

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10325 HOUSE LABOR & COMMERCE

170

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 132
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Law
 Title "An Act relating to the possession or distribution BPU Criminal Division
of alcohol in a local option area; . . ." Component Third Judicial District: Anchorage
 Sponsor House Judiciary Committee by Request
 Requester House Labor and Commerce Committee Component No. 2261

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						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	*****	*****	*****	*****	*****	*****

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1007 Interagency Receipts						
TOTAL	*****	*****	*****	*****	*****	*****

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

HB 132 strengthens enforcement laws for importation of alcoholic beverages in municipalities and villages that have elected to restrict the sale, importation, or possession of alcohol in their communities. First, it reduces by half the amount of alcohol that a person may possess in a restricted community for the application of the presumption that the person possesses the alcohol with intent to sell it. The bill also reduces by half the amount of alcohol a package store may send in a calendar month to a person in a restricted community, and changes the penalty for the illegal sale or transportation of alcohol to a restricted community by reducing by half the amount of alcohol illegally sent to the community that qualifies for a C felony. Package stores within 50 air miles of a restricted community would also be required to keep records of each sale in excess of the amount of alcohol that may be sent to an individual in a restricted community in a calendar month. These records would be available to law enforcement officers.

Prepared by: Joan M. Kasson Phone 465-5370
 Division Attorney General's Office Date/Time 3/15/01 2:56 PM
 Approved by: Kathryn Daughhete for Bruce M. Botelho, Attorney General Date 3/15/01
 Agency Department of Law

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

BILL NO. HB 132

ANALYSIS CONTINUATION

Reducing the amount of alcohol sold or transported that qualifies as a C felony will increase felony prosecutions, which are more complicated and time consuming than misdemeanors, often involving jury trials. We have no way to estimate what the increase in workload might be; however, any increase in costs in state FY02 will be covered by part of a recent federal appropriation to Alaska for law enforcement and prosecution relating to alcohol offenses.

HEB

147

Alaska State Legislature
House of Representatives

Alaska State Capitol
Juneau, Alaska 99801-1182
1-907-465-3438 (phone)
1-888-478-3438 (toll free)
1-907-465-4565 (fax)



Interim Address
716 West Fourth Avenue
Anchorage, Alaska 99501-2133
(phone) 1-907-269-0100
(fax) 1-907-269-0105

Representative Harry Crawford
District 22

Memorandum

TO: Representative Lisa Murkowski, Chair

FROM: Representative Harry Crawford

DATE: March 13, 2001

RE: HB 147: An Act Amending the Definition of Wages...

I respectfully request that House Bill 147 "An Act amending a definition of wages for the purpose of Title 36 of the Alaska Statutes to include payments for travel expenses and per diem," be scheduled for a hearing in the House Labor and Commerce Committee.

Alaska State Legislature
House of Representatives

Alaska State Capitol
Juneau, Alaska 99801-1182
1-907-465-3438 (phone)
1-888-478-3438 (toll free)
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Interim Address
716 West Fourth Avenue
Anchorage, Alaska 99501-2133
(phone) 1-907-269-0100
(fax) 1-907-269-0105

Representative Harry Crawford
District 22

**REPRESENTATIVE HARRY CRAWFORD
SPONSOR STATEMENT FOR HB 147**

HB 147 provides compensation for travel and subsistence for those people who travel long distances and stay in remote locations for work on state contracts. The bill will level the playing field for contractors who bid on state contracts. As the law is currently written, certain contractors can choose not to compensate for travel and per diem, giving them an unfair advantage over contractors that, under contract, provide room and board in remote locations. This necessary change will assure a minimum standard for housing and food for all employees working on state construction projects.

LEGAL SERVICES

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

(907) 465-3867 or 465-2450
FAX (907) 465-2929
Mail Stop 3101

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

MEMORANDUM

March 12, 2001

SUBJECT: Sectional Summary of HB 147 (Definition of "wages" for purposes of AS 36)

TO: Representative Harry Crawford
Attn: David D'Amato

FROM: Teresa B. Cramer *TBC*
Legislative Counsel

You have requested a sectional summary of the above-described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 amends the definition of "wages" for Title 36 of the Alaska Statutes to include payments for travel expenses and per diem in the categories of payments that are considered wages in the Title. Title 36 includes the state's Little Davis-Bacon Act, employment preferences, and state marine vessel maintenance provisions among other matters.

Sec. 2 applies the change to the definition of "wages" made by section 1 of the Act to contracts entered into on or after the effective date of the Act.

TC:lmb
01-086.lmb

FISCAL NOTE

**STATE OF ALASKA
2001 LEGISLATIVE SESSION**

Fiscal Note Number: _____
 Bill Version: HB 147
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Amending Definition of Wages BRU: Labor Standards & Safety
in Title 36 Component: Wage & Hour
 Sponsor: Representative Crawford
 Requester: House L&C Component Number: 345

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						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: None

POSITIONS

POSITIONS	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would change the definition of "wages" within the context of public contracts to include not only fringe benefits, but also travel and per diem costs. Wage and Hour Investigators would need to take this into account when reviewing certified payrolls and the Wage and Hour program would need to do an informational mailing notifying public contractors of the new requirements. The estimated fiscal impact is minimal and would be absorbed within existing funding.

Prepared by: Richard Mastrano, Director Phone: 269-4919
 Division: Labor Standards & Safety Division Date/Time: 3/30/01 3:40 PM
 Approved by: Ed Flanagan, Commissioner Date: 03/30/01
 Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 147
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Department: Labor and Workforce Development
 Title: Amending Definition of Wages BRU: Administrative Services
 in Title 36 Component: Labor Market Information
 Sponsor: Representative Crawford
 Requester: House L&C Component Number: 336

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						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: None

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation would change the definition of "wages" within the context of public contracts to include not only fringe benefits, but also travel and per diem costs. The Labor Market Information component currently collects information on wages and benefits from surveys of union labor agreements in support of Alaska's Little Davis/Bacon statute. The additional effort required collecting per diem information, if available from this same source, would be insignificant and could be absorbed within existing funding.

On the other hand, travel cost information is problematic. Due to the tremendous variability and uncertain nature of the cost of travel, labor agreements generally do not specify these costs.

Prepared by: Remond Henderson, Director Phone: 465-2720
 Division: Administrative Services Division Date/Time: 3/30/01 3:39 PM
 Approved by: Ed Flanagan, Commissioner Date: 03/30/01
 Agency: Department of Labor and Workforce Development

For distribution information, call the Governor's Legislative Office

HB

150

ALASKA STATE LEGISLATURE

Representative Lisa Murkowski Chair
Representative Andrew Halero Vice-Chair
Representative Pete Kott
Representative Kevin Meyer
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes



Alaska State Capitol
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Representative_Lisa_Murkowski@legis.state.ak.us

HOUSE LABOR AND COMMERCE COMMITTEE

Sponsor Statement HB 150

“An Act relating to insurance premiums for rental motor vehicles.”

House Bill 150 corrects the unintended consequence of Senate Bill 87 enacted in 1999, which requires motor vehicle rental companies to hold funds received from renters who purchase insurance products in separate trust accounts.

Senate Bill 87 gave the director of the Division of Insurance the authority to waive certain bond requirements but failed to do so for fiduciary accounts required of motor vehicle rental agencies. Because of the nominal revenues generated by the incidental sale of insurance, separate trust accounts are extremely impractical and logistically impossible for small rental companies—their primary business is vehicle rental, not insurance. House Bill 150 remedies the waiver omission for motor vehicle companies by eliminating the requirement that funds received be placed in separate fiduciary accounts.

The Division of Insurance and representatives of the rental car industry have worked in tandem to develop the language contained in House Bill 150. The parties agree that the measure corrects the unintended omission of account requirement waivers for motor vehicle rental agencies. I urge your favorable support.



Division of Insurance

P.O. Box 110805, Juneau, AK 99811-0805
Telephone: (907) 465-2515 • Fax: (907) 465-3422 • Text Telephone: (907) 465-5437
Email: Insurance@dced.state.ak.us • Website: www.dced.state.ak.us/insurance/

February 28, 2001

The Honorable Lisa Murkowski
House of Representatives
State Capitol, Room 408
Juneau, AK 99801-1182

Dear Representative Murkowski:

The Alaska Division of Insurance supports HB 150.

In 1999, the legislature enacted SB 87 which required the Division of Insurance to license motor vehicle rental agency personnel conducting the business of insurance by the sale of insurance coverage to rental car customers (AS 21.27.150(a)(7)). The legislation narrowly defines those who would be required to obtain this type of limited license. The legislation, however, did not address the requirement in AS 21.27.360 regarding the maintenance of premiums in a trust account. After further discussion with industry, it was clear that while this requirement is appropriate for full-time producers, it is not practical for receipts from insurance obtained incidental to the rental transaction. The statute does not contain an exemption from this requirement or provide discretion to the director for enforcement of these requirements.

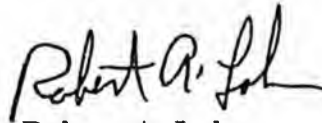
The review of premium trust requirements for licensed motor vehicle rental agency personnel weighed both the practical requirements and cost as well as the protection of the public by ensuring the proper handling and forwarding of premium received. The premium funds obtained through the motor vehicle rental agency transaction is minimal in relation to the entire transaction, but current statute requires that each location maintain a trust account and account for premiums to ensure proper handling. There would be costs incurred for the account and personnel to conduct the accounting. In addition, the motor vehicle rental transaction is often cashless and the trust requirements are geared toward monies received by the producer.

February 28, 2001

HB 150 recognizes that the premiums received in the transaction are minimal. It provides the insurance company who is to receive the funds the opportunity to agree that a premium trust fund for this type of licensee is not necessary. It is expected that the insurance company will make this decision based on its experience with the motor vehicle rental company and the guarantees the company can make to properly forward premiums to support the risk undertaken. In addition, the proposed statute requires that the insurance premium be itemized in the transaction so that determination of total premium and risk can be made. Overall, I believe that this bill properly balances the public's right to be protected from loss of coverage after premium is paid while keeping the costs of regulatory compliance reasonable.

Thank you for the opportunity to comment on HB 150.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert A. Lohr". The signature is written in a cursive style with a large initial "R".

Robert A. Lohr
Director

RAL/pb5010.doc

Committee file

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: HB 150
() Publish Date: _____

Revision Date/Time (Note if correction): 03/07/2001 2:35p.m. Dept. Affected: DCED
Title: An Act relating to insurance premiums for BRU: Insurance
rental motor vehicles Component: Insurance
Sponsor: House Labor & Commerce
Requester: House Labor & Commerce Component Number: 354

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	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr, Director Phone 907-269-7900
Division: Insurance Date/Time 03/07/2001 2:35p.m.
Approved by: Commissioner Deborah B. Sedwick Date 3/7/2001
Agency: Department of Community & Economic Development

For distribution information, call the Governor's Legislative Office

HB

152

ALASKA STATE LEGISLATURE

CHAIR
TRANSPORTATION

VICE-CHAIR
LABOR AND COMMERCE

MEMBER
COMMUNITY AND REGIONAL AFFAIRS

SPECIAL COMMITTEE
ECONOMIC DEVELOPMENT AND TOURISM



REPRESENTATIVE ANDREW HALCRO
District 12

SESSION
STATE CAPITOL, SUITE 418
JUNEAU, AK 99801-1182
(907) 465-4939
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1-800-465-4939

INTERIM
716 WEST 4TH, SUITE 620
ANCHORAGE, AK 99501
(907) 269-0244
FAX (907) 269-0248

HB 152

Sponsor Statement

"An Act relating to Brewpub Licenses."

Alaska is currently enjoying the proliferation of new industries that help to diversify and augment the economies of communities throughout the state. One such industry that has enjoyed newfound widespread success in Alaska is the brewing industry.

The majority of brewpubs in Alaska were created during a window in state law that allowed an individual to hold both a brewer's license and a restaurant license. This is no longer allowed, as restaurant owners must now purchase a full liquor license in order to serve their in-house beer. Also instituted at this time were draconian requirements that put a cap on the amount of house beer those brewpubs are allowed to sell in their own restaurants. State law limits the amount of beer a brewpub can sell in-house to 75,000 gallons, regardless of consumer demand. For a successful, growing enterprise, this amount is not sufficient. As establishments enjoy success and foster growth in their communities, this production cap is limiting their operation. HB 152 looks to raise this limit to 150,000 gallons on an annual basis.

The creation of this arbitrary ceiling was set during the 19th Legislature in which the cap was deemed as "a popular area in terms of annual production". There was no substantive basis for setting the cap at this level, and history has proved to us that it now needs to be revised.

These small businesses, located in most every region of the state, create very positive effects for their local economies. They generate increased employment, property tax revenue, and community involvement that were not present in Alaska just a few years ago. The growth of this industry has already transformed abandoned properties from blights in a city to viable operations that now contribute to the tax rolls.

To limit the growth and success of these entities would be irresponsible as we strive for diversity in our state's economy. Raising the production cap on these enterprises is key to continuing this source of new employment and development that otherwise would not exist.

Your positive consideration of this legislation would be appreciated.

THE
FOLLOWING
DOCUMENT(S)
ARE
POOR
ORIGINAL
COPIES

**Moose's Tooth Pub and Pizzeria
d.b.a. Fresh Ale Pubs, L.I.C.
P.O. Box 202549
Anchorage, AK 99520
(907) 258-2327
(907) 258-2317 fax**

March 16, 2000

Representative Andrew Halcro
State Capitol
Juneau, AK 99801-1182

Dear Mr. Halcro:

Since opening Moose's Tooth Brewing Company and Moose's Tooth Pub and Pizzeria in 1996, we have been interested in opening a second eating establishment in the Anchorage area and thanks to the passage of last year's House Bill 69, we are close to completion of our second location, the Bear Tooth Theatre Pub. However, due to the production cap that House Bill 69 placed on our brewery operations, we will not be able to produce enough beer to sell at our second location.

