \* Sec. 53. AS 06.45.060 is amended by adding a new paragraph to read:

30 (16) issue solicited or unsolicited credit cards or other similar credit  
31 granting devices to a member for obtaining money, goods, services or anything else of

1 value; notwithstanding (5)(A)(vi) of this section and AS 45.45.010, when credit is  
2 extended under this section, the credit union may impose a service charge at a monthly  
3 rate as agreed upon by contract between the credit union and the member receiving the  
4 credit granting device, but the credit union may not hold the member liable for charges  
5 made on a credit card or other credit granting device before its acceptance by the  
6 member; before an unsolicited card is considered accepted by the member, the  
7 member shall execute and furnish to the credit union a written statement of  
8 acceptance; in addition, a credit union may charge fees for credit cards or other similar  
9 credit granting devices.

10 \* **Sec. 54.** AS 06.45 is amended by adding a new section to read:

11 **Sec. 06.45.295. Automated teller machines.** (a) A state credit union may  
12 establish, maintain, and operate an automated teller machine on the premises of the  
13 main office or a branch office of the state credit union.

14 (b) A state credit union may establish, maintain, and operate an automated  
15 teller machine at a location other than credit union premises by notifying the  
16 department 30 days before the date of establishment. An automated teller machine  
17 operated off credit union premises shall be made available on a nondiscriminatory  
18 basis for use by depositors of other depository institutions authorized to do business in  
19 the state and their customers, upon the agreement of the other depository institutions  
20 to pay a fair and equitable amount for the use of the machine.

21 (c) The notice required by (b) of this section must include

22 (1) the location and general description of the surrounding area,  
23 including a description of the business establishment, if any, in which the machine will  
24 be located;

25 (2) the manner of operation and the kinds of transactions that the  
26 machine will perform;

27 (3) the names of the other depository institutions that will share the  
28 machine's services; and

29 (4) other information required by the department.

30 (d) A state credit union may invest in a corporation organized to operate  
31 machines that perform automated teller services for two or more depository

1 institutions.

2 (e) A person may not establish or operate an automated teller machine that  
3 accepts deposits unless those deposits are insured by the National Credit Union Share  
4 Insurance Fund or another agency of the United States that insures deposits.

5 \* Sec. 55. AS 06.05.005(b)(3), 06.05.175, 06.05.272(d), 06.05.990(18); and  
6 AS 06.20.330(a) are repealed.

7 \* Sec. 56. The uncodified law of the State of Alaska is amended by adding a new section to  
8 read:

9 INDIRECT COURT RULE AMENDMENTS. AS 06.01.028(b), added by sec. 4 of  
10 this Act, has the effect of changing Rule 45, Alaska Rules of Civil Procedure, Rules 17 and  
11 37, Alaska Rules of Criminal Procedure, and Rule 24, Alaska Bar Rules, because  
12 AS 06.01.028(b) requires court orders compelling disclosure to provide for reimbursement of  
13 a financial institution's reasonable costs of complying with the order.

14 \* Sec. 57. The uncodified law of the State of Alaska is amended by adding a new section to  
15 read:

16 TRANSITION: REGULATIONS. Notwithstanding sec. 60 of this Act, the  
17 Department of Community and Economic Development may immediately proceed to adopt  
18 regulations necessary to implement the changes made by this Act. The regulations take effect  
19 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the  
20 statutory changes.

21 \* Sec. 58. The uncodified law of the State of Alaska is amended by adding a new section to  
22 read:

23 INSTRUCTION TO REVISOR. The revisor of statutes is instructed to change the  
24 heading of

25 (1) AS 06.05.555 from "Certificate of authority for interstate and international  
26 branching" to "Certificate of authority for interstate state bank and international bank  
27 branching"; and

28 (2) AS 06.05.565 from "Applicability of title to interstate or international  
29 banks, to out-of-state depository institutions, and to bank holding companies" to  
30 "Applicability of title to interstate state banks, interstate national banks, international banks,  
31 and bank holding companies."

- 1 \* Sec. 59. Section 57 of this Act takes effect immediately under AS 01.10.070(c).
- 2 \* Sec. 60. Except as provided in sec. 59 of this Act, this Act takes effect July 1, 2001.



## Comments on Alaskans' Right to Financial Privacy

For over 30 years, the Alaska Banking Code (AS 06.05.175) has required banks to obtain the written permission of customers before disclosing personal information to others for most purposes. This has prevented banks from selling nonpublic, personal information about a customer to telemarketers, for example, without the customer's approval. With the passage of the Gramm-Leach-Bliley Act (GLBA), federal law now allows financial institutions to sell this information unless the customer tells them not to. This is called an opt-out system, where the burden is on Alaska citizens to prevent the selling of their information. It contrasts with the opt-in system that has been protecting Alaskans for over 30 years, in which the burden is on the financial institutions to obtain customer approval before selling their information to telemarketers.

Fortunately, the GLBA allows states to adopt more restrictive privacy provisions. As a result, AS 06.01.028,<sup>1</sup> as we proposed it, will maintain the current right of depositors and customers of financial institutions in Alaska to determine affirmatively whether nonpublic personal information about them, residing in the records of the financial institutions, will be shared by those institutions with others.<sup>2</sup> We believe this is a right that Alaskans have enjoyed, and have every reason to believe they still have it. We also believe the Alaska Constitution (at section 1.22) requires it.

This is not a debate over the ability of financial institutions to share information with their affiliates and conduct joint-marketing programs. The ability to share information with affiliates is provided in the Fair Credit Reporting Act, and may not be restricted by states until January 1, 2004. This is a debate over the ability of financial institutions to sell detailed, nonpublic, personally identifiable information to nonaffiliated third parties, including telemarketers, who can target solicitations to Alaskans. The information available for sale is almost everything except account numbers and passwords, and could include an individual's spending habits reflected in written checks and credit card charges.

The truth is, the opt-out system of the GLBA, is not a mechanism for Alaskans to protect their financial privacy. It is a mechanism that financial institutions will use to gain control over the distribution of personal information. Financial institutions will be sending out privacy notices to customers explaining the collection and use of information, and informing customers how to opt out of sharing with affiliates and nonaffiliated firms. These notices are often in small print, and included as inserts with monthly statements. Most people will not read them. Due to the size of the print, many, especially the elderly, may be unable to read them. If they do read them, few will understand all of the implications, because the phrase "sell to telemarketers" is unlikely to appear anywhere. The few that do understand will find no return, stamped envelope enclosed, and perhaps no form, but only a phone number to call.

Worst of all, the burden is on the customer, not the financial institution. Unless the customer goes through all the required steps, they will have failed to opt out, and the financial institution will be free to sell extremely private information to anyone who pays the price. We do not believe this is what Alaskans want, expect, or deserve.

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<sup>1</sup> In SB 66 and HB 106.

<sup>2</sup> Based on a recommendation of the department of law, we take the position at this time that the Fair Credit Reporting Act (FCRA) preempts state restrictions on information sharing among affiliates until January 1, 2004. Until and unless the issue is addressed more clearly at the federal level, we take it to mean that an opt-in requirement in AS 06.01.028 does not apply to information sharing with affiliates, but does apply to information sharing with nonaffiliated third parties.

