

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

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1 assets, including the right to control accounts established with the trust company for
2 trust assets, without shareholder approval if the department finds

3 (1) the interests of the trust company's creditors and depositors and
4 other customers are not jeopardized because of an unsafe or unsound condition of the
5 trust company;

6 (2) the sale is in the best interest of the trust company's creditors and
7 depositors and other customers; and

8 (3) the Federal Deposit Insurance Corporation or its successor
9 approves the transaction unless the deposits of the trust company are not insured by
10 the Federal Deposit Insurance Corporation or its successor.

11 (b) A sale under this section must include an assumption and promise by the
12 purchaser to pay or otherwise discharge

13 (1) all of the trust company's liabilities to customers;

14 (2) all of the trust company's liabilities for the salaries of the trust
15 company's employees incurred before the date of the sale;

16 (3) the obligations incurred by the department arising out of the
17 supervision or sale of the trust company; and

18 (4) the fees and any other payment due to the department under this
19 chapter and assessments due to the department under AS 06.01.010.

20 (c) This section does not limit the incidental power of a trust company to buy
21 and sell assets in the ordinary course of its operations.

22 (d) The sale by a trust company of all or substantially all of its assets with
23 shareholder approval is considered a voluntary dissolution and liquidation and is
24 governed by AS 06.26.730 - 06.26.800.

25 **Article 10. Dissolution and Liquidation.**

26 **Sec. 06.26.730. Voluntary liquidation.** (a) Without department approval, a
27 trust company may not cease acting as a fiduciary in this state and voluntarily
28 surrender its certificate of authority and as a consequence be relieved of the necessity
29 to comply with the requirements of this chapter.

30 (b) A trust company proposing to cease acting as a fiduciary in this state shall
31 submit to the department

1 (1) a certified copy of a resolution of the trust company's board of
2 directors reflecting the board's decision that the trust company should cease acting as a
3 fiduciary in this state; and

4 (2) the trust company's plan adopted by its board for winding up its
5 fiduciary operations in this state.

6 (c) The department may approve or disapprove the trust company's plan for
7 winding up its fiduciary operations in this state based on the department's evaluation
8 of whether the plan provides adequate protection for those persons and interests for
9 whom the trust company acts as a fiduciary. The department's approval may be
10 subject to any condition the department determines appropriate under the
11 circumstances.

12 (d) During the implementation of a trust company's plan for winding up its
13 fiduciary operations in this state, the department retains the authority to supervise the
14 trust company and may conduct any examination relating to either the trust company
15 or the plan for winding up that the department considers necessary or appropriate.

16 (e) If the department has reason to conclude that the trust company is not
17 safely or expeditiously implementing the approved plan for winding up the trust
18 company's fiduciary operations in this state, the department may

19 (1) begin revocation proceedings under AS 06.26.740;

20 (2) take possession of the trust company's trust business in this state in
21 the same manner, with the same effect, and subject to the same rights accorded to the
22 trust company under AS 06.26.750.

23 (f) The department shall cancel the trust company's certificate of authority if
24 the department approves the trust company's plan for winding up its fiduciary
25 operations in this state and if all of the following conditions that apply to the trust
26 company have been met:

27 (1) the trust company has completed its plan for winding up its
28 fiduciary operations in this state consistent with any conditions that the department
29 imposed on the plan under (c) of this section;

30 (2) the trust company has been relieved under all applicable laws of all
31 duties as trustee, executor, administrator, registrar of stocks and bonds, or any other

1 type of fiduciary position under court, private, or other appointment that the trust
2 company had accepted;

3 (3) if the trust company has its principal place of business in this state,
4 the trust company has, under all applicable laws, wound up its fiduciary operations in
5 each of the other jurisdictions where the trust company solicited appointment or
6 served as a fiduciary, or otherwise acted as a fiduciary;

7 (4) if the trust company has its principal place of business in this state
8 and is not authorized to engage in activities other than acting as a fiduciary, the trust
9 company is being liquidated under AS 06.26.760 - 06.26.800.

10 (g) Upon the department's canceling the trust company's certificate
11 authority, the trust company may not without obtaining a new certificate of authority
12 act as a fiduciary in this state, or in any jurisdiction.

13 **Sec. 06.26.740. Revocation.** (a) If the department determines that any of the
14 following factors exist, the department may revoke, consistent with AS 06.01.030 and
15 regulations adopted by the department under AS 06.01.030 and this chapter, a
16 company's certificate of authority:

17 (1) the existence of the trust company, or its authority to act as a
18 fiduciary, has been terminated or suspended under the laws of the state or other
19 jurisdiction in which the trust company is organized;

20 (2) the trust company's authority to act as fiduciary has been
21 terminated or suspended under the laws of the state or other jurisdiction in which the
22 trust company is organized, or its license to act as a fiduciary has been terminated or
23 suspended under the laws of any other jurisdiction in which the trust company had
24 been authorized to act as a fiduciary;

25 (3) a receiver, liquidator, or conservator has been appointed for the
26 trust company under the laws of the state or other jurisdiction in which the trust
27 company is organized, or for its operation in any other jurisdiction in which the trust
28 company operates;

29 (4) the trust company is violating or has violated or the department has
30 reasonable cause to believe is about to violate

31 (A) a law or regulation;

1 (B) a condition imposed by the department in writing in
2 connection with approving an application or notice under this chapter or
3 granting any other request of the trust company under this chapter;

4 (C) a written agreement that the trust company entered into
5 with the department;

6 (D) a cease and desist order issued by the department under
7 AS 06.01.030;

8 (5) the trust company is engaging in or has engaged in, or the
9 department has reasonable cause to believe the trust company is about to engage in an
10 unsafe or unsound practice;

11 (6) the trust company has ceased to pay its debts in the ordinary course
12 of business, is incapable of paying its debts as they mature, has liabilities in excess of
13 its assets, or is subject to or has applied for an adjudication in bankruptcy,
14 reorganization, or other relief under any bankruptcy, reorganization, insolvency, or
15 moratorium law;

16 (7) the trust company has ceased to act as a fiduciary in this state;

17 (8) the trust company has failed to pay any fees, charges, forfeitures,
18 penalties, or other payment due to the department under this title.