Prior to House Bill 69's passage, our business operated on a restaurant and eating place license and on a separate brewery license. Under that licensing scheme, our brewery could brew an infinite amount of beer. With this in mind and due to the large demand for our product, we moved the brewery in 1998 into a 10,000 square foot building and installed a brewing system four times larger than the previous. Unfortunately, the laws regarding simultaneous ownership of restaurant and brewery licenses had changed since the State's approval of our original licenses in 1996; although our licenses were grandfathered, under the new scheme we could not obtain a second license in order to open a second location.

Since House Bill 69's passage, we have been building our second location and are close to opening. However, we are faced with the ironic situation that while the State now allows us to possess a second eating establishment license, the State's cap on our beer production will leave us without enough beer to support sales at our second location.

Currently, we employ 5 people at Moose's Tooth Brewing Co., 87 people at Moose's Tooth Pub and Pizzeria and within one year of operation of the Bear Tooth and its restaurant, we anticipate employing an additional 100 people. If the production cap remains the same, we know some of the following will likely happen:

1) brewery employment figures will remain the same (currently our brewery can legally brew 2400 barrels but the plant can physically produce 20,000-30,000 barrels with new tankage and employ at least a dozen people)

- 2) our distributor will end our contract to distribute our beer to the 27 draft accounts in southcentral Alaska (from Valdez to Homer) because we will be forced to allocate every last keg to our own locations,
- 3) we will be forced to purchase another brand of beer brewed by a microbrewery in the lower 48, or
- 4) in the alternative, we will contract with a microbrewery in the lower 48 to produce our own beer and we will then import our beer back into the state (not a popular option within the company because we like to be able to claim that our product is made in Alaska);
- 5) we will close our brewery in Anchorage because it will be forced to continue at near present levels because of the cap in production; because of our expenditures for a new brewing system in 1998 we continue to operate at a loss;
- 6) if expansion and potential franchise is possible, and because we can not produce enough beer in Alaska to supply our company's retail establishments, we would relocate the brewery and overall corporate headquarters to the Pacific Northwest were our cost of goods and labor would be substantially lower [although this option is not very attractive to us because as a company and as citizens of this state, we regard southcentral Alaska as home, it makes sense in that many of our largest out-of-state competitors in the microbrew industry have both retail eating establishments and unrestricted brewing capacity in their respective states; because we already compete with these companies (such as Sierra Nevada, Redhook, Portland Brewing Co., Full Sail, etc.) for tap handles in Alaska, our company might want to be in a state where we can at least legally attempt to match our competitors' production levels, especially when these breweries also enjoy the right of operate retail beer and food establishments, cheaper raw materials and cheaper labor).

I believe that we are doing our part as Alaskans to produce jobs and quality Alaskan products but we will not be able to continue doing so if we are now allowed to produce additional product at our brewery. I look forward to discussing our situation with you and your associates in the near future.

Sincerely


Matt Jones

cc: Representative Norm Rokeberg

Subject: Mooses Tooth

Date: Wed, 21 Mar 2001 07:52:17 -0800

From: "Veronica Allmaras" <talkeetnavern@gci.net>

To: "Andrew Halcro" <Representative_Andrew_Halcro@legis.state.ak.us>

I read about the Mooses' Tooth in the ADN this morning. One of our sacred political mantras is to create or preserve jobs for Alaskans. Now we have a local employer who may have to have it's beer brewed Outside. Why should this job be exported when we have Alaskans who want and can do it in Alaska!!! We need to support our local businesspersons, particularly the successful ones who employ over 100 people.

I live in South Anchorage, near the gravel pits, and haven't missed voting in an election in over 25 years, except once when I was out of the country. I hope you can do something about our inane alcohol laws.

Thanks.

Subject: beer capping without the bottle

Date: Mon, 26 Mar 2001 11:52:54 -0900

From: "secret bishop" <newerafilms@hotmail.com>

To: Representative_Andrew_Halcro@legis.state.ak.us

Sir,

Just wanted to pass along my two cents.

I love Alaska.

I love living in Alaska.

I plan to raise my family in Alaska.

I support local and Alaskan businesses and find the diversity in products that Alaskans provide a welcome. I think we should encourage more Alaskans to keep their dollars in Alaska and also support those businesses that have put a responsible, strong foot forward to challenge other products on the Market.

The subject of this email is beer production.

Specifically dealing with production of microbeer and the growing businesses of the Mooses Tooth/Bear Tooth Theatre and Fresh Ale Pubs.

I enjoy the MoosesTooth for their dedication to a family style atmosphere and commitment to high quality food and beer. There are few places to dine out in this community that provide such an excellent service. I think it is great that their business is growing and believe that it has been growing responsibly and benefitting the community. I'd love to see more opportunities for employment at the Mooses Tooth and would love to see them brew more beer.

I do not understand the politics that would stifle such positive growth in our community.

Please support lifting the cap of microbeer production in Alaska. I would hate to see them have to leave our great state in order to continue to grow.

The message that something like that sends out is disheartening.

Thank you for your time,
sincerely,
mike jipping

Get your FREE download of MSN Explorer at <http://explorer.msn.com>

Subject: HB 152

Date: Sun, 25 Mar 2001 21:58:41 -0900

From: Patty and Josh <whitedog@ak.net>

To: <Representative_Andrew_Halcro@legis.state.ak.us>

Dear Representative Halcro;

We are writing to voice our support of your House Bill 152. As you know, this bill will raise the annual brewpub production limit to 150,000 gallons. This is a reasonable measure which will allow for growth in the local brewpub industry. With this bill, the Moose's Tooth Brewing Co. will be able to continue to locally supply the demand of its customers. If this bill does not pass, the Moose's Tooth may be forced to contract some of its production out of state.

The Moose's Tooth is an local success story, providing over 100 jobs in our community. Please don't force them to leave the state. Let's keep local businesses here in Alaska. Thank you.

Joshua B Halberg
Patricia J Bliss
22821 Northwoods Drive
Chugiak, AK 99567

22-LS0354V
Ford
4/6/01

CS FOR HOUSE BILL NO. 152()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE HALCRO

A BILL
FOR AN ACT ENTITLED

1 **"An Act relating to brewpub licenses."**

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

3 *** Section 1. AS 04.11.135(a) is amended to read:**

4 (a) A brewpub license authorizes the holder of a beverage dispensary license
5 to

6 (1) manufacture beer [ON PREMISES LICENSED UNDER THE
7 BEVERAGE DISPENSARY LICENSE NOT MORE THAN 75,000 GALLONS OF
8 BEER IN A CALENDAR YEAR];

9 (2) sell beer [MANUFACTURED] on no more than two premises
10 licensed under a [THE] beverage dispensary license for consumption on the licensed
11 premises if the holder of the brewpub license is also the holder of both beverage
12 dispensary licenses [OR OTHER LICENSED PREMISES OF THE BEVERAGE
13 DISPENSARY LICENSEE THAT ARE ALSO LICENSED AS A BEVERAGE
14 DISPENSARY];

15 (3) sell beer [MANUFACTURED] on each of the premises described

1 [LICENSED] under (2) of this subsection [THE BEVERAGE DISPENSARY
2 LICENSE] in quantities of not more than five gallons per day to an individual who is
3 present on the licensed premises;

4 (4) provide a small sample of the brewpub's beer manufactured on the
5 premises free of charge unless prohibited by AS 04.16.030; and

6 (5) sell beer [MANUFACTURED ON THE PREMISES LICENSED
7 UNDER THE BEVERAGE DISPENSARY LICENSE] to a person licensed as a
8 wholesaler under AS 04.11.160.

9 * Sec. 2. AS 04.11.135(d) is repealed.

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mises;

(2) more than five gallons to a person who is licensed under this title, or in another state or country.

(c) The holder of a brewery license may permit a person to sample small portions of the brewery's product free of charge unless prohibited by AS 04.16.030.

(d) The biennial brewery license fee is \$1,000. (§ 2 ch 131 SLA 1980; am § 2 ch 85 SLA 1988; am § 2 ch 111 SLA 1988; am § 1 ch 157 SLA 1988; am § 6 ch 63 SLA 1993)

Effect of amendments. — The 1993 amendment, effective December 31, 1993, in subsection (d), substituted "biennial" for "annual" and increased the license fee.

the amendment to (b) of this section by sec. 2, ch. 85, SLA 1988 (HCS CSSB 413 (Jud)), see 1988 House & Senate Joint Journal Supplement No. 18, May 10, 1988 p. 2.

Legislative history reports. — For an analysis of

Sec. 04.11.135. Brewpub license. (a) A brewpub license authorizes the holder of a beverage dispensary license to .

(1) manufacture on premises licensed under the beverage dispensary license not more than 75,000 gallons of beer in a calendar year;

(2) sell beer manufactured on premises licensed under the beverage dispensary license for consumption on the licensed premises or other licensed premises of the beverage dispensary licensee that are also licensed as a beverage dispensary;

(3) sell beer manufactured on the premises licensed under the beverage dispensary license in quantities of not more than five gallons per day to an individual who is present on the licensed premises;

(4) provide a small sample of the brewpub's beer manufactured on the premises free of charge unless prohibited by AS 04.16.030; and

(5) sell beer manufactured on the premises licensed under the beverage dispensary license to a person licensed as a wholesaler under AS 04.11.160.

(b) Except as provided under AS 04.11.360(10), the brewpub license is not transferable, shall remain the property of the state, and is not subject to any form of alienation.

(c) The biennial brewpub license fee is \$500.

(d) Notwithstanding (a) of this section, the holder of a brewpub license who under the provisions of AS 04.11.450(b) formerly held a Brewery license and a restaurant or eating place license and who, under the former brewery license, manufactured beer at a location other than the premises licensed under the former restaurant or eating place license may

(1) manufacture not more than 75,000 gallons of beer in a calendar year on premises other than the premises licensed under the beverage dispensary license;

(2) provide a small sample of the manufactured beer free of charge at the location the beer is manufactured unless prohibited by AS 04.16.030; and

(3) sell the beer authorized to be manufactured under this subsection

(A) on the premises licensed under the beverage dispensary license or other licensed premises of the beverage dispensary licensee that are also licensed as a beverage dispensary;

(B) to a wholesaler licensed under AS 04.11.160; or

(C) to an individual who is present on the premises where the beer is manufactured in quantities of not more than five gallons per day. (§ 3 ch 111 SLA 1988; am § 7 ch 63 SLA 1993; am §§ 6, 7 ch 101 SLA 1995; am § 3 ch 136 SLA 1996; am §§ 5, 6 ch 74 SLA 1999)

Effect of amendments. — The 1993 amendment, effective December 31, 1993, in subsection (c), substituted "biennial" for "annual" and increased the license fee.

The 1995 amendment, effective July 1, 1995, substituted "75,000 gallons" for "16,000 gallons" in paragraph (a)(1) and made a section reference substitution in subsection (b).

The 1996 amendment, effective October 1, 1996, in

subsection (a), added paragraphs (3) and (4) and made related changes.

The 1999 amendment, effective July 1, 1999, in subsection (a) added "or other licensed premises of the beverage dispensary licensee that are also licensed as a beverage dispensary" at the end of paragraph (2), added paragraph (5), and made related stylistic changes; and added subsection (d).

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: _____
 Bill Version: HB 152
 () Publish Date: _____

Revision Date/Time (Note if correction): _____ Dept. Affected: Revenue
 Title: Brewpub Licenses BRU: ABC Board
 Component: ABC Board
 Sponsor: Representative Halcro
 Requester: House Labor and Commerce Committee Component Number: 100

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						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

POSITIONS	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill increases the amount of beer a brewpub could manufacture from 75,000 to 150,000 gallons in a calendar year.

The legislation would have no fiscal impact on the Alcoholic Beverage Control Board.