# MEMORANDUM


## State of Alaska Department of Law

TO: Terry Elder, Director  
Division of Banking, Securities and  
Corporations  
Department of Community and  
Economic Development

DATE: March 28, 2001

FILE NO: 663-01-0158

TEL. NO: (907) 465-3600

FROM:  Dan Robinson  
Assistant Attorney General  
Commercial Section

SUBJECT: Fair Credit Reporting Act's  
effect on HB 106/Sb66

You have requested the Department of Law's opinion on the effect certain provisions in the Fair Credit Reporting Act may have on HB 106/SB 66. Specifically, your question was whether the Act, codified at 15 U.S.C. 1681, prohibits the state from adopting an "opt-in" system for determining what non-public information must be kept confidential. An opt-in system requires that the information be kept confidential unless the customers of financial institutions give their permission for the information to be disclosed. In contrast, an "opt-out" system allows financial institutions to disclose the information unless their customers inform them that they want it kept confidential.

Language in 15 U.S.C. 1681t(b)(2) indicates that states may not pass laws that impose requirements or prohibitions "with respect to the exchange of information among persons affiliated by common ownership or common corporate control . . . ." The prohibition is temporary, however, since 15 U.S.C. 1681t(d)(2) allows states to pass such laws if they: 1) are enacted after January 1, 2004; 2) explicitly state that they are intended to supplement the relevant portions of the Fair Credit Reporting Act; and 3) give greater protection to consumers than provided by the Fair Credit Reporting Act.

An earlier provision in the Act, 15 U.S.C. 1681a(d)(2)(A)(iii), establishes an opt-out system for information exchanges among institutions affiliated by common ownership or corporate control.

At minimum, then, the state may not enact provisions setting stricter limits on the exchange among affiliates of the type of information covered by the Fair Credit Reporting Act. In other words, the state could not require an opt-in system for such information when the Act has established an opt-out system. Doing so would impose

Terry Elder, Director  
Re: Fair Credit Reporting Act's  
effects on HB 106/SB 66  
Our File: 663-01-0158

March 28, 2001  
Page 2

new requirements with respect to the exchange of information among affiliates and thus violate 15 U.S.C. 1681t(d)(2).

Further, because the Act covers such a broad range of information, it is possible that all financial information would be included as the type covered by the Act and that imposing an opt-in system on any information exchanges among affiliates would be subject to challenge.

HB 106/SB 66 in their current form do not present problems under this opinion since they merely establish an opt-in system for the disclosure of non-public information without specific mention of affiliates. To the extent federal law requires an opt-out system for information exchanges among affiliates, the bills simply do not apply. Nothing in the Fair Credit Reporting Act prohibits the state from enacting an opt-in system for the disclosure of non-public information by financial institutions to unaffiliated third parties.

As noted above, the restrictions on states with respect to imposing additional prohibitions on information exchanges among affiliates would no longer apply to state provisions enacted after January 1, 2004, if the provisions grant greater protection to consumers (as an opt-in system does), and explicitly supplement the Fair Credit Reporting Act's opt-out provisions.

cc: Deborah Behr, Assistant Attorney General, Department of Law  
Chrystal Smith, Special Assistant, Office of the Attorney General

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## Privacy paradise: Vermont and Alaska keep financial information under wraps

By *Lucy Lazarony* • Bankrate.com<sup>SM</sup>



Wondering where to go to find a financial institution that will keep your personal information under lock and key?

You might want to try a bank in Alaska.

If that's a little farther than you hoped to go, how about taking your banking business to Vermont?

These two states have financial privacy rules with real, sharp teeth.

Banks in these parts keep a lid on all the private financial tidbits they collect. Customer privacy is respected and protected in ways that folks living in the other 48 states may envy. No need to worry about information being leaked to telemarketing companies or anyone else without permission.

It's certainly not a luxury most of us enjoy. It is, simply, refreshing.

### Just the way things are done

There are laws, certainly, but there is also an attitude that privacy is extremely valuable.

"We're certainly not offended by the notion of keeping our customers' information confidential. That's been our way for awhile," says Gordon White, executive vice president at Northfield Savings Bank, a community bank with branches throughout central Vermont.

"We don't even reveal if people have an account. We don't want to."

A 1995 Vermont law precludes banks from sharing customer financial information with anyone without prior written approval from the customer. It applies to all banks doing business in Vermont. The law lists 24 exceptions for things such as court orders or sharing information with credit reporting agencies.

"What this law did was clarify for folks what could be and what couldn't be done without permission," says Julie Brill, State Assistant Attorney General in Vermont. "It helped everyone understand what the rules of the road were."

### You also need to know

[How to opt out of mailing and telemarketing lists](#)

[A closer look at the new privacy rules \(5/24/00\)](#)

[Pulling the plug on telemarketers \(5/15/00\)](#)

[Clinton proposes privacy protections \(5/10/00\)](#)

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People in the Green Mountain State have been keen on privacy for quite some time. Banks have been quick to respect this.

**"Even before the law we were always very, very certain that we didn't share information without the customer's permission."**

"Even before the law we were always very, very certain that we didn't share information without the customer's permission," says Carolyn Demasi, a compliance officer at Northfield Savings Bank.

And that has always meant getting permission in writing.

But isn't that a lot of work? What about the cost? The time lost? And all the other stuff banks seem to complain about whenever consumer privacy is debated. White maintains it's no hardship whatsoever.

"It's business as usual," he says.

### **Ignoring telemarketers**

Protecting consumer privacy has been business as usual up in Alaska for decades. Customer records are confidential, under the Alaska Banking Code. Records will not be shared with anyone without a customer's written OK.

"That has been the law in Alaska as long as I can remember," says David Lawer, president of the Alaska Bankers Association and general counsel at First National Bank of Alaska. He has lived in Alaska since 1971.

The only exceptions to the state code are for court orders and subpoenas.

Lawer views the law as "a shield" more than anything else. It's helped keep private customer records away from "the ubiquitous angry spouse" and lawyers trying to shortcut the subpoena process.

"It's worked more to our benefit than our detriment," Lawer says.

What about a bank's bottom line? Has it hurt bank marketing efforts in any way? Not a problem, according to Lawer.

"I can't honestly identify how it's been harmful to banks," he says.

There have been times when telemarketing companies have called Alaskan banks requesting customer lists in the hopes of selling-who-knows-what.

"There have been incidents," Lawer says. "But it's not been prevalent by any means. I expect that it's been ignored."

### **"We don't share..."**

Alaska banks are just as reticent when it comes to sharing customer information with other financial institutions.

"We don't share information with any other lending institution unless we have the approval of the customer," says Sharon Engle, vice president and consumer banking center manager for the National Bank of Alaska, which has been bought by Wells Fargo.

"We get a lot of requests for sharing of information, but if it's not signed by the customer it's not something we participate in."

There has been a little bit of discussion over whether or not the state code applies to all banks doing business in Alaska or just those regulated by the state Department of Banking. But that debate, if you can call it that, hasn't gotten very far. Nobody's ever thought to challenge the law.

**"We get a lot of requests for sharing of information, but if it's not signed by the customer it's not something we participate in."**

"To my knowledge everybody has voluntarily complied," Lawer says.

Privacy has been respected and expected up in Alaska for as long as anyone can remember.

"That's part of Alaska," Engle says. "Alaskans are very independent, extremely friendly. But also privacy is very important.... it's a small place."

Small is not a word most people would associate with a state one-fifth the size of the continental United States. But Engle says there's a definite small town, everybody-knows-everybody feeling. With a population of 600,000 or so it can't be helped.

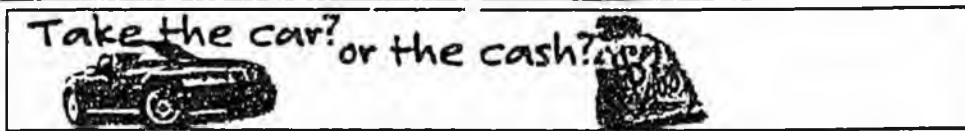
"This state. People come up here to get lost. Privacy is just extremely important. It's just been very watched. With a small population it's just something that you have to do."

Refreshing, isn't it?

*If you'd like to make a comment on this story, email [bankrate editors](#) or post a letter to the editor*

-- Posted Aug. 28, 2000

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### How We Protect Your Information

We restrict access to nonpublic personal information about you to those employees who need to know that information to provide products or services to you. We maintain physical, electronic, or procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

### What Members Can Do to Help

Alaska State Employees Federal Credit Union is committed to protecting the privacy of its members. Members can help by following these simple guidelines:

- Protect your account numbers, plastic card numbers, PINs (personal identification numbers) or passwords. Never keep your PIN with your card, which can provide free access to your accounts if your card is lost or stolen.
- Use caution when disclosing your account numbers, social security numbers, etc. to other persons. If someone calls you explaining the call is on behalf of the credit union and asks for your account number, you should beware. Official credit union staff will have access to your information and will not need to ask for it.
- Keep your information with us current. If your address or phone number changes, please let us know. It is important that we have current information on how to reach you. If we detect potentially fraudulent or unauthorized activity or use of an account, we will attempt to contact you immediately.
- Let us know if you have questions. Please do not hesitate to call us — we are here to serve you!

Alaska State Employees  
Federal Credit Union  
P.O. Box 21449  
Juneau, AK 99802  
Phone: (907) 586-4329  
Fax: (907) 586-8078



# PRIVACY NOTICE AND DISCLOSURE



ALASKA STATE EMPLOYEES  
FEDERAL CREDIT UNION  
P.O. Box 21449  
Juneau, AK 99802  
Phone: (907) 586-4329  
Fax: (907) 586-8078



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**ALASKA STATE EMPLOYEES  
FEDERAL CREDIT UNION**

**PRIVACY NOTICE AND DISCLOSURE**

Alaska State Employees Federal Credit Union, your member owned financial institution, is committed to providing you with competitive products and services to meet your financial needs and help you reach your goals. We are equally committed to protecting the privacy of our members. Under federal law, we are required to give you this privacy notice. It describes our credit union's privacy policy and practices concerning the personal information we collect and disclose about our members. It also includes information about the parties who receive personal and sometimes nonpublic information from us as we conduct the business of the credit union. These practices are followed by the credit union and its affiliates, Payment Systems for Credit Unions (PSCU) and AlaskaOption (AKO), and therefore this notice will be applied to both.

If after reading this notice you have questions, please contact us at:

(907) 452-4740

or write to:

Vice President of Operations  
Alaska State Employees Federal Credit Union  
P.O. Box 21449  
Juneau, AK 99802

**Information We Collect About You**

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications and other forms
- Information about your transactions with us or our affiliates, PSCU and AKO
- Information we receive from a consumer reporting agency
- Information obtained when verifying the data you provide on an application or other forms; this may be obtained from your current or past employers, or from other institutions where you conduct financial transactions

We may disclose all of the information we collect, as described above, as permitted by law.

**Parties Who Receive Information From Us**

We may disclose nonpublic personal information about you to the following types of third parties:

- **Financial service providers**, such as insurance companies, and mortgage service companies
- **Non-financial companies**, such as consumer reporting agencies, data processors, check/share draft printers, financial statement publishers, and plastic card processors

Alaska State Employees Federal Credit Union and its affiliates PSCU and AKO may also work closely to offer products and services to meet member needs. As a result, we may also share your nonpublic personal information with each other as permitted by law.

**Disclosure of Information to Parties That Provide Services to Us**

In order for us to conduct the business of the credit union, we may disclose all of the information we collect, as described above, to companies that perform marketing or other services on our behalf or to other financial institutions with whom we have joint marketing agreements so that we may provide members competitive products and services. We may also disclose nonpublic personal information about you under circumstances as permitted or required by law. These disclosures typically include information to process transactions on your behalf, conduct the operations of our credit union, follow your instructions as you authorize, or protect the security of our financial records.

To protect our members' privacy, we only work with companies that agree to maintain strong confidentiality protections and limit the use of information we provide. We do not permit these companies to sell the information we provide to other third parties.

**Disclosure of Information About Former Members**

If you terminate your membership with Alaska State Employees Federal Credit Union or its affiliates, PSCU and AKO, we will not share information we have collected about you, except as may be permitted or required by law.

**Household Bank (SB), N.A.**  
**A Household International Company**  
**Privacy Statement**

**Introduction - Our Commitment to You**

Household Bank (SB), N.A., a Household International company, is proud to be part of a financial services organization that has been providing superior products and services to its customers for more than 122 years. We greatly appreciate the trust that you and millions of other Household International customers have placed in us, and we will protect that trust by continuing to respect the privacy of all our applicants and customers even if our formal customer relationship ends.

It is important for you to know that in order to ensure that our customers get the very best service and the highest quality products, Household collects demographic information (like your name and address) and credit information (like information related to your accounts with us). This information comes either directly from you, for instance, from your application and transactions on your account; or, it may come from an outside source such as your credit bureau report. In addition, if you visit our Internet website, we may collect certain information about your Internet usage.

**We Respect Your Privacy**

Since some of the information we gather is not publicly available, we take great care to ensure that this information is kept safe from unauthorized access, and we would never share the information in violation of any regulation or law.

Because Household\* respects your privacy and values your trust, the only employees or companies who can access your private personal information are those who use it to service your account or provide services to you or to us. Household\* diligently maintains physical, electronic and procedural safeguards that comply with applicable federal standards to guard your private personal information and to assist us in preventing unauthorized access to that information.

In addition, if you have selected credit insurance provided by either Household Insurance Group, Inc.\* or the Assurant Group\*, the Privacy Statements of such companies are as set forth in the previous sections of this Privacy Statement and are applicable to information used by either company in connection with your credit insurance. Neither Household Insurance Group, Inc. nor the Assurant Group disclose any information about you to their affiliates or third parties, except as permitted by law. The remaining sections of this Privacy Statement, and the opt-outs contained in this Privacy Statement, do not apply to Household Insurance Group, Inc.\* or the Assurant Group\*.