Prepared by: Doug Griffin, Executive Director Phone 269-0351
 Division: Alcoholic Beverage Control Board Date/Time March 30, 2001, 1 p.m.
 Approved by: Larry Persily, Deputy Commission Date 03/30/2001
 Agency: Department of Revenue

For distribution information, call the Governor's Legislative Office

"The Brewers Guild of Alaska (BGA) supports the raising of the production capacity on Brewpubs from 75,000 gallons to 150,000 gallons with the following restriction in place. Any Brewpub requesting a production capacity increase (above 75,000 gal.) would be prohibited from wholesaling any of their beer offsite."

homerbrw wrote:

Greeting Rep. Scalzi,

I'm sorry I was unable to meet with you on your last trip to Homer. It appears our former business partner was in to see you and I am unclear if his opinion was stated with the fact that his affiliation with Homer Brewing Company has been severed. It appears from the letter you sent to Homer Brewing Company we are in favor of the above mentioned House Bills, when in fact, we are against them. The limit of production that Brew Pubs licenses now have is to help level the playing field that has become so uneven during the past 6 years of legislation. The 3-tier system that is in place for solid reasons, is being deteriorated by the fact that Brew Pubs are allowed to sell in both the retail and wholesale market. As a Production Brewery, The Homer Brewing Company is not allowed to own interest in multiple licenses which keeps us out of the "bar business". This is to prevent "tied houses", for example, Anheuser-Busch could own all the bars if this 3-tier system were not in place which would then put all other breweries out of business. It sounds extreme, but is quite possible if there weren't these safeguards in place. We are sympathetic to the limits that Anchorage's Moose's Tooth folks are facing, but it is a fact that all states have some sort of limitations on what a Brew Pub license can produce. A Brew Pub is intended to be just that...a pub that brews beer. Not a brewery that acts like a pub, which is what seems to be happening. I hope you are aware of the Brewers Guild of Alaska and the stance they have taken on this HB 152. CHARR has also adopted the same sentiment, which is, raise the production cap in order for Brew Pubs to brew sufficient product for their licensed establishments, but disallow them to sell into the wholesale market. Their sales into this area is more for marketing and not profit driven, whereas, Production Breweries only have this market to sell their product. Once again, Moose's Tooth has been very "gentlemanly" in their manner of wholesale distribution, but legislation with this broad of a base, will allow another company to set up shop in what surely will be a less than "gentlemanly" fashion. This brings up HB 153. When I was in the process of licensing Homer Brewing Company in 1996 it became apparent that the thing to do was to also purchase a "Restaurant or Eating Place License" which would allow breweries to sell pints for consumption on premise. Glacier Brewhouse, The Snow Goose and Railway Brewing Company all did this and began operation. I joined in with this idea only to find out, it was no longer allowed. Reason being...breweries and bars are intended to be separated. With breweries in the bar business, it caused those with Beverage Dispensary Licenses to object. The financial burden of these licenses is far greater than the two I mention combined, which caused the deflation of value of a Dispensary license. Please don't misunderstand this, I would love to sell a simple pint of Homer Brewing Company's fine-quality-malted-beverages here at the brewery. But with the laws of Alaska as they have been established, I do not think it would behoove the alcohol beverage industry to move to this at this time. When I travel to Washington and enjoy the fruits of the Maritime Brewing Company's efforts next door in their pub (not full bar), I must wonder why I can't do the same, but I have known since I began in business this was not Washington. I also believe the big picture of such a possibility is further away than my length of time in this business. Both The Brewer's Guild of Alaska and CHARR do not support HB 153, nor do we at the Homer Brewing Company. AT THIS TIME. On a final note, SB 8 that is stirring around the Senate which would raise the excise tax on beer from the current .35/gallon to \$3.02/gl. Surely you can see this is an unreasonable amount of increase and it is a fact that beer in Alaska is the 10th highest taxed beer in the U.S. We support a reasonable increase in alcohol excise tax that would be used directly to fund new programs that combat alcohol abuse in this state, but it is a fact that the craft-brewed beer industry is not the brunt of alcohol abuse in this state. As local producers in the state we face the increased burden of bringing all but the water from Outside to brew our product. The cost of doing this creates greater expenses than similar Northwest breweries do not incur, coupled with the fact their state excise taxes are far less. Competing on the market with Outside breweries should not be so unbalanced. Thank you for your considerations on these matters.

Respectfully, Karen E. Berger/Stephen F. McCasland
Homer Brewing Company, owners

Anchorage Daily News

B-6 Monday, April 2, 2001



WRITE ONLINE

Got an opinion? A reaction to a news story? Log onto adn.com and click on the Forums section and join in. There are separate forums there on News, Sports, Features and a variety of other topics.

Beer production cap on local brewers bad for Alaska business

I just read about the Moose's Tooth's potential restriction on brewing beer for its restaurants ("Brewpub battles beer production cap," March 23). One of our sacred political mantras is to create and preserve jobs for Alaskans. Now we have a local employer that may have to have its beer brewed Outside. Why should this business be exported when we have Alaskans who can do it in Alaska? We need to support our local businesses, particularly the successful ones that employ more than 100 people.

— *Veronica Allmaras*
Anchorage



HB

157

ALASKA STATE LEGISLATURE

Chair:
LABOR AND COMMERCE

Member:
MILITARY AND VETERANS AFFAIRS
COMMUNITY AND REGIONAL AFFAIRS
LEGISLATIVE COUNCIL
JOINT ARMED SERVICES



REPRESENTATIVE LISA MURKOWSKI

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Sponsor Statement

HB 157

“An Act relating to trust companies and providers of fiduciary services”

At the request of the Division of Banking and Securities, I have introduced House Bill 157, the Revised Alaska Trust Company Act. The purpose of this bill is to update the existing Trust Company Act which has not undergone any major revisions since its adoption during the territorial days of 1949. If enacted, this legislation will be a tool that will enhance the process of formation, operation, supervision and regulation of the trust industry in Alaska.

Recent changes to Alaska trust laws make creation of trust charters in Alaska more desirable. However, the Alaska Trust Act does not provide guidance as to who or what needs a charter, nor guidance for the formation and organization of a trust entity, or provisions for permissible activities including interstate or intrastate business expansion.

The bill repeals existing AS 06.25 and replaces it with AS 06.26 ‘Providers of Fiduciary Services.’ This chapter clarifies who may provide fiduciary services in Alaska, expands on who may be a trust company, what their powers may be, and covers specific items such as certificate of authority, required capital, operations of offices, and the like.

I have worked with local trust companies, trust attorneys and the Division to formulate this legislation. This bill meets the needs of the Division to adequately regulate new and existing trust companies and also for those providing fiduciary services without being a burden to their overall business activities. I urge your support of this legislation.

Overview of HB 157

The language in the current Trust Company Act (the Act) dates back to 1949 and is virtually unchanged since. The current statute, is not a functional act.

In the past 12 years the Division has chartered only two trust companies, both of which were organized within the past 2 years. During this process it became apparent that the Act was lacking in many respects. For example, the Act includes no guidance as to who needs a charter, has minimal guidance with respect to permissible activities, and has no provisions for interstate or intrastate business expansion. In most instances the Division had to improvise by using the processes of the Alaska banking code (AS 06.05) for guidance in the formation and organization of the trust companies.

In recent years, many states have rewritten their existing trust company acts. The process leading to this bill included receiving acts from several states and a draft of a uniform trust company act provided by the Conference of State Bank Supervisors. In addition, the drafts of the bill were reviewed by, and comments were considered from, the Alaska trust industry, attorneys in the trust field, and several CPAs.

Alaska's laws, concerning trusts, have undergone many changes, enhancing the desirability of a trust charter in Alaska. This bill, if enacted, will be a tool that will enhance the process of formation, operation, supervision and regulation of the trust industry in Alaska. The bill will establish a new chapter (AS 06.26) and will repeal the current act (AS 06.25).

Section 1

Section 06.05.235(g)

Technical amendment to change reference from the old trust act (AS 06.25) to the new trust act (proposed AS 06.26).

Section 2

Section 06.26.010

Specifies who is authorized to act as a fiduciary.

Old law did not authorize who may act as a fiduciary.

Section 06.26.020

List specifies persons that are exempted from chartering requirements when acting as a fiduciary.

Old law did not provide for exemptions to acting as a fiduciary, nor did it define who was authorized to act as a fiduciary in the first place.

Section 06.26.030

Authorizes a trust company that has an office or branch established under this chapter to act as a fiduciary in this state, another state or another country, and to conduct any activities in offices outside of Alaska that are not prohibited by this chapter and are permitted by the host state.

Old law did not provide for in state or interstate branching unless the trust company also had banking powers.

Section 06.26.040

Prohibits any person from using the words "trust" or "trust company" unless authorized to act as a fiduciary under this chapter and grand fathers names in use prior to the enactment of this bill.

Old law did not prohibit using the words "trust" or "trust company" which could convey the impression that a person is acting as a fiduciary.

Section 06.26.050

Grants various powers to a trust company and defines a "national bank exclusively exercising trust powers" as a person issued a charter with trust powers only from the Office of the Comptroller of the Currency.

Old law was similar, but more restrictive.

Section 06.26.060

Permits one or more persons to organize a trust company.

Old law required 5 or more persons to form a trust company.

Section 06.26.070

Requires a trust company be incorporated under AS 10.06 with additional specific requirements and requires a minimum of 5 directors and a maximum of 25 directors.

Old law required incorporation under AS 06.05, the Alaska banking code, and limited the maximum number of directors to 15.

Section 06.26.080

Provides procedures to amendments to the trust company's articles of incorporation by a vote of shareholders representing a majority of the capital and that they become effective 61 days after filing unless the department specifies otherwise.

Old law was similar but did not contain time constraints for action by the department.

Section 06.26.085

Prohibits a person from acting as a trust company until they have received a certificate of authority from the department.

Old law was similar.

Section 06.26.090

Specifies the procedures, requirements, and restrictions to apply for, and to receive, a certificate of authority to act as a trust company in Alaska.

Old law was similar, but provided less guidance and was less restrictive.

Section 06.26.100

Requires department to notify organizers of proposed trust company when application is accepted for filing; requires organizers to publish notice of application filing in newspaper and to provide proof of publication.

Old law did not impose these requirements.

Section 06.26.110

Prior to the department issuing a certificate of authority, the trust company must have received the full amount of capital required under AS 06.26.120 and requires the trust company to begin its operation within 6 months, or other such extended time, or the department must revoke the certificate of authority.

Old law similar, but did not provide for a 6-month expiration period if no business conducted.

Section 06.26.120

Sets a minimum unimpaired capital requirement of \$400,000 and a minimum paid-in surplus requirement equal to 20% of paid-in capital, gives the department the authority to issue an order to require adjustments to the capital requirement to protect the safety and soundness of the trust company, provides authority for the department authorize increases and decreases to capital requested by the trust company, and restricts the payment of dividends if surplus is decreased do to operating losses.

Old law was similar, but required less capital and was less detailed and did not address payment of dividends.

Section 06.26.130

Details how a trust company can issue convertible or nonconvertible capital notes or debentures, if authorized by the department, sets limits on the amount of notes and debentures, disallows retirements of notes and debentures in the event of insolvency, and makes them subordinate to certain other liabilities of the trust company.

Old law did not address this.

Section 06.26.140

Prohibits cumulative voting by shareholders unless allowed by the trust company's articles of incorporation.

Old law did not address this.

Section 06.26.150

Requires a trust company to maintain a home office in this state and one executive office to maintain an office in the home office, designates each executive officer at the home office as

agent for service of process, and permits a trust company to change its home office location to any of its existing offices in the state by filing a notice with the department.

Old law did not address this.

Section 06.26.160

Provides procedures for applying to establish branch offices and provides for the department to act prior to the 61st day after filing an application unless otherwise specified by the department, and gives department authority to deny the application based on safety and soundness concerns.

Old law did not address the establishment of branches unless the trust company was FDIC insured. The procedures for establishing a branch would have been governed by the Alaska banking code (AS 06.05), which are similar to this proposed section.

Section 06.26.170

Provides procedures for applying to the department to establish or acquire representative trust offices anywhere in the state.

Old law did not address this.

Section 06.26.180

Provides for interstate branching and details procedures, guidelines and restrictions.

Old law did not address this.

Section 06.26.190

Permits a trust company to be closed on holidays described in AS 44.12.101-025 and make available a notice of holiday closings to its customers, provides for other closures and addresses the hours of operation.

Old law did not address this.

Section 06.26.200

Subjects a private fiduciary to compliance with this chapter unless expressly exempted in writing by the department and restrict them from transacting business with the general public.

Old law did not address this.

Section 06.26.210

Specifies what information must be contained in a request for exemption, prohibits department approval if application is incomplete, lists requirements to maintain exempt status of a private fiduciary, requires annual certification of exempt status and allows department to investigate a private fiduciary as necessary to verify annual certification, and requires a private fiduciary with an exemption under AS 06.26.200 to comply with home office provisions of AS 06.26.150 (f).

Old law did not address this.

Section 06.26.220

Exemption of a private fiduciary cannot be transferred. Any change in control requires an application.

Old law did not address this.

Section 06.26.230

Provides authority for the department to revoke an exemption with guidelines and restriction.

Old law did not address this.

Section 06.26.240

Permits a private fiduciary to offer services to the general public if it satisfies the requirements of this section, provides guidelines for approval, and the right to deny if the private fiduciary does not meet the requirements of this chapter.

Old law did not address this.

Section 06.26.250

Authorizes the department to adopt regulations regarding permissible investments and appropriate investment powers of trust companies.

Old law did not address this.

Section 06.26.260

Restrict pledging of company assets with some exceptions.

Old law did not address this.

Section 06.26.370 (a) - (c)

Permits a trust company to deposit trust assets with itself and provides requirements and guidelines for this practice.

Old law did not address this.

Section 06.26.380

Subject to regulations adopted by the department, a trust company may invest in common investment funds.

Old law did not address this.

Section 06.26.390

Restricts fees between a client and the trust company to be arm's length (a) and reasonable (b).

Old law did not address this.

Section 06.26.400

Requires a trust company to disclose conflicts of interest.

Old law did not address this.

Section 06.26.410

Requires a trust company to observe prudent standards of care applicable to trustees under AS 13.36.225--13.36.290(Alaska Uniform Prudent Investor Act).

Old law did not address this.

Section 06.26.450

Requires department approval for a change in control of a trust company and provides for certain exceptions.

Old law did not address this.

Section 06.26.460

Provides a process for applying for a change in control, and lists guidelines and restriction.

Old law did not address this.

Section 06.26.470

Requires the department to approve or deny an application for acquisition or control no later than 60 days after the notice of application is published. Department may set conditions in approval.

Old law did not address this.

Section 06.26.480

AS 06.26.450-480 may not be construed to prevent the department from investigating a transfer involving voting securities evidencing a direct or indirect interest in a trust company if the department considers the transfer against the public interest.

Old law did not address this.

Section 06.26.500

Sets restrictions on voting the securities of a trust company which held by the trust company in a fiduciary capacity.