**How We Share Information with Other Household Companies**

From time to time, for general business purposes such as fraud control, or when we think it may benefit you, we do share certain information with companies within the Household family. These companies all provide financial services such as loans and insurance. The information we share might come from your application, for instance your name, address and telephone number. Also, the information we share could include your credit bureau reports, your transactions with us or other Household companies, your Internet usage, your account balance, payment history, or credit card usage.

**Sharing Information with Our Partners**

We also occasionally share certain information with companies that we work with outside of the Household family. This information might include name, address, and phone number.

**Sharing Information with Other Third Parties**

We also may share information with other companies outside the Household family that are able to extend special offers we feel might be of value to you. These companies may be financial services providers (such as insurance agents) or they may be non-financial companies (such as retailers or direct marketers). These offers are typically for products and services that you might not otherwise hear about. The information we may provide them comes from the sources described above and might include your name, address, and phone number.

We may also provide information to non-Household companies that perform operational services related to your account, or marketing services for us. The sharing of information with these types of companies is permitted by law. Such a company might include a financial company with whom we have a joint marketing agreement. This information also comes from the sources described above and might include name, address, and phone number.

Finally, we provide information about you to non-Household companies as permitted by law. These companies may include credit reporting agencies and companies which provide services related to your account.

**How to Opt-Out (non-Household companies)**

If you do not want us to share your private information with non-Household companies, please let us know by simply calling us at 1-800-365-3804 (please have your Account number available). We will be happy to comply with your "opt-out" request, which will apply to all private label accounts you have with Household Bank (SB), N.A. Private label accounts are not general purpose accounts such as Mastercard® or Visa®, but are accounts that may be used only at the specific merchant or merchants named on the credit card or account. Any opt-out request for non-Household companies will not be effective before July 1, 2001. An opt-out request by any party on a joint account will apply to all parties on the joint account. Opt-out requests will not apply to information sharing that is permitted by law. Please allow sufficient time for us to process your request.

**How to Opt-Out (Household companies)**

If you do not want us to share your credit information (such as your credit bureau information) with other Household companies, please let us know by simply calling us at 1-800-365-3804 (please have your Account number available). This request will not apply to information about your transactions or experience with Household (such as account information, account usage, or payment history) and will only apply to the private label accounts you have with Household Bank (SB), N.A. An opt-out request by any party on a joint account will apply to all parties on the joint account.

Atención clientes hispanoparlantes: Esta Declaración Sobre la Privacidad proporciona información sobre cómo manejamos información personal no pública acerca de nuestros clientes, las circunstancias bajo las cuales podemos compartir esa información con otras personas, y cómo usted puede pedir que no compartamos esa información con terceros que no sean aliados nuestros. Si quisiera que le proporcionemos una traducción al español de la Declaración Sobre la Privacidad en su totalidad, sírvase comunicarse con nosotros escribiendo a HRS USA, PO Box 15521, Wilmington, DE 19850 5521 o llamándonos gratis al 1-800-899-8131.

\*Household Insurance Group, Inc. includes Household Life Insurance Company, Wesco Insurance Company, Service General Insurance Company, First Central National Life Insurance Company of New York, Household Life Insurance of Delaware and such other companies Household Insurance Group may subsequently acquire. The Assurant Group includes American Reliable Insurance Company, American Bankers Insurance Company of Florida, American Bankers Life Assurance Company of Florida, Financial Insurance Exchange, Bankers American Life Assurance Company and Union Security Life Insurance Company.

**Subject:** [Fwd: hb 106 and hb184 no interest cap and no private right of action]  
**Date:** Sun, 22 Apr 2001 16:48:09 -0800  
**From:** Representative Lisa Murkowski <Representative\_Lisa\_Murkowski@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Amy Erickson <Amy\_Erickson@legis.state.ak.us>

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**Subject:** hb 106 and hb184 no interest cap and no private right of action  
**Date:** Fri, 20 Apr 2001 11:01:57 -0700  
**From:** akpirg <akpirg@akpirg.org>  
**To:** Representative\_Lisa\_Murkowski@legis.state.ak.us

KATHERINE R. ALTENEDER  
PHYSICAL: 18610 DANNY DR., EAGLE RIVER, AK  
PHONE: 907/694-6934 • FAX: 907/694-6935  
E-MAIL • ALTENEDR@ALASKA.NET  
April 20, 2001  
RE: HB 106 AND HB 184

Alaska Public Interest Research Group supports this critique by Katherine R. Alteneder. Alaska consumers will be hurt badly by these bills. Steve Conn.

I am writing to express my concern regarding certain consumer unfriendly provisions of HB106 and HB 184, generally the Gramm Leach Bliley Act (GLBA) reform bills, set for hearing in Labor & Commerce this Friday, April 20, 2001.

I am concerned with the following aspects of the GLBA provisions:

? The weakness of the privacy provisions

? The lack of a private right of action so that Alaskan consumers, who do not enjoy a fully funded Consumer Protection division in the Attorney General's Office, have individual recourse against an unscrupulous financial institution or insurance company

? Certain aspects of the state's proposed antitying and disclosure provisions which are contrary to the joint federal regulations issued by the Office of the Comptroller of the Currency (OCC), the Federal Reserve Board (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS)

However, I am most concerned with a seemingly innocuous statutory change that has absolutely nothing to do with the GLBA, and seems to have been slipped in at the consumer's peril. Specifically:

? Section 11 of HB 106, amending AS 06.05.209(b), removing the statutory limitation on the interest rate and fees a state bank can charge on credit cards

It is alleged that the intent and primary effect of this amendment is to keep Alaska banks competitive with out-of-state banks. However, as a result of a little known OCC letter, this provision will in fact give a windfall (at the expense of Alaska citizens) to out-of-state banks that happen to have branches in the state.

The general rule is that a bank can charge the interest rates allowable in its home state to any customer, regardless of their domicile. However, according to OCC Letter #822, when a national bank has branch office in a state AND makes credit determinations in that state, the

bank must follow that state's law. In other words, as it stands now, outsiders doing business in our state must play by our rules; rules put in place presumably because the legislature saw a need to level the playing field between lenders and Alaska consumers. However, if this proposed change is made law, Alaskans will be subject to the usurious rates allowed in other states.

Currently, an Alaska bank may charge up to 17% on the outstanding balance, and when cash is advanced, it may charge a setup charge that does not exceed 3% of the funds advanced or \$12, whichever is less, except that on loans under \$100, a minimum charge not exceeding \$3 may be charged. Presently the cost of money at the Federal Reserve is 5%; clearly our rate of 17% is highly profitable in the current market. However, if you accept this amendment, it will be entirely legal to charge 50%, 100%, 1000% or however the profiteering whim of the lender and the lack of sophistication or vulnerability (i.e. the aged and disabled) of the consumer collide. I urge you to oppose any changes in law that will force Alaskans to pay unconscionable and outrageous interest rates on credit cards.