Old law did not address this.

Section 06.26.510

Provides for a minimum of 5 and maximum of 25 directors of a trust company, requires a majority of directors to be residents of this state and set qualifications and requirements for directors.

Old law did not address this except that the number of directors was limited between 5 and 15.

Section 06.26.520

Requires board meetings to be held at least once every three months, the department or a director may call a special meeting, a majority of the board constitutes a quorum, the board shall keep minutes and attendance and voting records, and at least once every three months the board is required to review various reports of trust accounts.

Old law did not address this.

Section 06.26.530

Requires officers be appointed annually by the board, states the president is responsible for the operation of the trust company, requires an officer to be responsible for maintenance of trust company records and a different officer be responsible for attestation of signatures.

Old law required annual appointment of officers, but did not address maintenance of records.

Section 06.26.540

Requires board approval for an officer or employee to create or dispose of an asset or liability.

Old law did not address this.

Section 06.26.550

Authorizes a trust company to appoint a trust committee, which must meet monthly. Committee required to keep a record of its actions, and may elect officers to accept new accounts.

Old law did not address this.

Section 06.26.560

Lists prohibited acts of directors, officers, employees and shareholders.

Old law did not address this.

Section 06.26.570

Prohibits insider transactions, prohibits extension of credit to insiders unless terms are the same as would be offered to a non-insider, authorizes department to adopt regulations to implement this section, and excludes a subsidiary of a trust company from the meaning of "affiliate".

Old law did not address this.

Section 06.26.580

Generally prohibits a trust company from investing trust assets in the stocks or obligations of the trust company or using trust assets to acquire property from the trust company and prohibits use of material inside information in connection with the purchasing or selling a trust asset.

Old law did not address this.

Section 06.26.585

Requires the trust company to establish written policies and procedures for buying and selling trust assets that are securities and must include the prohibition in AS 06.26.580(b).

Old law did not address this.

Section 06.26.590

Places the responsibility for proper exercise of fiduciary powers on the board.

Old law did not address this.

Section 06.26.600

Requires segregation of trust asset records from the trust company records.

Old law did not address this.

Section 06.26.610

Requirement for confidentiality of customer information.

Old law did not address this.

Section 06.26.620

Requires the trust company to maintain various insurance policies, sets limits, requires an annual review of insurance coverages to determine adequacy, and requires filing evidence of all coverages with the department.

Old law did not address this.

Section 06.26.630

Requires reporting of crimes.

Old law did not address this.

Section 06.26.650

Provides authority for mergers.

Old law did not address this.

Section 06.26.660

Provides the process and guidelines for mergers.

Old law did not address this.

Section 06.26.670

Gives dissenting shareholders of a proposed merger rights which are governed by AS 10.06.574-582 (Alaska corporations code).

Old law did not address this.

Section 06.26.680

Authorizes the department to approve applications for purchases of all, or substantially all of the assets of another trust company and provides for an investigation into the application.

Old law did not address this.

Section 06.26.690

Authorizes a purchasing trust company to hold the purchase price and other money or assets delivered to it by the selling trust company and act as the disbursing agent.

Old law did not address this.

Section 06.26.700

Requires a purchasing trust company, in the case of a selling trust company being liquidated by a state or federal agency, to deliver the remaining assets to the receiver.

Old law did not address this.

Section 06.26.710

Provides for the method of payment to creditors by the purchasing trust company.

Old law did not address this.

Section 06.26.720

Authorizes the board of a trust company, with the prior approval of the department, to sell all or substantially all assets without shareholder approval under certain conditions and considers the sale of all or substantially all assets with shareholder approval as a voluntary dissolution and is governed by AS 06.26.730-800.

Old law did not address this.

Section 06.26.730

Gives the requirement, procedures and guidelines for department approval, for a trust company to voluntarily surrender its certificate of authority.

Old law did not address this.

Section 06.26.740

Gives situations where the department is authorized to revoke or suspend a trust company's certificate of authority.

Old law did not address this.

Section 06.26.750

Authorizes the department to take possession of the trust company's fiduciary operations and appoint a receiver for liquidation if the department revokes the trust company's certificate of authority.

Old law did not address this.

Section 06.26.760

Vests the department with the full and exclusive power of managing and controlling a trust company when the department has taken possession of a trust company and includes procedures and guidelines.

Old law did not address this.

Section 06.26.770

Authorizes the department to reorganize a trust company by entering an order proposing a reorganization plan.

Old law did not address this.

Section 06.26.780

Give the requirements and guidelines for the department when liquidating a trust company.

Old law did not address this.

Section 06.26.790

Directs the department to liquidate a trust company by giving notice to various parties, the process for payment of claims, and notice requirements, and the procedures for wrapping up the business via the courts.

Old law did not address this.

Section 06.26.800

The department is authorized to appoint the FDIC as receiver of a trust company the department has taken possession of.

Old law did not address this.

Section 06.26.810

Authorizes an out of state trust company (interstate state, interstate national, and international trust companies) to act as fiduciary in this state only if they maintain a trust office in this state.

Old law did not address this.

Section 06.26.820

Authorizes out of state trust companies to establish a new trust office in the state or acquire one that already exists.

Old law did not address this.

Section 06.26.830

Requires an out of state trust company to file a notice with the department to establish a new trust office or acquire an existing trust office.

Old law did not address this.

Section 06.26.840

Sets out minimum qualifications for an out of state or international trust company to establish or acquire a trust office in the state including filing various items with the department.

Old law did not address this.

Section 06.26.850 (a) - (h)

Authorizes and provides a process for an out of state trust company to establish or acquire a representative office as permitted by AS 06.26.810-895.

Old law did not address this.

Section 06.26.860

Permits an out of state trust company to establish or acquire additional trust offices or representative offices to the same extent a trust company can under AS 06.26.160.

Old law did not address this.

Section 06.26.870

Authorizes the department to examine interstate state and international trust companies and collect fees for the examination, require reports and assess fees.

Old law did not address this.

Section 06.26.880

Authorizes the department to take enforcement actions if an office of an out of state trust company is being operated in an unsafe and unsound manner, is in violation of state laws, or is engaged in an activity not permissible under this chapter.

Old law did not address this.

Section 06.26.890

Requires an out of state trust company to give 60 days notice for mergers, consolidations, change in control, transfer of all or substantially all assets, and for closing or disposition of any office in the state.

Old law did not address this.

Section 06.26.895

Defines international trust company, interstate national trust company, and interstate state trust company.

Old law did not address this.

Section 06.26.900

Gives a list of powers of the department.

Old law did not address this.

Section 06.26.905

Permits the department to enter into cooperative agreements and enforcement actions with other governmental regulators.

Old law did not address this.

Section 06.26.910

List of instances when a person may appeal to the department, authorizes department to adopt regulations establishing procedures for appeals, and subjects appeals to AS 44.62 (Administrative Procedure Act).

Old law did not address this.

Section 06.26.920

Authorizes department to bring a civil court action against a person who has or is about to commit a violation of this chapter.

Old law did not address this.

Section 06.26.930

Requires a trust company to submit various reports.

Old law did not address this.

Section 06.26.940

Gives persons who suffer damages as a result of violations by persons subject to this chapter, the right to bring an action in court.

Old law did not address this.

Section 06.26.950

Stipulates that this chapter does not allow a trust company to engage in banking.

Old chapter did not have this provision.

Section 06.26.960

Prohibits a trust company from taking an action with respect to its corporate status or capital structure without first receiving the department's approval and authorizes the department to adopt regulations under AS 10.06 applicable to an act in this chapter.

Section 06.26.990

Defines various terms.

Old law only defined "department."

Section 06.26.995

Short title of the act is "Revised Alaska Trust Company Act."

Section 3

AS 13.36.025 is amended so that the provisions of (a) are not intended to be overridden by AS 06.26, and AS 06.26 governs in the event of a conflict.

Section 4

Technical change in AS 13.36.320(a) replacing the word "Alaska" with "the state" and replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

Section 5

Technical change in AS 13.36.390 (2) replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

Section 6

Technical change in AS 21.66.250 replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

Section 7

Technical change in AS 34.77.100(a) replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

Section 8

Lists sections that are repealed.

Section 9

Several areas of law are amended as a result of AS 06.26.760(b)(2). Those areas are: Rules 6 and 12 of the Alaska Rules of Civil Procedure, Rule 40 of the Alaska Rules of Criminal Procedure, Rules 204, 403, 502, 602, and 611 of the Alaska Rules of Appellate Procedure.

Section 10

Outlines requirements and time frames for trust companies existing prior to the effective date of this Act to comply with the new Act.

Section 11

Authorizes the department to adopt regulations necessary to implement sections 1-8 of this act. no earlier than January 1, 2002.

Section 12

Sections 10 and 11 are effective immediately.

Section 13

Except as provided in section 12, this Act becomes effective January 1, 2002.

CS FOR HOUSE BILL NO. 157()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

**Offered:
Referred:**

Sponsor(s): REPRESENTATIVE MURKOWSKI

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to trust companies and providers of fiduciary services; amending Rules
2 6 and 12, Alaska Rules of Civil Procedure, Rule 40, Alaska Rules of Criminal Procedure,
3 Rules 204, 403, 502, 602, and 611, Alaska Rules of Appellate Procedure, and Rule 7.2,
4 Alaska Rules of Professional Conduct; and providing for an effective date."

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

6 * Section 1. AS 06.05.235(g) is amended to read:

7 (g) For the purpose of this section and AS 06.05.570, a trust company
8 organized under AS 06.26 [AS 06.25] that is engaged in the business of banking shall
9 be considered a state bank.

10 * Sec. 2. AS 06 is amended by adding a new chapter to read:

11 **Chapter 26. Providers of Fiduciary Services.**

12 **Article 1. General Authority.**

13 **Sec. 06.26.010. Persons authorized to act as fiduciaries. (a)**

14 **Notwithstanding other provisions of law and except as provided in AS 06.26.020, a**

1 person may not act as a fiduciary in this state unless the person is

2 (1) a trust company organized under this chapter;

3 (2) a private fiduciary that has received an exemption under
4 AS 06.26.200;

5 (3) a state financial institution;

6 (4) a national bank having its principal office in this state and
7 authorized by the United States Comptroller of the Currency to act as a fiduciary;

8 (5) a federally chartered savings association having its principal office
9 in this state and authorized by its federal chartering authority to act as a fiduciary;

10 (6) an international bank that has a branch bank in this state established
11 or maintained under AS 06.05.550; in this paragraph, "international bank" has the
12 meaning given in AS 06.05.990;

13 (7) an interstate national bank with a branch bank in this state
14 established or maintained under AS 06.05.550; in this paragraph, "interstate national
15 bank" means a national bank whose principal office, as designated in the bank's
16 articles of incorporation, is not located in this state;

17 (8) an entity that

18 (A) is organized under the laws of a state of the United States
19 other than this state;

20 (B) holds a charter, license, certificate, or other type of
21 authorization from this or another state of the United States to engage in
22 banking; and

23 (C) has a branch bank located in this state established or
24 maintained under AS 06.05.550;

25 (9) an interstate state trust company or international trust company
26 with a trust office authorized by the department under AS 06.26.810 - 06.26.895;

27 (10) a trustee of only charitable trusts, does not provide or offer
28 fiduciary services to the general public with regard to noncharitable trusts, and
29 observes the requirements applicable to trustees under AS 13.36.225 - 13.36.290
30 (Alaska Uniform Prudent Investor Act); or

31 (11) a federally chartered credit union having its principal office in this

1 state and authorized by the National Credit Union Administration to act as a fiduciary.

2 (b) In this section, "branch bank" has the meaning given in 06.05.990.

3 **Sec. 06.26.020. Exemptions.** (a) Notwithstanding any other provision of this
4 chapter, a person does not act as a fiduciary under this chapter if the person

5 (1) is licensed to practice law in this state, the person is acting within
6 the scope of the license, and the person and any law firm of the person are not trustees
7 of more trusts than the number established for the person and law firm by the
8 department by regulation or order; in this paragraph, "law firm" means a partnership, a
9 professional corporation organized under AS 10.45, or another association organized
10 for the practice of law and in which the person practices law;

11 (2) acts as trustee under a deed of trust delivered only as security for
12 the payment of money or for the performance of another act;

13 (3) receives and distributes on behalf of a principal rents and proceeds
14 of sales as a real estate broker or other licensee under AS 08.88;

15 (4) engages in securities business activity or investment advisory
16 business activity as a registered broker-dealer, a broker-dealer agent, a state
17 investment adviser, or an investment adviser representative, or as a federal covered
18 adviser who has made a notice filing under AS 45.55.040(h), the person is acting
19 within the scope of the person's registration or notice filing, and the activity is
20 regulated by the department under AS 45.55 or by the United States Securities and
21 Exchange Commission; in this paragraph, "agent," "broker-dealer," "federal covered
22 adviser," "investment adviser representative," "investment advisory business,"
23 "securities business," and "state investment adviser" have the meanings given in
24 AS 45.55.990;

25 (5) engages in the sale and administration of an insurance product as
26 an insurance company licensed under AS 21 or an insurance producer licensed under
27 AS 21;

28 (6) is a cemetery association organized and acting under AS 10.30;

29 (7) is a trustee for a voting trust under AS 10.06 and is acting in that
30 capacity;

31 (8) has a certified public accountant certificate issued under AS 08.04.

1 the person is acting within the scope of the certificate, and the person and any
2 accounting firm of the person are not trustees of more trusts than the number
3 established for the person and accounting firm by the department by regulation or
4 order; in this paragraph, "accounting firm" means a partnership, a professional
5 corporation organized under AS 10.45, or another association organized for the
6 practice of public accounting and in which the person practices public accounting;

7 (9) holds real property in trust for the primary purpose of subdivision,
8 development, or sale or to facilitate a business transaction with respect to the real
9 property;

10 (10) does not provide or offer fiduciary services to the general public
11 and serves as a trustee of a trust created by

12 (A) the person's family members; or

13 (B) another person that is organized, formed, or created by the
14 family members; in this subparagraph, "person" has the meaning given in
15 AS 01.10.060, and includes trusts that are not business trusts;

16 (11) holds money or other assets as a homeowners' association or
17 similar organization to pay maintenance and other related costs for commonly owned
18 property; in this paragraph, "homeowners' association" includes an association of
19 apartment owners under AS 34.07.450 and a unit owners' association or master
20 association under AS 34.08.990;

21 (12) holds money or other assets in connection with the collection of
22 debts or payments on loans by a person acting solely as the agent or representative at
23 the sole direction of the person to whom the debt or payment is owed, including
24 engaging in the business of an escrow agent;

25 (13) acts as a conservator if the person is appointed by a court of this
26 or another state or is qualified to act as a conservator under AS 13.26.320;

27 (14) acts as a personal representative if the person is appointed a
28 personal representative by a court of this or another state or is qualified to act as a
29 personal representative under AS 13.21.035; in this paragraph, "personal
30 representative" has the meaning given in AS 13.06.050;

31 (15) acts as a guardian or receiver if the person is appointed as a

1 guardian or receiver by a court of this or another state;

2 (16) is a business partner acting with regard to the business, or a co-
3 owner of property acting with regard to the co-owned property;

4 (17) serves as a trustee of a trust for which the settlor of the trust is not
5 a family member of the person if the person does not provide or offer fiduciary
6 services to the general public and does not serve as a trustee of more trusts than the
7 number established for the person by the department by regulation or order.

8 (b) When establishing the number of trusts that are allowed for an exemption
9 under (a)(1), (8), or (17) of this section, the department shall consider the protection of
10 the public, the effect on efficient delivery of trust services at a reasonable cost, and the
11 likelihood that the particular exemption can make the trust services available to the
12 persons who need the service.

13 (c) In addition to the exemptions identified in (a) of this section, the
14 department may by regulation or order grant an exemption to a person if the person
15 demonstrates good cause for needing the exemption and the department determines
16 that the exemption would not conflict with public order or convenience.

17 (d) To maintain an exemption under this section, a person who is exempt
18 under (a) or (c) of this section may not advertise in any medium, including an
19 electronic medium, for which the person acts as a fiduciary.

20 **Sec. 06.26.030. Location of operation.** (a) A trust company may act as a
21 fiduciary in this state, another state, or a foreign country, subject to complying with
22 applicable laws of the state or foreign country, at an office or branch established and
23 maintained under this chapter.

24 (b) A trust company may conduct any activities at an office outside this state
25 that are permissible for a trust company chartered by the host state, except to the
26 extent those activities are expressly prohibited by the laws of this state or by a
27 regulation or order of the department applicable to the trust company.

28 **Article 2. Name, Powers, Organization, and Capitalization.**

29 **Sec. 06.26.040. Name of trust company.** (a) A person may not use the
30 words "trust" or "trust company" or any other words in a manner that could reasonably
31 be expected to convey the impression that the person is acting as a fiduciary unless the

1 person is authorized to act as a fiduciary under AS 06.26.010.

2 (b) This section does not prohibit the use of the words "trust" or "trust
3 company" in the name of a corporation that is in existence as of the effective date of
4 this Act and that is not subject to this chapter if the corporation was originally
5 organized under the laws of this state and has not, since the date of its original
6 organization, amended or restated its articles of incorporation to delete from its name
7 the words "trust" or "trust company."

8 **Sec. 06.26.050. Powers of trust company.** (a) A trust company may perform
9 any act as a fiduciary that a state financial institution, or a national bank exclusively
10 exercising trust powers, may perform, including

- 11 (1) acting as trustee under a written agreement;
- 12 (2) receiving money and other property as trustee for investment in
13 real or personal property;
- 14 (3) acting as a trustee and performing the fiduciary duties committed
15 or transferred to it by a court;
- 16 (4) receiving money or other assets under AS 06.35;
- 17 (5) acting as an executor, an administrator, or a trustee of the estate of
18 a deceased person;
- 19 (6) acting as a custodian, guardian, conservator, or trustee for a minor
20 or an incapacitated person;
- 21 (7) acting as a successor fiduciary to a depository;
- 22 (8) receiving for safekeeping any type of personal property;
- 23 (9) acting as a custodian, an assignee, a transfer agent, an escrow
24 agent, a registrar, or a receiver;
- 25 (10) acting as an investment adviser, an agent, or an attorney-in-fact in
26 any agreed upon capacity;
- 27 (11) exercising additional powers expressly authorized by a regulation
28 adopted under this chapter; and
- 29 (12) exercising an incidental power that is reasonably necessary to
30 enable it to fully exercise the powers expressly conferred according to commonly
31 accepted fiduciary customs and usage.

1 (b) A trust company may exercise the powers of a business incorporated under
2 the laws of this state that are reasonably necessary to enable the exercise of its specific
3 powers under this chapter.

4 (c) A trust company may contribute to community solicitations, or to
5 charitable, philanthropic, or benevolent instrumentalities that operate to promote
6 public welfare, amounts that its board considers appropriate and in the interests of the
7 trust company.

8 (d) Subject to AS 06.26.370, a trust company may deposit trust money or
9 other assets with itself.

10 (e) Subject to the approval of the department and to being insured by the
11 Federal Deposit Insurance Corporation or its successor, a trust company may accept
12 deposits from the public.

13 (f) A trust company organized under this chapter may apply for a certificate of
14 authority under AS 06.05.

15 (g) A trust company organized under this chapter with a certificate of
16 authority issued under AS 06.05 may exercise all powers granted to it under AS 06.05
17 to the extent the powers do not conflict with this chapter. A trust company with a
18 certificate of authority issued under AS 06.05 is subject to all of the provisions of
19 AS 06.05. In case of a conflict between the provisions of this chapter and AS 06.05,
20 the provisions of this chapter apply.

21 (h) In (a) of this section, "national bank exclusively exercising trust powers"
22 means a person issued a charter by the United States Comptroller of the Currency if
23 the charter confers only trust powers.

24 **Sec. 06.26.060. Organizers.** One or more persons may organize a trust
25 company.

26 **Sec. 06.26.070. Incorporation.** (a) A trust company shall be incorporated
27 under AS 10.06.

28 (b) In addition to the items required under AS 10.06.208 to be included in
29 articles of incorporation, the articles of incorporation of a trust company must specify

30 (1) the judicial district where the trust company will be located and the
31 community where the trust company will locate its principal place of business;

1 (2) the amount of the trust company's stock, which must be divided
2 into shares having a par value of not less than \$1 each;

3 (3) that there will be at least five but not more than 25 directors;

4 (4) the period for which the trust company is organized, whether
5 limited or perpetual;

6 (5) the name by which the trust company will be known, which must
7 contain the words "trust company" as a part of the name; and

8 (6) a declaration that each incorporator will, if elected, accept the
9 responsibilities and faithfully discharge the duties of a director.

10 **Sec. 06.26.080. Amendment of articles or bylaws.** (a) A trust company may
11 amend its articles of incorporation or bylaws in a manner consistent with its articles,
12 its bylaws, AS 10.06, and this chapter by a vote of its shareholders representing at
13 least a majority of the capital at a regular meeting or at a special meeting called for
14 that purpose. The trust company shall file a written notice of an amendment with the
15 department.

16 (b) The department has 60 days from the date that the department receives a
17 notice under (a) of this section to review the amendment, and the amendment becomes
18 effective on the 61st day after the department receives the notice unless the department
19 specifies a different date. The department may extend the 60-day period of review if
20 the department determines that the notice raises significant issues that require
21 additional information or if the department needs additional time for analysis. If the
22 60-day period of review is extended, the amendment becomes effective only when the
23 department approves the amendment in writing.

24 **Sec. 06.26.085. Certificate of authority required.** A person may not act as a
25 trust company until a certificate of authority is received from the department.

26 **Sec. 06.26.090. Application for certificate of authority.** (a) An application
27 for a certificate of authority shall be made in the form required by the department and
28 must be supported by the information, data, records, and opinions of counsel required
29 by the department. The application must be accompanied by all fees and deposits
30 required by this chapter.

31 (b) The department may grant a certificate of authority only if the department

1 receives evidence from the applicant that the department determines demonstrates that
2 the establishment of the proposed trust company will serve public convenience and
3 well-being. The evidence must address the following factors:

4 (1) the market to be served;

5 (2) whether the proposed organizational structure, capital structure,
6 and amount of initial capitalization are adequate for the proposed trust company and
7 its location;

8 (3) whether the anticipated volume and nature of the proposed trust
9 company indicates a reasonable probability of success and profitability based on the
10 market sought to be served;

11 (4) whether, as a group, the proposed officers, directors, and
12 employees have sufficient fiduciary experience, ability, standing, competence,
13 trustworthiness, and integrity to justify a belief that the proposed trust company will
14 operate in compliance with the law and that success of the proposed trust company is
15 probable;

16 (5) whether each principal shareholder has sufficient experience,
17 ability, standing, competence, trustworthiness, and integrity to justify a belief that the
18 proposed trust company will be free from improper or unlawful influence or
19 interference with respect to the trust company's operation in compliance with the law;
20 and

21 (6) whether the persons organizing the trust company are acting in
22 good faith.

23 (c) The applicant for a certificate of authority bears the burden of establishing
24 that public convenience and well-being will be served by the establishment of the trust
25 company. The failure of an applicant to furnish required information, data, opinions
26 of counsel, other material, the required fee, or a required deposit is considered an
27 abandonment of the application.

28 (d) An applicant shall pay under AS 06.01.010 the investigation expenses
29 incurred by the department in processing an application for a certificate of authority.
30 When submitting an application to the department, the applicant shall pay the
31 department \$2,000 as an advance payment of the investigation expenses incurred by

1 the department. If the investigation expenses incurred by the department are less than
2 \$2,000, the department shall promptly refund the excess to the applicant. If the
3 investigation expenses incurred by the department are greater than \$2,000, the
4 department may obtain reimbursement from the applicant.

5 (e) The department shall determine whether all of the applicable requirements
6 of this section have been satisfied and shall enter an order granting or denying the
7 certificate of authority. The department may deny the application if the department
8 determines that the requirements of this chapter have not been met. The department
9 may set conditions on the certificate of authority and shall include any conditions in
10 the order granting the certificate of authority.

11 (f) If a protest of the application is not filed with the department on or before
12 the 15th day after the last date that the notice is published under AS 06.26.100, the
13 department may immediately determine whether the application meets the
14 requirements of this section based on the application and investigation.

15 **Sec. 06.26.100. Department notices regarding application.** (a) The
16 department shall notify the organizers of a proposed trust company when the
17 application under AS 06.26.090 is complete and accepted for filing and all required
18 fees and deposits have been paid. Promptly after notification, the organizers shall
19 publish in a form specified by the department notice of the filing of the application in
20 a newspaper of general circulation published in the community proposed as the trust
21 company's principal place of business. If a newspaper of general circulation is not
22 published in the community, the organizers shall publish the notice in a newspaper of
23 general circulation near the community. The department may require the organizers to
24 publish the notice at other locations reasonably necessary to solicit the views of
25 potentially affected persons. The notice must include a solicitation of comments and
26 protests.

27 (b) To prove that the publication required by (a) of this section has been
28 accomplished, the organizers shall file with the department an affidavit of publication
29 from the newspaper in which the notice was published.

30 **Sec. 06.26.110. Issuance of certificate of authority; required operation.**

31 (a) The department may not deliver a certificate of authority to a person to act as a

1 trust company until the person has

2 (1) received cash or marketable securities in at least the full amount of
3 the capital required under AS 06.26.120 from subscriptions for the issuance of shares;

4 (2) elected or qualified the initial officers and directors named in the
5 application for the certificate of authority or other officers and directors approved by
6 the department; and

7 (3) complied with all other requirements of this chapter related to the
8 organization of a trust company.

9 (b) A person who receives a certificate of authority, including a certificate of
10 authority with conditions, shall open a home office and begin providing fiduciary
11 services within six months after the date that the person receives the certificate of
12 authority or by the end of any extension of the six-month period allowed by the
13 department. If the person does not open the home office or begin providing fiduciary
14 services within the six months or by the end of any extension, the department shall
15 revoke the certificate of authority.

16 **Sec. 06.26.120. Required capital; change in outstanding capital and**
17 **surplus.** (a) A trust company may not act as a fiduciary unless the trust company has
18 paid-in capital in an amount acceptable to the department, but not less than \$400,000,
19 and paid-in surplus equal to 20 percent of paid-in capital. The trust company shall
20 hold its unimpaired capital as security for the faithful discharge of the fiduciary duties
21 undertaken by the trust company and for the claims of creditors.