The big winners with this legislation are the federally chartered banks with a home office in another state: Wells Fargo, holding 45.61% of the deposits in the state and the sole provider of financial services in much of rural Alaska, and Keybank, holding 10.39% of the deposits. Given the minimal nature of the state banks' market share, there is no evidence that they will receive such a significant benefit that it is worth putting the majority of Alaskans at such risk.

As we all know, credit card agreements are cram-down contracts and not subject to negotiation between parties with equal bargaining power. We also all know that credit card rates are not set according to the credit risk of the applicant - it's a fixed rate that so far surpasses the Federal Reserve rate that I doubt there is any American left who is not entirely befuddled by how this can all be "legal." Well, right now sky-high rates are not legal in Alaska, and there is no reason why they should be.

While I am an attorney by training, I am currently a stay-at-home Mom and write these comments in my capacity as a citizen with a deep concern that the predatory lending schemes so prevalent in the lower 48 be prohibited from coming to Alaska. This legislation has been proposed without any input from consumers, and with the absence of a consumer protection division in the Attorney General's Office, it is especially critical that legislators such as yourself scrutinize legislation with an eye to protecting Alaska's citizens (all of whom are consumers) from abusive and predatory lending practices. Your committee is the only place consumers can be given a voice.

Please consider my comments. I would like to discuss these and the GLBA issues with you, and will provide any back-up materials that I have access to that you think would be helpful in your review.

The bottom line: I urge you to oppose any change in law that would make Alaskans easy prey for out-of-state profiteers.

Sincerely,

Katherine R. Alteneider

**Subject:** [Fwd: HB-184 and HB 106]

**Date:** Sun, 22 Apr 2001 16:42:42 -0800

**From:** Representative Lisa Murkowski <Representative\_Lisa\_Murkowski@legis.state.ak.us>

**Organization:** Alaska State Legislature

**To:** Amy Erickson <Amy\_Erickson@legis.state.ak.us>

---

**Subject:** HB-184 and HB 106

**Date:** Tue, 03 Apr 2001 15:51:19 -0700

**From:** akpirg <akpirg@akpirg.org>

**To:** Representative\_Lisa\_Murkowski@legis.state.ak.us

April 3, 2001

To: Chair Representative Lisa Murkowski and  
Members of the House Labor and Commerce Committee  
From: Steve Conn, Alaska Public Interest Research Group  
Subject: Testimony on HB-184 and HB 106

In pending legislation regarding behavior of banks and insurance companies, the issue of whether consumers should be required to "opt out" of information shared within the bank's institutional family or with other third parties or whether state law should require an explicit "opt in" by the consumer has been addressed in hearings where there was no consumer advocate present.

Pleased be advised that every consumer group, including AkPIRG, believes that opt-ins should be required and that opt-out is often no choice at all. This information sharing relates directly to privacy and a heightened potential for information theft.

Notices to consumers to "opt out" are extremely obscure. I can provide you by fax with the notice I received from Key Bank. I challenge you to find the mechanism provided to "opt-out." For your further edification, I suggest that you or one of your staff use that option and discover how the consumer is dealt with by Key Bank. If you do, you will have strong evidence that opt-out choices are so obscured that they are rarely exercised. An "opt-in" right protects consumers.

During the recent speculative frenzy, important barriers between federally insured banking and stock brokers and insurance firms were pulled down. Most consumers do not realize this. This places a special burden on

Financial institutions to do more than pass information about clients to other

Corporate family members in order to sell risky financial products. Consumers who want this help or information should ask for it. No burden should be placed on them to opt out of aggressive campaigns for their hard earned money- especially in today's dangerous economy.

**Subject:** [Fwd: HB 184 and HB 106 - Financial Privacy]  
**Date:** Sun, 22 Apr 2001 16:45:01 -0800  
**From:** Representative Lisa Murkowski <Representative\_Lisa\_Murkowski@legis.state.ak.us>  
**Organization:** Alaska State Legislature  
**To:** Amy Erickson <Amy\_Erickson@legis.state.ak.us>

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**Subject:** HB 184 and HB 106 - Financial Privacy  
**Date:** Tue, 10 Apr 2001 14:35:52 -0700  
**From:** akpirg <akpirg@akpirg.org>  
**To:** Representative\_Lisa\_Murkowski@legis.state.ak.us

Dear Representative:

This is important new information for anyone voting on HB 184 or on HB 106. Consumers must have the right to choose or "opt in" when financial institutions want to share personal information. "Opt out" is no right at all. Steve Conn, AkPIRG, 278-3661

**Subject:**

Lost in the Fine Print: Study Shows Financial Privacy Policies

Unreadable

FOR IMMEDIATE RELEASE

April 10, 2001

"LOST IN THE FINE PRINT:" STUDY SHOWS

FINANCIAL PRIVACY NOTICES ARE NOT READABLE

"Most consumers won't be able to understand the financial privacy notices now being mailed to them by their banks." That is the conclusion of readability consultant Mark Hochhauser, Ph.D., who conducted a readability study of 17 such privacy notices.

The notices Hochhauser analyzed are required by a new federal law, the Financial Services Modernization Act (also known as Gramm-Leach-Bliley). "It's vital that consumers understand their new privacy rights," said Tena Friery of the nonprofit consumer group Privacy Rights Clearinghouse. "Financial institutions obtain highly sensitive information from their customers, and can sell it to third parties unless consumers say 'no'." The PRC has joined Hochhauser in releasing the study, titled "Lost in the Fine Print: Readability of Financial Privacy Notices."

By July 1, 2001, financial institutions such as banks, credit card companies, brokerage firms, and insurance companies are required to send notices to all their customers. The notices must explain the kinds of information they collect, how they use customer information, and how consumers can "opt-out" that is, tell companies that they cannot sell, lease or otherwise disclose information to outside companies. How to get this message to consumers was left largely up to each company. "The government's basic requirement was to write the notices in 'plain language,'" said Friery. "It's clear these companies have not succeeded."

In conducting his study, Hochhauser used the Flesch Reading Ease Score, a standard readability measure. While

readable documents average 15-20 words per sentence, these notices averaged 25 or more words per sentence. To ensure understanding, privacy notices should be written at a junior high reading level. But the most readable of these notices was written at a second year college reading level; the least readable were at a graduate school level. Recent Census figures show that only 25% of the population has a college degree.

Other factors that can affect a document's readability are typeface, type size and line spacing.

Hochhauser found that the 17 notices he analyzed fell short in these categories as well. A combination of these factors makes a document even more difficult to read. "This is especially true," said Hochhauser, "for the elderly and people who use English as a second language."

Hochhauser and the PRC also invite consumers to test the readability of one sample notice themselves. A "Cloze Test" is provided in the PRC's Fact Sheet 24B on its web site, [www.privacyrights.org](http://www.privacyrights.org).