22 (b) The department may by order require or permit adjustment to capital for a
23 proposed or existing trust company if the department finds the condition and
24 operations of an existing trust company or the proposed scope or type of operations of
25 a proposed trust company requires adjustment to capital to protect the safety and
26 soundness of the trust company. The safety and soundness factors to be considered by
27 the department in the exercise of its discretion to adjust capital include

28 (1) the nature and type of business conducted;

29 (2) the nature and degree of liquidity of the assets held by the trust
30 company other than trust assets;

31 (3) the amount of fiduciary assets being managed;

- 1 (4) the type of fiduciary assets held and the depository of those assets;
2 (5) the complexity of the fiduciary duties and degree of discretion
3 undertaken;
4 (6) the competence and experience of management;
5 (7) the extent and adequacy of internal controls;
6 (8) the presence or absence of annual unqualified audits by an
7 independent certified public accountant;
8 (9) the reasonableness of the trust company's plans for retaining or
9 acquiring additional capital; and
10 (10) the existence and adequacy of insurance held by the trust
11 company to protect its customers, beneficiaries, and grantors.

12 (c) If the department orders a trust company to increase or adjust its capital,
13 the order must state the date by which the increase or adjustment must be made. An
14 order under this subsection does not prohibit the trust company from later applying to
15 the department to reduce capital requirements for the trust company under (b) of this
16 section.

17 (d) Subject to (b) of this section, a trust company to which the department
18 issues a certificate of authority shall at all times maintain capital in at least the amount
19 required under (a) of this section, as increased or decreased under (b) of this section.

20 (e) A trust company may not reduce or increase its outstanding capital through
21 dividend, redemption, issuance of shares, or otherwise without the prior written
22 approval of the department, unless otherwise permitted by this chapter.

23 (f) Prior approval by the department is not required for a decrease in surplus
24 caused by incurred losses that exceed undivided profits. A decrease to surplus as a
25 result of losses shall be replaced before payment of further dividends.

26 **Sec. 06.26.130. Capital notes or debentures.** (a) A trust company may, with
27 the written consent of the department, and if authorized by its articles of incorporation
28 or approved by persons owning two-thirds of the stock of the trust company entitled to
29 vote, issue convertible or nonconvertible capital notes or debentures. The principal
30 amount of notes and debentures outstanding at any time may not exceed 33 1/3
31 percent of the capital stock and surplus fund of the trust company on the date of

1 issuance. The rate and term are subject to the approval of the department, but the term
2 may not exceed 20 years.

3 (b) A trust company may not retire capital notes or debentures if the
4 retirement creates an impairment of its capital. Capital notes and debentures are
5 subordinated in right of payment in the event of insolvency or liquidation of the trust
6 company to the prior payment of all deposits and all claims of other creditors except
7 the holders of securities on a parity with the capital notes and debentures and the
8 holders of securities expressly subordinated to the capital notes and debentures.

9 **Sec. 06.26.140. Cumulative voting.** Shareholders may not use cumulative
10 voting in the election of directors unless cumulative voting is allowed by the trust
11 company's articles of incorporation.

12 **Article 3. Operation of Offices.**

13 **Sec. 06.26.150. Trust company home office.** (a) A trust company shall
14 continuously maintain in this state a home office where the trust company operates
15 and keeps its records. At least one executive officer shall maintain an office at the
16 home office.

17 (b) Each executive officer at the home office is an agent of the trust company
18 for service of process.

19 (c) A trust company may change its home office to any of its offices existing
20 at the time of the change within this state by filing a written notice with the
21 department setting out the name of the trust company, the street address of its home
22 office before the change, the street address to which the home office is to be changed,
23 and a copy of a resolution adopted by the trust company's board authorizing the
24 change.

25 (d) The change of the location of a home office takes effect on the 61st day
26 after the date the department receives the notice under (c) of this section, unless the
27 department establishes a different date or unless, before the 61st day, the department
28 notifies the trust company that the trust company shall establish to the satisfaction of
29 the department that the relocation is consistent with the original determination made
30 under AS 06.26.090 for the establishment of a trust company at that location, in which
31 event the change of home office takes effect when approved by the department.

1 **Sec. 06.26.160. Trust company branch offices.** (a) A trust company may
2 establish branch offices anywhere in the state by

3 (1) filing a written notice with the department setting out the name of
4 the trust company, the street address of the proposed branch office, and a description
5 of the activities proposed to be conducted at the branch office;

6 (2) filing with the department a copy of a resolution adopted by the
7 trust company's board authorizing the establishment or acquisition of the branch
8 office; and

9 (3) paying the filing fee established by the department by regulation.

10 (b) The department has 60 days from the date the department receives the
11 notice under (a) of this section to review the proposal for the branch office, and the
12 trust company may begin operating the branch office on the 61st day after the date the
13 department receives the notice, unless the department specifies a different date.

14 (c) The department may extend the 60-day period of review provided by (b) of
15 this section if the department determines that the proposed branch office raises issues
16 that require additional information or if the department needs additional time for
17 analysis. If the 60-day period of review is extended, the trust company may establish
18 the branch office only after the department approves the branch office in writing. The
19 department may deny the trust company permission to establish a branch office if the
20 department has safety or soundness concerns.

21 **Sec. 06.26.170. Trust company representative offices.** (a) A trust company
22 may establish or acquire representative trust offices anywhere in this state. To
23 establish or acquire a representative office, a trust company shall

24 (1) file a written notice with the department that sets out the name of
25 the trust company and the location of the proposed representative office;

26 (2) file with the department a copy of a resolution adopted by the trust
27 company's board authorizing the establishment or acquisition of the representative
28 office; and

29 (3) pay the filing fee established by the department by regulation.

30 (b) The department has 60 days from the date the department receives the
31 notice filed under (a) of this section to review the establishment or acquisition of a

1 representative office, and the trust company may begin operating the representative
2 office on the 61st day after the date the department receives the notice, unless the
3 department specifies a different date.

4 (c) The department may extend the 60-day period of review provided by (b) of
5 this section if the department determines that the written notice raises issues that
6 require additional information or if the department needs additional time for analysis.
7 If the 60-day period of review is extended, the trust company may establish the
8 representative office only after the department approves the office in writing. The
9 department may deny permission to establish or acquire a representative office of the
10 trust company if the department has safety or soundness concerns.

11 **Sec. 06.26.180. Offices outside the state.** (a) With the prior written approval
12 of the department, a trust company may establish a branch office or a representative
13 office outside this state. To establish a branch office or representative office outside
14 this state, a trust company shall

15 (1) submit an application to the department specifying the location of
16 the proposed office, the business to be conducted at the proposed office, and the laws
17 of the jurisdiction where the office will be located that permit the office to be
18 established;

19 (2) file with the department a copy of a resolution adopted by the trust
20 company's board authorizing the establishment or acquisition of the office; and

21 (3) pay the filing fee established by the department by regulation.

22 (b) The department may approve an application under (a) of this section for a
23 branch office or representative office if the department finds that

24 (1) the laws of the jurisdiction in which the office is to be located
25 permit the establishment of the office; and

26 (2) the department does not have a significant supervisory or
27 regulatory concern regarding the proposed office.

28 (c) If a trust company submits with the application a certified statement of the
29 governmental regulator for the jurisdiction in which the office is to be located
30 expressly permitting the establishment of the office, the trust company may establish
31 the office by following the procedures under AS 06.26.090, except that the trust

1 company may not establish the office before the 91st day after the date the department
2 receives the notice filed under AS 06.26.160(a) unless the department notifies the trust
3 company that the trust company may establish the office on an earlier date.

4 (d) The department may deny a trust company permission to establish a
5 branch office or representative office outside this state if the department has safety or
6 soundness concerns regarding

7 (1) the market to be served;

8 (2) whether the proposed organizational structure, capital structure,
9 and amount of capitalization are adequate;

10 (3) whether the anticipated volume and nature of the proposed office
11 indicate a reasonable probability of success and profitability based on the market
12 sought to be served;

13 (4) whether, as a group, the officers, directors, and employees have
14 sufficient fiduciary experience, ability, standing, competence, trustworthiness, and
15 integrity to justify a belief that the proposed office will operate in compliance with
16 law.

17 **Sec. 06.26.190. Hours of operation.** (a) A trust company and an interstate
18 state trust company or an international national trust company maintaining a trust
19 office under AS 06.26.810 - 06.26.895 may close on the legal holidays described in
20 AS 44.12.010 - 44.12.025. A notice of holiday closings shall be made available to the
21 trust company's customers by mail, by the Internet, or by other means.

22 (b) A trust company and an interstate state trust company or international trust
23 company maintaining a trust office under AS 06.26.810 - 06.26.895 may close on any
24 business day if the trust company

25 (1) notifies the department in advance of the closure; and

26 (2) makes a closure notice available to its customers by mail, by the
27 Internet, or by other means.

28 (c) The hours of operation, and any changes in the hours of operation, of a
29 trust company and an interstate state trust company or international trust company
30 maintaining a trust office under AS 06.26.810 - 06.26.895 must be submitted to the
31 department and must be made available to the trust company's customers by mail, by

1 the Internet, or by other means.

2 (d) Notwithstanding this section, the hours of operation of a trust company
3 with a certificate of authority issued under AS 06.05 are subject to AS 06.05.166.

4 **Article 4. Private Fiduciaries.**

5 **Sec. 06.26.200. Private fiduciaries.** (a) Unless the department expressly in
6 writing exempts the person under this section from all or some of the provisions of this
7 chapter, a private fiduciary shall comply with the provisions of this chapter applicable
8 to a trust company.

9 (b) A private fiduciary may apply in writing for an exemption from specific
10 provisions of this chapter. The department may grant the exemption, in whole or in
11 part, if the department finds that the private fiduciary does not and will not provide or
12 offer fiduciary services to the general public.

13 (c) At the expense of the private fiduciary, the department may examine or
14 investigate the private fiduciary in connection with an application for an exemption
15 under this section. Unless the application presents novel or unusual questions, the
16 department shall approve or deny the application for exemption not later than the 61st
17 day after the date that the department considers the application complete and accepted
18 for filing. If the application presents novel or unusual questions, the department may
19 extend the time for approving or denying the application. The department may require
20 the private fiduciary to submit additional information the department considers
21 necessary to make an informed decision.

22 (d) The department may make an exemption under this section subject to
23 conditions or limitations imposed by the department that are consistent with this
24 chapter.

25 (e) The department may adopt regulations that are consistent with this chapter
26 defining the activities that do not constitute providing or offering fiduciary services to
27 the general public, specifying the provisions of this chapter that are subject to an
28 exemption under this section, and establishing procedures and requirements for
29 obtaining, maintaining, or revoking an exemption granted under this section.

30 **Sec. 06.26.210. Requirements to apply for and maintain status as a**
31 **private fiduciary.** (a) To obtain an exemption under AS 06.26.200, a private

1 fiduciary shall file an application with the department containing

2 (1) a nonrefundable application fee established by the department by
3 regulation;

4 (2) a detailed statement under oath showing the private fiduciary's
5 assets and liabilities as of the end of the month that precedes the date of the filing of
6 the application with the department;

7 (3) a statement under oath of the reason for requesting the exemption;

8 (4) a statement under oath that the private fiduciary currently does not
9 provide or offer fiduciary services to the general public and that the private fiduciary
10 will not provide or offer fiduciary services to the general public without the prior
11 written permission of the department;

12 (5) the current street address of the physical location in this state where
13 the private fiduciary will maintain its records, the private fiduciary's current telephone
14 number at that location, and a statement under oath that the address given is true and
15 correct and not a United States Postal Service post office box or a private commercial
16 mail drop;

17 (6) a list of the specific provisions of this chapter or regulations
18 adopted under this chapter from which the private fiduciary requests an exemption.

19 (b) The department may not approve an exemption under this section unless
20 the application complies with (a) of this section.

21 (c) To maintain its exemption under AS 06.26.200, a private fiduciary

22 (1) may not provide or offer fiduciary services to the general public;

23 (2) shall file an annual certification on or before December 31 of each
24 year on a form provided by the department that the private fiduciary is maintaining the
25 conditions and limitations of its exempt status; the annual certification must be
26 accompanied by a fee established by the department by regulation.

27 (d) The annual certification required under (c) of this section is valid only if it
28 bears an acknowledgment stamped by the department. The department has 60 days
29 from the date it receives the annual certification to review the annual certification and
30 return a copy of the acknowledged annual certification to the private fiduciary. The
31 burden is on the exempt private fiduciary to notify the department of a failure to return

1 a copy of an acknowledged annual certification within the 60-day period.

2 (e) The department may examine or investigate the private fiduciary
3 periodically as necessary to verify the annual certification.

4 (f) Notwithstanding having an exemption under AS 06.26.200, a private
5 fiduciary shall comply with the home office provisions of AS 06.26.150 and shall
6 report to the department any change of address or telephone number within 30 days
7 after the change.

8 **Sec. 06.26.220. Transfer of control.** Control of an exempt private fiduciary
9 may not be sold or otherwise transferred with an exemption under AS 06.26.200. In
10 any change of control, the exempt status of the private fiduciary automatically
11 terminates on the effective date of the transfer, and the person acquiring control must
12 comply with this chapter. After transfer of control, a separate application for an
13 exemption under AS 06.26.200 must be filed with the department if the acquiring
14 person wishes to obtain or continue an exemption under AS 06.26.200.

15 **Sec. 06.26.230. Revocation of exemption.** (a) The department may revoke an
16 exemption under AS 06.26.200 if the exempt private fiduciary

17 (1) makes a false statement under oath on any document required to be
18 filed by this chapter;

19 (2) fails to submit to an examination as required by AS 06.26.200;

20 (3) withholds requested information from the department; or

21 (4) violates a provision of this section applicable to exempt private
22 fiduciaries.

23 (b) If the department determines from examination or other credible evidence
24 that an exempt private fiduciary has violated a requirement of this chapter, the
25 department may by personal delivery or registered or certified mail, return receipt
26 requested, notify the exempt private fiduciary in writing that the department will
27 revoke the private fiduciary's exemption as of a stated date, which may not be before
28 the fifth calendar day after the date that the notification is delivered or mailed. The
29 notification must state the grounds for the revocation with reasonable certainty. After
30 a revocation takes effect, the revocation is final, and the private fiduciary is subject to
31 all of the requirements and provisions of this chapter that are applicable to private

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fiduciaries not exempt under AS 06.26.200.

(c) A private fiduciary shall comply with the provisions of this chapter from which it was formerly exempt within five calendar days after the effective date of a revocation of its exemption under this section. However, if the department determines at the time of revocation that the private fiduciary has been engaging in or attempting to engage in acts intended or designed to deceive or defraud, the department may, in the department's sole discretion, shorten or eliminate the five-calendar-day compliance period.

(d) If, within the time allowed under (c) of this section, the private fiduciary does not comply with all of the provisions of this chapter, including the capitalization requirements that have been determined by the department as necessary to assure the safety and soundness of the private fiduciary, the department may

- (1) file a court action or pursue another remedy provided by this chapter; or
- (2) refer the private fiduciary to the attorney general for institution of appropriate legal proceedings against the private fiduciary.

Sec. 06.26.240. Conversion to trust company. (a) A private fiduciary may not provide or offer fiduciary services to the general public as a trust company until the private fiduciary satisfies the requirements of this section.

(b) The private fiduciary shall file a notice with the department on a form prescribed by the department, furnish a copy of a resolution adopted by the board authorizing the private fiduciary to provide or offer fiduciary services to the general public, pay any filing fee established by the department by regulation, and comply with the requirements of this chapter for trust companies. The notice must provide the name of the private fiduciary and acknowledge that any exemption granted or otherwise applicable to the private fiduciary under AS 06.26.200 ceases to apply on the effective date of the notice.

(c) The department has 60 days after the department receives the notice under (a) of this section to review the conversion, and a private fiduciary may begin providing or offering fiduciary services to the general public on the 61st day after the date that the department receives a notice under (a) of this section from the private

1 fiduciary, unless the department specifies a different date.

2 (d) The department may extend the 60-day period of review provided by (c) of
3 this section if the department determines that the notice raises issues that require
4 additional information or if the department needs additional time for analysis. If the
5 60-day period of review is extended, the private fiduciary may provide or offer
6 fiduciary services to the general public only after written approval by the department.

7 (e) The department may deny a private fiduciary permission to provide or
8 offer fiduciary services to the general public as a trust company if the department finds
9 that the private fiduciary does not meet the requirements of this chapter for trust
10 companies.

11 Article 5. Investments, Loans, and Deposits.

12 Sec. 06.26.250. Regulations on investments. The department may adopt
13 regulations to establish limits, requirements, or exemptions for particular classes or
14 categories of investment, or limit or expand investment authority for trust companies
15 for particular classes or categories of securities or other property.

16 Sec. 06.26.260. Pledge of assets. (a) A trust company may not pledge or
17 create a lien on any of the assets belonging to the trust company except to secure

18 (1) the repayment of money borrowed;

19 (2) trust deposits as specifically authorized or required by
20 AS 06.26.370 or by regulations adopted under this chapter; or

21 (3) deposits made by the United States government, the state, or a
22 municipality, or an agency of those governmental bodies.

23 (b) An act, a deed, a conveyance, a pledge, or a contract that violates this
24 section is void.

25 Article 6. Trust Assets.

26 Sec. 06.26.370. Deposits of trust assets. (a) A trust company may deposit
27 trust money or other trust assets with itself as an investment if the settlor or the
28 beneficiary authorizes the deposit and if

29 (1) the trust company maintains as security for the deposits a separate
30 fund of securities that may be used for trust investments and that are under the control
31 of a federal reserve bank or a clearing corporation in this state or elsewhere; in this

1 paragraph, "clearing corporation" has the meaning given in AS 45.08.102;

2 (2) the total market value of the security fund maintained under (1) of
3 this subsection is at all times at least equal to the deposit;

4 (3) the security fund maintained under (1) of this subsection is
5 expressly designated as a security fund; and

6 (4) the security fund maintained under (1) of this subsection is
7 maintained under the control of a person listed in AS 06.26.010(a).

8 (b) A trust company may make periodic withdrawals from or additions to the
9 security fund required by (a) of this section if the trust company maintains the value
10 required by (a) of this section for the security fund. Income from the securities in the
11 security fund belongs to the trust company.

12 (c) Notwithstanding (a) of this section, security under (a) of this section for a
13 deposit is not required to the extent the deposit is insured by the Federal Deposit
14 Insurance Corporation or its successor.

15 **Sec. 06.26.380. Common investment funds.** Subject to regulations adopted
16 by the department, a trust company may invest trust assets in common investment
17 funds.

18 **Sec. 06.26.390. Fee determination; investment and management costs.** (a)
19 A trust company shall deal at arm's length with a person when arranging the
20 compensation to be paid by the person for the services of the trust company. Any
21 compensation paid to the trust company must be a reasonable amount with respect to
22 the services rendered.

23 (b) When investing and managing trust assets, a trust company may only incur
24 costs that are appropriate and reasonable in relation to the assets, the purposes of the
25 trust, and the skills of the trust company.

26 **Sec. 06.26.400. Disclosure of conflicts of interest.** Before accepting
27 appointment as a trustee, a trust company shall disclose any conflict of interest that
28 may reasonably be expected to arise in the relationship.

29 **Sec. 06.26.410. Requirements for handling trust assets.** A trust company,
30 its representatives, and its appointees shall observe the requirements applicable to
31 trustees under AS 13.36.225 - 13.36.290 (Alaska Uniform Prudent Investor Act).

1 **Article 7. Ownership.**

2 **Sec. 06.26.450. Acquisition of control.** (a) Except as expressly otherwise
3 permitted under this chapter, a person may not, without the prior written approval of
4 the department, directly or indirectly acquire control of a trust company through a
5 change in a legal or beneficial interest in voting securities of a trust company or a
6 corporation or other person who owns voting securities of a trust company.

7 (b) This section does not apply to

8 (1) the acquisition of securities in connection with the exercise of a
9 security or other interest in full or partial satisfaction of a debt previously contracted
10 for in good faith if the acquiring person files written notice of acquisition with the
11 department before the person votes the securities acquired;

12 (2) the acquisition of voting securities in any class or series by a
13 person in control who has previously complied with and received approval to acquire
14 control under AS 06.26.450 - 06.26.480 or who was identified as a person in control in
15 an earlier application filed with and approved by the department;

16 (3) an acquisition or transfer by operation of law, a will, or in testate
17 succession if the acquiring person files written notice of acquisition with the
18 department before the person votes the securities acquired; or

19 (4) a transaction exempted by the department by regulation or order
20 because the transaction is not within the purposes of AS 06.26.450 - 06.26.480.

21 **Sec. 06.26.460. Application for acquisition of control.** (a) A proposed
22 transferee seeking approval under AS 06.26.450 to acquire control of a trust company
23 shall file with the department

24 (1) an application in the form prescribed by the department;

25 (2) the filing fee established by the department by regulation; and

26 (3) all information required by regulation or that the department
27 requires for a particular application in order to make an informed decision to approve
28 or reject the proposed acquisition.

29 (b) If the proposed transferee under (a) of this section includes a group of
30 persons acting together, the department may require each member of the group to
31 provide information to the department.

1 (c) If the proposed transferee is not a resident of the state, a corporation
2 organized under AS 10.06, or a foreign corporation qualified under AS 10.06 to
3 transact business in this state, the proposed transferee shall file with the department a
4 written consent to service of process on a resident of this state for any court action
5 arising out of or connected with the proposed acquisition of control.

6 (d) Promptly after the department accepts the application as complete, the
7 proposed transferee shall publish notice of the application, the date of filing the
8 application, and the identity of each participant in the acquisition of control in the
9 form specified by the department in a newspaper of general circulation published in
10 the community proposed as the trust company's principal place of business. If a
11 newspaper of general circulation is not published in the community, the notice shall be
12 published in a newspaper of general circulation near the community. Publication of
13 notice of an application may be deferred for up to 31 days after the date the
14 application is filed if

15 (1) the proposed transferee requests confidential treatment and
16 represents that a public announcement of the tender offer and the filing of appropriate
17 forms with the United States Securities and Exchange Commission or the appropriate
18 federal banking agency, as applicable, will occur within the period of deferral; and

19 (2) the department determines that public interest will not be harmed
20 by the requested confidential treatment.

21 (e) The department may waive the requirement that a notice be published or
22 permit delayed publication of the notice if the department makes a written
23 determination that waiver or delay is in the public interest.

24 **Sec. 06.26.470. Decision on application for acquisition of control.** (a) The
25 department shall approve or deny an application for acquisition of control not later
26 than the 60th day after the date that the notice regarding acquisition of control is
27 published under AS 06.26.460.

28 (b) If the department approves an application filed under AS 06.26.460, the
29 applicant may acquire control. Any written commitment from the proposed transferee
30 offered to and accepted by the department as a condition for approval of the
31 application is enforceable against the trust company and the transferee.

1 director of a trust company if

2 (1) the trust company incurs an unreimbursed loss attributable to a
3 charged-off obligation of the person or holds a judgment against the person or against
4 another person who was controlled by the person when the loan that gave rise to the
5 judgment or charged-off obligation was funded and went into default;

6 (2) the person has been convicted of a felony, or of another crime
7 involving moral turpitude or breach of trust; or

8 (3) the person, acting as a personal representative, made a loan of trust
9 money or other assets, or a purchase or sale of trust assets, that is voidable under
10 AS 13.16.400 and the person has not corrected the situation; in this paragraph,
11 "personal representative" has the meaning given in AS 13.06.050.

12 (c) If a trust company does not elect directors before the 61st day after the date
13 of its regular annual meeting, the department may appoint a person to operate the trust
14 company and elect directors. If the appointed person is unable to locate or elect
15 persons willing and able to serve as directors, the department may close the trust
16 company for liquidation.

17 (d) A vacancy on a board that reduces the number of directors to fewer than
18 five shall be filled not later than the 30th day after the date that the vacancy occurs. If
19 the vacancy on the board is not filled within 30 days after the date that the vacancy
20 occurs, the department may appoint a person to operate the trust company and elect a
21 board of at least five persons. If the appointed person is unable to locate or elect five
22 persons willing and able to serve as directors, the department may close the trust
23 company for liquidation.

24 (e) Before beginning each term to which a person is elected to serve as a
25 director of a trust company, the person shall submit an affidavit to be filed with the
26 minutes of the trust company stating that the person, to the extent applicable,

27 (1) accepts the position and is not disqualified from serving in the
28 position;

29 (2) will not violate or knowingly permit a director, an officer, or an
30 employee of the trust company to violate any law applicable to the conduct of business
31 of the trust company; and

1 (3) will diligently perform the duties of the position.

2 **Sec. 06.26.520. Board meetings and review of reports.** (a) The board of
3 directors of a trust company shall meet at least once every three months. The
4 department or a director may call a special meeting of the board. A majority of the
5 board constitutes a quorum. The board shall keep minutes of each board meeting,
6 including a record of attendance and a record of all votes.

7 (b) At least once every three months, the board of directors of a trust company
8 shall review written reports prepared by the president, other officers of the trust
9 company, or a trust committee appointed under AS 06.26.550. The reports must
10 include the accounts that have been opened or closed during the calendar quarter
11 before the meeting and the trust accounts subject to annual review during the calendar
12 quarter before the meeting.

13 **Sec. 06.26.530. Officers.** (a) The board shall annually appoint the officers of
14 the trust company. The officers serve at the pleasure of the board.

15 (b) The president of the trust company is the principal executive officer
16 primarily responsible for the execution of board policies and operation of the trust
17 company. The trust company shall have an officer responsible for the maintenance
18 and storage of all records of the trust company and for required attestation of
19 signatures. These positions may not be held by the same person. The board may
20 appoint other officers of the trust company as the board considers necessary.

21 **Sec. 06.26.540. Prohibition of certain action by officer or employee.**
22 Unless expressly authorized by a resolution of the board recorded in the minutes of the
23 board, an officer or employee may not create or dispose of a trust company asset or
24 create or incur a liability on behalf of the trust company.

25 **Sec. 06.26.550. Trust committee.** (a) The board may appoint a trust
26 committee to act for the company in matters dealing with the initial and annual
27 reviews of accounts, account acceptance, and investment strategies. A trust committee
28 shall consist solely of directors, officers, or employees of the trust company, or any
29 combination of these positions. The trust committee shall keep a record of its actions
30 and shall report in writing to the board on all actions taken by the trust committee
31 since the previous board meeting. The board shall ratify or rescind each action.

1 (b) The trust committee shall meet at least once a month to review existing
2 accounts and to ratify or rescind newly accepted accounts. The trust committee may
3 not ratify a new account unless it is approved by a majority of the members of the trust
4 committee present at the meeting at which the new account is considered.

5 (c) A trust committee may elect one or more officers to accept new accounts,
6 subject to the requirements of (b) of this section.

7 **Sec. 06.26.560. Prohibited acts.** (a) A director, an officer, an employee, or a
8 shareholder of a trust company may not

9 (1) conceal information or a fact, or remove, destroy, or conceal a
10 book or record of the trust company, for the purpose of concealing information or a
11 fact from the department or an agent of the department; or

12 (2) for the purpose of concealing, remove or destroy a book or record
13 of the trust company that is material to a pending or anticipated court or administrative
14 proceeding.

15 (b) A director, an officer, or an employee of a trust company may not make a
16 false entry in the records, a report, or a statement of the trust company.