The full study is available on the PRC website, [www.privacyrights.org/ar/CLB-Reading.htm](http://www.privacyrights.org/ar/CLB-Reading.htm)

The Cloze reading test is available at [www.privacyrights.org/fs/fs24b-ClozeFinancial.htm](http://www.privacyrights.org/fs/fs24b-ClozeFinancial.htm)

Privacy Rights Clearinghouse  
1717 Kettner Ave. Suite 105  
San Diego, CA 92101  
Voice: 619-298-3396  
Fax: 619-298-5681  
[bgivens@privacyrights.org](mailto:bgivens@privacyrights.org)  
<http://www.privacyrights.org>

Michael J. Burns  
District President



KeyBank  
P.O. Box 100420  
Anchorage, AK 99510

April 13, 2001

Representative Lisa Murkowski  
Chair, Labor & Commerce  
House of Representatives  
State Capital, Room 408  
Juneau, AK 99801-1182

Re: SB 66

Dear Chair Murkowski:

I seek your support for SB66 as passed by the Senate Labor and Commerce Committee. Our most important asset is the relationship we have with our customers. These relationships are the only real value that our company has. Any activity that we might undertake that would undermine that trust would be foolhardy. The continued trust and confidence of our customers is paramount.

We are very comfortable in supporting provisions that would allow our customers to "opt out" of information-sharing, both with our corporate affiliates and third parties. It is not just our commitment to perpetuating this trust relationship, but there also exists a substantial body of Federal law that would protect privacy.

- Gramm-Leach-Bliley Financial Modernization Act

Provisions of this Act provide significant, effective protection for personal privacy. The new law permits a financial institution to transfer any "non-public personal information" to non-affiliated third parties so long as the institution "clearly and conspicuously" provides consumers with notice about its policies and practices for disclosing personal information, and an opportunity to "opt out" of such transfers. The law further requires financial institutions to inform customers of their policies toward sharing information among affiliates, but it wisely imposes no restrictions on such information-sharing. SB 66, as presented by the Administration, would require customers to "opt in" to both of these practices, a clearly unworkable standard. Federal laws in this area, in addition to Gramm-Leach, are as follows:

- Fair Credit Reporting Act

Prohibits financial service companies from sharing third-party, credit-related information about consumers with affiliates without first providing consumers with "clear and conspicuous notice" and an opportunity to "opt out" of the information-sharing.

Representative Lisa Murkowski

April 13, 2001

Page 2

- Electronic Funds Transfer Act

Requires that financial institutions notify their customers about circumstances, under which those institutions, in the ordinary course of business, will disclose information about customer accounts to any other party, including affiliates.

- The Federal Trade Commission Act

Prohibits "unfair and deceptive practices in or affecting commerce" – including failing to abide by a stated privacy policy or other activities that violate privacy promises, contracts, and disclosures – by any business, specifically including banks.

We feel very strongly that we do not need more government regulations, concerning management of our most prized asset - the trust of our customer.

Thank you for your consideration of this complex and easily misconstrued issue.

Respectfully,



Michael J. Burns  
President

MJB:ss



March 27, 2001

Honorable Lisa A. Murkowski  
Chairperson  
House Labor & Commerce Committee  
State Capitol, Room 408  
Juneau, Alaska 99801-1182

Re: HB 106

Dear Chairperson Murkowski:

We would like to add our comments regarding House Bill 106 to those you have received from several other banks. We appreciate the fact that HB 106 was introduced to "ensure there are no conflicts in the state banking code with GLBA" (Gramm-Leach-Bliley Act.) A second reason for the bill is listed as, "to ensure that state banks are given comparable powers to the powers granted national banks as a result of the implementation of GLBA."

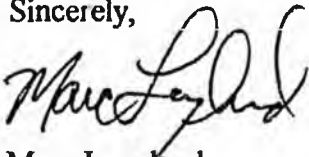
We are concerned that the contents of one section, proposed section 06.01.028 "Depositor and customer records confidential," do pose conflicts between the state banking code and GLBA, and do not grant us comparable powers to national banks. This essentially establishes two standards of privacy – one for state banks and one for national banks.

The privacy and confidentiality of our customers' personal information has always been of great concern to us at Northrim and to all Alaskan banks. Not only do we have strict federal laws and regulations already in place to regulate privacy, but we also recognize that keeping our customers' information confidential provides them with the great "Customer First Service" that they expect from us. The Federal Regulations already in place, which affect privacy in various ways, are Bank Secrecy Act, Children's Online Privacy Protection Act, Electronic Funds Transfer Act, Fair Credit Reporting Act, Right to Financial Privacy Act, Telemarketing and Consumer Fraud and Abuse Prevention Act of 1991, Telephone Consumer Protection Act of 1991, and Gramm-Leach-Bliley Act. In addition, the bank regulators have issued final guidelines regarding Customer Data Security Standards, and we must be in compliance with these by 7/1/2001. It becomes difficult and complicated when our state laws are not consistent with the federal laws with which we are already required to comply. It is also inefficient and burdensome to maintain bank policies and procedures for the state that conflict with the standards set by the federal regulators.

Lastly, we are glad to learn that the proposed insurance law changes set forth in SB 138 conform to the privacy standards set forth in GLBA. However, in this case, the state is again establishing a dual standard for privacy – one for state regulated financial institutions and another for insurance companies.

We hope that you will take all of these things into consideration when reviewing the Alaska Bankers' amendment to this section of HB 106, which attempts to align state law with the requirements of GLBA. We feel that the standards set forth in GLBA are beneficial to financial institutions and consumers alike because they provide the financial industry with the flexibility to provide customers with additional beneficial information without added, costly regulations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marc Langland".

Marc Langland  
President and CEO

**Alaska Bankers Association  
proposed amendments of HB106/SB66  
concerning confidentiality**

1. Delete p.2, line 10 through p.3, line 17, and replace that material with
 

**Sec. 06.01.028. Depositor and customer records confidential. (a) The records of a financial institution pertaining to its depositors and customers and the information contained in such records are confidential. Such records and information may not be disclosed by the financial institution to another person or a government except when, and only to the extent that, the disclosure is**

  - (1) authorized in writing by the depositor or customer;
  - (2) required by federal or state statute or regulation or by a subpoena, search warrant or other order directed to the financial institution issued by a court or administrative agency having jurisdiction of the financial institution; or
  - (3) made in compliance with sections 501-509 of P.L. 106-102 (15 U.S.C. §§6801-6809) and regulations promulgated thereunder.

**(b) A financial institution is authorized, but is not required, to comply with a subpoena, search warrant or other order issued by a court or administrative agency of this state that does not provide for the reimbursement of the financial**

institution's reasonable costs of complying with the order.

(c) When disclosure is required or permitted under (a)(2), (a)(3), or (b) of this section by a subpoena, search warrant or other order of a court or administrative agency, the financial institution shall mail a copy of the order to the depositor or customer within three business days after its receipt of the order unless the order is, or is accompanied by, a court order that expressly directs the financial institution not to notify or inform the depositor or customer.

(d) In this section, "government" means the United States; a state, commonwealth, district or territory of the United States; a municipality or other political subdivision of a state, commonwealth, district or territory of the United States; a foreign state; or a department, agency, instrumentality, officer, employee or agent of any of the foregoing.