17 **Sec. 06.26.570. Transactions with management and affiliates; penalties.**

18 (a) Without the prior approval of a disinterested majority of the board recorded in the
19 minutes, or, if a disinterested majority cannot be obtained, the prior written approval
20 of the department, a trust company may not directly or indirectly

21 (1) sell or lease an asset of the trust company to a director, an officer, a
22 principal shareholder, or an affiliate of the trust company;

23 (2) purchase or lease property in which a director, an officer, a
24 principal shareholder, or an affiliate of the trust company has an interest; or

25 (3) extend credit to a director, an officer, a principal shareholder, or an
26 affiliate of the trust company.

27 (b) In addition to the requirements of (a) of this section, a lease transaction
28 described in (a)(2) of this section involving real property may not be consummated,
29 renewed, or extended by the trust company without the prior written approval of the
30 department.

31 (c) A trust company may not extend credit to a director, an officer, an

1 employee, a principal shareholder, or an affiliate of the trust company unless the
2 extension of credit

3 (1) is made on substantially the same terms, including interest rates
4 and collateral requirements, as the terms prevailing at the time for comparable
5 transactions by the trust company with persons who are not directors, officers,
6 employees, principal shareholders, or affiliates of the trust company;

7 (2) does not involve more than the normal risk of loss or present other
8 unfavorable features; and

9 (3) follows credit underwriting procedures that are as stringent as the
10 underwriting procedures applicable to comparable transactions by the trust company
11 with persons who are not directors, officers, employees, principal shareholders, or
12 affiliates of the trust company.

13 (d) The department may adopt regulations to implement this section, including
14 regulations to establish limits, requirements, or exemptions other than those specified
15 by this section for particular categories of transactions.

16 (e) In this section, "affiliate" does not include a subsidiary of the trust
17 company.

18 **Sec. 06.26.580. Trust asset transactions involving certain securities, assets,**
19 **or information.** (a) Except as provided in this chapter, or as authorized under the
20 instrument creating the relationship, a trust company may not invest trust assets in the
21 stock or obligations of, or use trust assets to acquire property from, the trust company
22 or any of the trust company's officers, directors, or employees. A trust company may
23 not sell trust assets to the trust company or to any of the trust company's directors,
24 officers, or employees.

25 (b) A trust company may not use material inside information in connection
26 with a decision or recommendation to purchase or sell a security that is a trust asset.

27 **Sec. 06.26.585. Policies and procedures.** A trust company shall adopt
28 written policies and procedures regarding decisions or recommendations to purchase
29 or sell a security that is a trust asset to facilitate compliance with federal and state
30 securities laws. These policies and procedures must include the prohibition in
31 AS 06.26.580(b).

1 **Sec. 06.26.590. Fiduciary responsibility.** The board of a trust company is
2 responsible for the proper exercise of fiduciary powers by the trust company and for
3 each matter that is related to the exercise of fiduciary powers, including

- 4 (1) the determination of policies;
5 (2) the investment and disposition of trust assets; and
6 (3) the direction and review of the actions of each officer, employee,
7 and committee employed or used by the trust company in the exercise of its fiduciary
8 powers.

9 **Sec. 06.26.600. Trust account record keeping.** A trust company shall keep
10 its trust assets records separate and distinct from other records of the trust company in
11 the manner required by state and federal law. The trust assets records must contain all
12 material information relating to each trust assets account, as appropriate under the
13 circumstances.

14 **Sec. 06.26.610. Customer records confidential.** (a) The trust company
15 records relating to customers are confidential and may not be made public unless

- 16 (1) disclosure is compelled by a court or administrative order;
17 (2) disclosure is required by federal or state law;
18 (3) disclosure is authorized in writing by the customer;
19 (4) disclosure is made to the holder of a negotiable instrument drawn
20 on the trust company as to whether the drawer has sufficient money or other assets in
21 the financial institution to cover the instrument; or

22 (5) an inquiry has been made by a state financial institution, or by a
23 credit-reporting agency regulated under 15 U.S.C. 1681 - 1681u (Fair Credit
24 Reporting Act) solely for the express purpose of determining the credit worthiness of
25 the customer as an applicant for credit, and the information disclosed by the trust
26 company, state financial institution, or credit-reporting agency relates only to the
27 payment habits of the customer in connection with loans or other credit
28 accommodations and does not pertain to records concerning deposit balances in
29 savings or checking accounts.

30 (b) When disclosure of trust company records is required or allowed under
31 (a)(1) or (2) of this section, the trust company shall notify the customer of the

1 disclosure. If notification before disclosure is not possible, the trust company shall
2 immediately notify the customer of the disclosure or inquiry. However, the trust
3 company may not notify the customer if disclosure is made under a search warrant or
4 under a court order issued at the request of a grand jury.

5 (c) When disclosure of trust company records is compelled by a court order
6 under (a)(1) of this section, the court may provide in the order for the reimbursement
7 of the trust company for the costs allowed by the rules of court and incurred by the
8 trust company to comply with the order.

9 **Sec. 06.26.620. Insurance; bonds.** (a) The board of directors of a trust
10 company shall maintain bonding and other insurance for the trust company against
11 dishonesty, fraud, defalcation, forgery, theft, embezzlement, burglary, robbery, theft,
12 and other similar insurable losses and hazards as required by the department by
13 regulation. The board shall obtain the bonding and other insurance from a person
14 authorized under AS 21 to act as an insurer or a surety insurer in this state.

15 (b) The board of directors shall procure errors and omissions insurance in the
16 amount of at least \$500,000.

17 (c) At least once each year, the board of directors shall review the bonding and
18 other insurance required by this section to determine whether the coverage is adequate
19 in relation to the exposure of the trust company. The minimum amount of insurance
20 required by this section does not automatically represent adequate bonding and
21 insurance coverage in relation to the exposure. Immediately after procuring the
22 bonding and other insurance, the board shall file copies of the documents representing
23 the bonding and other insurance with the department.

24 **Sec. 06.26.630. Reports of apparent crime.** (a) A trust company that is the
25 victim of a robbery, that has a shortage of money or other assets in excess of \$5,000,
26 or that is the victim of an apparent or suspected misapplication of its money or other
27 assets in any amount by a director, an officer, or an employee shall report the robbery,
28 shortage, or apparent or suspected misapplication to the department within 48 hours
29 after it is discovered. The initial report may be oral if the trust company promptly
30 confirms the report in writing to the department. The trust company or a director, an
31 officer, an employee, or an agent of the trust company is not liable for defamation to

1 or subject to any another cause of action based on supplying the information in the
2 report.

3 (b) A trust company may satisfy the requirements of (a) of this section by
4 filing with the department a copy of a written report filed with the appropriate law
5 enforcement agency.

6 Article 9. Organic Change.

7 Sec. 06.26.650. General provisions for conversions, mergers, and
8 consolidations. (a) A national bank whose main office is located in the state or a
9 state bank whose main office is located in the state may convert to a trust company or
10 merge or consolidate with a trust company, and a trust company may merge or
11 consolidate with another trust company, if the conversion, merger, or consolidation is
12 consistent with federal and state law and approved by the department. The
13 requirements of AS 06.26.650 - 06.26.670 are in addition to the merger and
14 consolidation requirements of AS 10.06.

15 (b) Before merger or consolidation under (a) of this section, a trust company
16 shall file with the department a merger or consolidation application and other
17 information and reports that the department requires under AS 06.26.660.

18 (c) The department, in the exercise of its power to approve or disapprove
19 applications for merger or consolidation under (a) of this section, shall act in the
20 interests of promoting and maintaining a sound trust company system, promoting the
21 security of deposits and customers, preserving of the liquid position of trust
22 companies, and preventing injurious credit expansions and contractions.

23 (d) A trust company converting to or merging or consolidating with a national
24 bank shall submit to the department a copy of any application to the United States
25 Comptroller of the Currency for a national bank charter or any other application to the
26 United States Comptroller of the Currency to convert, merge, or consolidate when the
27 applications are forwarded to the United States Comptroller of the Currency.

28 Sec. 06.26.660. Merger or consolidation. (a) To merge or consolidate under
29 AS 06.26.650, the merging persons shall file with the department the original articles
30 of merger or consolidation, a number of copies of the articles of merger or
31 consolidation equal to the number of trust companies involved in the merger or

1 consolidation, and an application in the form required by the department. The
2 department may require the submission of additional information it considers
3 necessary to make an informed decision.

4 (b) The department may approve a merger or a consolidation if

5 (1) the surviving or new trust company will be solvent and have
6 adequate capitalization for its operations and location;

7 (2) the surviving or new trust company has in all respects complied
8 with the statutes and regulations governing the organization of a trust company in this
9 state;

10 (3) all obligations and liabilities of each trust company that is a party
11 to the merger or consolidation have been properly discharged or otherwise lawfully
12 assumed or retained by a trust company or other fiduciary;

13 (4) a surviving or new trust company is not authorized to act as a
14 fiduciary under this chapter, will not act as a fiduciary, and has otherwise complied
15 with the laws of this state;

16 (5) the surviving or new trust company satisfies the provisions in
17 AS 06.26.090 that the department determines apply to the trust company; and

18 (6) all conditions imposed by the department have been satisfied.

19 (c) If the department approves the merger or consolidation and finds that all
20 investigative expenses incurred by the department and all required filing fees have
21 been paid, the department shall issue a certificate of merger or consolidation.

22 **Sec. 06.26.670. Rights of dissenters.** In addition to the dissenter's rights
23 under AS 10.06 for a merger or consolidation, if a shareholder of a trust company
24 objects to a conversion of the trust company, the dissenting shareholder's rights shall
25 be exercised under and governed by AS 10.06.574 - 10.06.582 as if the conversion
26 were a merger.

27 **Sec. 06.26.680. Authority to purchase assets of another trust company.**

28 (a) A trust company with the prior written approval of the department may purchase
29 all or substantially all of the assets of another trust company, including the right to
30 control accounts established with the trust accounts. Except as otherwise expressly
31 provided by another statute, the purchase by a trust company of all or part of the assets

1 of another trust company does not make the purchasing trust company responsible for
2 a liability or obligation of the selling trust company that the purchasing trust company
3 does not expressly assume. Except as otherwise provided by statute, AS 06.26.450 -
4 06.26.480 do not govern or prohibit the purchase by a trust company of all or part of
5 the assets of a person who is not a trust company or an exempt private fiduciary.

6 (b) To purchase assets under (a) of this section, a trust company shall file with
7 the department an application in the form required by the department. The department
8 shall investigate the condition of the purchaser and seller and may require the
9 submission of additional information it considers necessary to make an informed
10 decision. The department shall approve the purchase if

11 (1) the purchasing trust company will be solvent after the purchase and
12 have sufficient capitalization for its operations and location;

13 (2) the purchasing trust company has complied with all applicable
14 statutes and regulations in this state;

15 (3) all fiduciary obligations and liabilities of the purchasing trust
16 company and selling trust company have been properly discharged or otherwise
17 lawfully assumed by the purchasing trust company;

18 (4) all conditions imposed by the department have been satisfied or
19 otherwise resolved; and

20 (5) all expenses incurred by the department and all required fees have
21 been paid.

22 (c) A purchase under this section is effective on the date the department
23 approves the purchase unless the purchase agreement provides for, and the department
24 consents to, a different effective date.

25 **Sec. 06.26.690. Authority to act as disbursing agent.** A purchasing trust
26 company may hold the purchase price and any additional money or other assets
27 delivered to it by the selling trust company in trust for the selling trust company and
28 may act as an agent of the selling trust company in disbursing the money or other
29 assets by paying the creditors of the selling trust company. If the purchasing trust
30 company acts under a written contract of agency approved by the department that
31 specifically names each creditor and the amount to be paid each creditor, and if the

1 agency is limited to the purely ministerial act of paying creditors the amounts due
2 them as determined by the selling trust company and reflected in the contract of
3 agency and does not involve discretionary duties or authority other than the
4 identification of the creditors named, the purchasing trust company

5 (1) may rely on the contract of agency and the instructions included in
6 it; and

7 (2) is not responsible for

8 (A) an error made by the selling trust company when
9 determining its liabilities, the creditors to whom the liabilities are due, or the
10 amounts due to the creditors; or

11 (B) a preference that results from the payments made under the
12 contract of agency and the instructions included in the contract.

13 **Sec. 06.26.700. Liquidation of selling trust company.** If a selling trust
14 company is at any time after the sale of assets voluntarily or involuntarily closed for
15 liquidation by a state or federal regulatory agency, the purchasing trust company shall
16 pay to the receiver of the selling trust company the balance of the money or other
17 assets held by the purchasing trust company in trust for the selling trust company and
18 not yet paid to the creditors of the selling trust company. Without further action, the
19 purchasing trust company is then discharged of all responsibilities to the selling trust
20 company and the selling trust company's receiver, creditors, and shareholders.

21 **Sec. 06.26.710. Payment to creditors.** A purchasing trust company may pay
22 a creditor of the selling trust company the amount to be paid the creditor under the
23 terms of the contract of agency entered into under AS 06.26.690 by opening an agency
24 account in the name of the creditor, crediting the account with the amount to be paid
25 the creditor under the terms of the agency contract, and mailing or personally
26 delivering a duplicate of the written evidence of the credit to the creditor at the
27 creditor's address shown in the records of the selling trust company. With regard to
28 the creditor, the purchasing trust company is an agent of the selling trust company
29 only to the extent of the credit reflected by the written evidence of the credit.

30 **Sec. 06.26.720. Sale of assets.** (a) The board of a trust company, with the
31 department's approval, may cause a trust company to sell all or substantially all of its