2. Delete p.3, lines 18-28 and replace that material with

\*Sec. 4. AS 06.01.050 is amended to read:

Sec. 06.01.050. Definitions. In this title [CHAPTER], unless the context otherwise requires,

(1) "commissioner" means the commissioner of community and economic development;

(2) "department" means the Department of Community and Economic Development;

(3) "financial institution" means a person [AN INSTITUTION] subject to the regulation of the department under this title;

(4) "person" means an individual, a corporation, a general, limited or limited liability company, or any other association or organization accorded status or capacity by law; and

(5) "state financial institution" means a financial institution that is organized under this title, AS 10.13, or AS 44.81.

3. At page 25, add a new section to read as follows

**\*Sec. 59. COURT RULE CHANGES.** To the extent that it requires court orders compelling disclosure to provide for reimbursement of a financial institution's costs of compliance, AS 06.01.028(b) has the effect of amending Rule[s] 45 \_\_\_\_\_ of the Alaska Rules of Civil Procedure, Rule[s] \_\_\_\_\_ of the Alaska Rules of Criminal Procedure, and Rule[s] \_\_\_\_\_, Alaska Rules of Administrative Procedure.

March 19, 2001

The Honorable Lisa Murkowski  
Alaska State House of Representatives  
Juneau, Alaska

RE: SB 66 / HB 106

Dear Representative Murkowski:

As President of the Alaska Bankers Association and President and CEO of Alaska Pacific Bank, I offer the following comments on Senate Bill 66. The Alaska Bankers Association represents all nine banks and savings institutions across the state, including both state and federally chartered institutions.

In general, our association supports SB 66 and the underlying intent to bring the state banking code into conformity with the Gramm-Leach-Bliley Act, which passed Congress in 1999. The Gramm-Leach-Bliley Act was the result of years of work to modernize the laws governing the banking and insurance industries.

The FDIC recently issued very specific directions to financial institutions on implementing the privacy provisions of the new law. The Alaska Bankers Association supports the customer privacy and confidentiality safeguards established in Gramm-Leach-Bliley.

However, we are opposed to the current approach to customer privacy and confidentiality in Section 3, *Depositor and customer records confidential*, which is unnecessarily restrictive and in direct conflict with federal law. The proposed legislation would move this provision from its current location under the Alaska Banking Code, where it is applicable only to state-chartered financial institutions, to the Administration section, which covers all financial institutions operating in the state. The Alaska Bankers Association is offering an amendment to SB 66 that completely replaces Section 3 and incorporates the well thought out privacy provisions of the Gramm-Leach-Bliley Act by reference.

Regulation P, which goes into effect on July 1, 2001, implements the provisions of the Gramm-Leach-Bliley Act. The new regulation will significantly restrict the ability of financial institutions to share nonpublic personal information about customers with non-affiliated third parties. In addition, financial institutions will be required to provide customers with an annual disclosure of privacy policies and information sharing practices. Customers will be given the opportunity to prevent the sharing of nonpublic personal information with non-affiliated third parties through the "opt out" process.

Representative Murkowski

March 19, 2001

Page 2

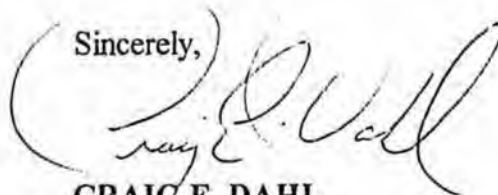
It is important to understand that information sharing among financial institution affiliates is already regulated by the Fair Credit Reporting Act, which allows customers to opt out of the sharing of credit application data or other personal information. Similarly, the Right to Financial Privacy protects customer records maintained by financial institutions from improper disclosure to federal government officials or agencies and provides for prior notification to the customer of the disclosure.

Alaskan banks have always taken prudent measures to protect customer privacy and confidentiality; our reputation and integrity depend upon it. Current federal regulations already provide the protections Alaskans deserve and the regular bank examination process will ensure that all financial institutions are operating within those laws.

The Alaska Bankers Association is asking for your assistance in preventing restrictive language in SB 66 that would hinder our ability to pass on the benefits of information technology to our customers through lower costs, expanded product lines and increased convenience.

Thank you for your consideration of our proposed amendment to SB 60.

Sincerely,



**CRAIG E. DAHL**

President

Alaska Bankers Association

Privacy Policy Talking Points  
Alaska 2001 Legislative Session

Over the next several months, bank customers in Alaska will receive a disclosure of their bank's privacy policy. This disclosure is required under the new federal financial services modernization law called the Gramm-Leach-Bliley Act (GLB). The GLB law requires banks to have a privacy policy and to disclose it annually. It also establishes, for the first time, an affirmative obligation for banks to protect customer privacy. Further, the law requires that customers be given a chance to "opt out" of information sharing with other companies for the marketing of non-financial products.

Because GLB establishes new standards for banks, the Alaska Bankers Association believes Alaska legislators should let the new federal law have time to work before adding additional burdens on banks. Besides the new modernization law's requirements, there are at least 14 other federal laws governing customer information practices of financial companies. Alaska has consumer fraud laws protecting consumers from abusive and unscrupulous business practices and one of the most restrictive state privacy standards already on its books.

The Alaska Bankers Association believes policy makers need to balance individual concerns about privacy with the benefits of fair and responsible customer information transfers like fraud prevention, quick credit approvals, and ATM services.

Alaska Bankers Association

## Q & A

**Q. What privacy requirements are mandated by the new financial services modernization law, Gramm-Leach-Bliley?**

A. All financial services companies must make an initial annual disclosure by July 2001 to their customers describing their privacy policy and offering consumers the option to prohibit them from sharing their information with non-affiliated companies. This disclosure and opt-out notice must be repeated annually. It has been estimated that consumers will each receive seven disclosures from their bank, mortgage lender, credit card, and insurance companies.

In addition, the GLB law also establishes for the first time the affirmative obligation for banks to protect customer privacy. Although we believe Alaska banks have always protected customer privacy, the new federal law makes this a legal obligation, enforceable in court .

**Q. Do Alaska banks frequently sell or share customer information?**

A. Banks in Alaska do not sell or share customer profiles or sensitive information to outside parties for their independent use. Alaska banks would run the risk of alienating customers if they did so. Selling sensitive customer information would be a foolish business practice. However, banks frequently transfer information to other entities to confirm a credit rating, to protect against fraud, to produce checks, and for other routine business activities. When a customer uses an ATM, some information about them will be routed through various entities. Bankers in Alaska are concerned that poorly thought-out privacy measures could disrupt accepted business practices that customers want and expect.

**Q. How extensively do banks use telemarketing?**

A. Banks often contact their own customers by phone to offer them products or services that may be of interest.

**Q. What is so bad about allowing prior customer approval before allowing customer information to be shared outside my bank?**

A. The Alaska Bankers Association has two major concerns: cost and practicality. Allowing prior customer consent makes sense in theory, but nothing comes without a cost. The Roundtable, a Washington, D.C., based industry group, estimates that the typical American family saves \$195 a year because of information sharing. Credit costs in America are lower than in Europe, partially because of the ease of getting credit information here. Because banks routinely transfer information to vendors and agents, a strict interpretation of the prior approval standard could complicate routine transactions, adding expense or making them impractical.

In addition, no other state imposes a broad-based standard of this sort. Alaska customers could be excluded from national marketing programs and thus miss opportunities other Americans receive.

**Q. Do banks allow telemarketers or retailers to directly debit a credit card or banking account? Do banks sell or share account numbers?**

A. Typically, when a customer chooses to purchase a product from a 1-800 or Internet retailer, or any retailer, the bank debits the account itself and does not allow the retailer to do so.

Under the Gramm-Leach-Bliley law, financial companies are expressly prohibited from transferring customer account numbers even in controlled, contractual arrangements.

**Q. How can customers correct information a bank may have about them?**

A. Customers regularly receive statements detailing their transactions and balances. Customers are encouraged to correct any errors.

**Q. Do Alaska banks use medical information to make credit decisions?**

A. No.

**Q. Do Alaska banks sell or share information about specific checking or credit card transactions to outside groups?**

A. No.



Section One:  
Overview of privacy rule requirements

The privacy rule governs when and how banks may share nonpublic personal information about consumers with nonaffiliated third parties.

The rule embodies two principles—notice and opt out. In summary:

- All banks must develop initial and annual privacy notices. The notices must describe in general terms the bank's information sharing practices.
- Banks that share nonpublic personal information about consumers with nonaffiliated third parties (outside of opt out exceptions delineated in the privacy rule) must also provide consumers with:
  - an opt out notice
  - a reasonable period of time for the consumer to opt out

*A few key terms used throughout the privacy rule are critical to understanding the rule's scope and application. Refer to Section Four of this guide for an explanation of:*

- nonpublic personal information
- the distinction between consumers and customers
- nonaffiliated third party

**Exceptions to opt out:** A consumer cannot opt out of all information sharing. First, the privacy rule does not govern information sharing among affiliated parties. Second, the rule contains exceptions to allow transfers of nonpublic personal information to unaffiliated parties to process and service a consumer's transaction, and to facilitate other normal business transactions. For example, consumers can-

not opt out when nonpublic personal information is shared with a nonaffiliated third party to:

- market the bank's own financial products or services
- market financial products or services offered by the bank and another financial institution (joint marketing)
- process and service transactions the consumer requests or authorizes
- protect against potential fraud or unauthorized transactions
- respond to judicial process
- comply with federal, state, or local legal requirements

*Applying exceptions: A bank may have to satisfy disclosure and other requirements to make the rule's opt out exceptions applicable. For example, the joint marketing exception requires a contractual agreement between two nonaffiliated financial institutions to:*

- jointly offer, endorse, or sponsor the financial product or service, and*
- limit further use or disclosure of the consumer information transferred*

*In addition, the bank must include a separate statement in the privacy notice disclosing the joint marketing agreement.*

**Prohibition on sharing account numbers:** The privacy rule prohibits a bank from disclosing an account number or access code for credit card, deposit, or transaction accounts to any nonaffiliated third party for use in marketing. The rule contains two narrow exceptions to this general prohibition. A bank may share account numbers in conjunction

with marketing its own products as long as the service provider is not authorized to directly initiate charges to the accounts. A bank may also disclose account numbers to a participant in a private label or affinity credit card program when the participants are identified to the customer. An account number does not include a number or code in encrypted form as long as the bank does not also provide a means to decode the number.

**Limits on reuse and redisclosure:** The privacy rule limits reuse and redisclosure of nonpublic personal information received from a nonaffiliated financial institution or disclosed to a nonaffiliated third party. The specific limitations depend on whether the information was received pursuant to or outside of the notice and opt out exceptions.

**State Law:** A provision under a State law that provides greater consumer protection than provided under the GLBA privacy provisions will supercede the Federal privacy rule. The bank will be obligated to comply with the provisions of that State law to the extent those provisions provide greater consumer protection than the Federal privacy rule. The Federal Trade Commission determines whether a particular State law provides greater protection.

**Every bank must develop initial and annual privacy notices—even if the bank does not share information with nonaffiliated third parties.**

**Content of notices:** The initial, annual, and revised notices include, as applicable:

- categories of information a bank collects (all banks)
- categories of information a bank may disclose (all banks, except a bank that does not intend to make any disclosures or only makes disclosures under the exceptions may simply state that)
- categories of affiliates and nonaffiliates to whom a bank discloses nonpublic personal information (all banks sharing nonpublic personal information with an affiliate or with a nonaffiliated third party)
- information sharing practices about former customers (all banks)

Type of notice	Who gets it	Delivery
<b>Initial privacy notice</b> (all banks)	<ul style="list-style-type: none"> <li>• all existing bank customers</li> <li>• all new bank customers after July 1, 2001</li> <li>• consumers who are not customers</li> </ul>	<ul style="list-style-type: none"> <li>• <b>no later than July 1, 2001</b></li> <li>• when the customer relationship is established</li> <li>• <b>only</b> if the bank intends to share nonpublic personal information about the consumer with a nonaffiliated third party</li> </ul>
<b>Annual privacy notice</b> (all banks)	<ul style="list-style-type: none"> <li>• customers</li> </ul>	<ul style="list-style-type: none"> <li>• at least once in any period of 12 consecutive months while the customer relationship continues</li> </ul>
<b>Revised privacy notice</b> (as applicable)	<ul style="list-style-type: none"> <li>• customers and consumers who are not customers</li> </ul>	<ul style="list-style-type: none"> <li>• <b>before</b> the bank shares nonpublic personal information in a manner not described in the most recent notice delivered to the customer or consumer</li> </ul>

- categories of information disclosed under the service provider/joint marketing exception (only those banks relying on this exception)
- consumer's right to opt out (only those banks that disclose outside of exceptions)
- disclosures made under the Fair Credit Reporting Act (only those banks providing the FCRA opt out notice)
- disclosures about confidentiality and security of information (all banks)

A revised notice may be required when a bank changes its information sharing practices.

The table on page 1-2 reflects the rule's requirements for delivering initial, annual, and revised notices to consumers and customers.

#### Opt Out Notice

The final rule provides that an opt out notice is adequate if it:

- identifies all the categories of nonpublic personal information the bank intends to disclose to nonaffiliated third parties

- states the consumer can opt out of the disclosure
- provides a reasonable method for the consumer to opt out, such as a toll-free telephone number

The table below summarizes the rule's requirements for delivering an opt out notice.

**The opt out right:** If a bank intends to share nonpublic personal information outside the exceptions, it must also:

- provide consumers with a **reasonable opportunity to opt out**. Examples in the privacy rule give consumers **30 days** to respond to the opt out notice when the bank delivers the notice by mail or electronically
- **comply** with a consumer's opt out direction as **soon as reasonably practicable** when the direction is received after the initial opt out period elapses
- **comply** with the opt out direction until revoked in writing by the consumer

**Delivering notices:** The initial, annual, revised, and opt out notices may be delivered in writing or, if the consumer agrees, electronically. An oral description of the notice is not sufficient.

Type of notice	Who gets it	Delivery
<b>Opt out notice</b> (only banks that share outside of exceptions)	• customers and consumers who are not customers	• <b>before</b> the bank shares nonpublic personal information about the customer or consumer (and the information sharing is not permissible under the privacy rule opt out exceptions)