19 (b) If the department has reasonable cause to believe any of the factors
20 identified in (a) of this section is true, and if the department determines it is necessary
21 to protect the persons and interests in this state for whom the trust company acts as a
22 fiduciary or to protect the property in this state to which the trust company holds title
23 as a fiduciary or in which the trust company holds an interest as a fiduciary, the
24 department may immediately suspend the trust company's certificate of authority.

25 **Sec. 06.26.750. Authority to take possession.** If the department revokes a
26 trust company's certificate of authority under AS 06.26.740(a), the department may
27 take possession of the trust company's fiduciary operations in this state and may
28 appoint a receiver for the liquidation of the trust company's fiduciary operations in this
29 state. If the trust company has its principal place of business in this state, the
30 department may take possession of, and appoint a receiver for the liquidation of all the
31 trust company's fiduciary operations wherever they are conducted.

1 **Sec. 06.26.760. Department in possession.** (a) When the department has
2 taken possession of a trust company, it is vested with the full and exclusive power of
3 management and control, including the power to act as a trustee for trust assets, to
4 continue or discontinue the operation of the trust company, to stop or limit the
5 payment of the trust company's obligations, to employ necessary assistants, to execute
6 an instrument in the name of the trust company, to commence, defend, and conduct in
7 the trust company's name any action or proceeding to which the trust company may be
8 a party, to terminate the possession by restoring the trust company to its board, and to
9 reorganize or liquidate the trust company under this chapter. As soon as practicable
10 after taking possession, the department shall make an inventory of the trust assets and
11 the trust company assets and file a copy of the inventory with the superior court.

12 (b) When the department has taken possession, the following dates are
13 postponed until six months after the possession begins:

14 (1) notwithstanding other provisions of law, the date on which any
15 period of limitation fixed by a statute or agreement would otherwise expire on a claim
16 or right of action of the trust company; or

17 (2) the date on which an appeal must be taken or a pleading or other
18 document must be filed by the trust company in any pending court action or other
19 proceeding.

20 (c) A judgment, lien, or attachment may not be enforced against trust company
21 assets while the assets are in possession of the department. Upon the election of the
22 department in connection with a liquidation or reorganization,

23 (1) any lien or attachment, other than an attorney's or mechanic's lien,
24 obtained upon a trust company asset during the department's possession or within four
25 months before beginning that possession may be vacated, except liens created by the
26 department while in possession; and

27 (2) any transfer of trust company assets made after or in contemplation
28 of the trust company's insolvency or in anticipation of the department's takeover, with
29 intent to effect a preference of one creditor over another creditor or to prevent the
30 distribution of the trust company assets according to law, is void.

31 (d) The department may borrow money in the name of the trust company in

1 the department's possession and may pledge trust company assets as security for the
2 loan.

3 (e) All necessary and reasonable expenses resulting from the department's
4 possession of a trust company and of its reorganization or liquidation shall be paid
5 from trust company assets.

6 **Sec. 06.26.770. Reorganization.** (a) If the department decides to reorganize
7 a trust company, the department, after providing an opportunity for a hearing to all
8 interested parties, shall enter an order proposing a reorganization plan. The
9 department shall send a copy of the plan to each depositor and other customers and to
10 each creditor who will not receive payment of a claim in full under the plan and a
11 notice that, unless within 30 days the plan is disapproved in writing by persons
12 holding one-third or more of the aggregate amount of the claims, the department will
13 reorganize the trust company.

14 (b) A plan of reorganization may not be established under this chapter unless,
15 in the opinion of the department,

16 (1) the plan is fair to all classes of depositors, other customers,
17 creditors, and shareholders;

18 (2) subject to a fair adjustment for new capital that a class will pay
19 under the plan, the face amount of the trust company asset interest provided to a class
20 of depositors, other customers, creditors, or shareholders under the plan does not
21 exceed the value of the assets at liquidation less the full amount of the claims of all
22 prior classes;

23 (3) the plan provides for the issuance of common stock in an amount
24 that will provide an adequate ratio to deposits;

25 (4) any exchange of new common stock for obligations or stock of the
26 trust company will be made

27 (A) in the inverse order of the priorities in liquidation of the
28 classes that will retain an interest in the trust company; and

29 (B) upon terms that adjust in a fair manner any change in the
30 relative interest of the respective classes that will be produced by the
31 exchange;

1 (5) the plan assures the removal of a director, an officer, or an
2 employee responsible for a problem identified by the department, including an unsafe,
3 unsound, or unlawful action or the existence of an unsafe or unsound condition;

4 (6) any merger or consolidation provided by the plan complies with
5 this chapter.

6 (c) When in the course of reorganization, supervening conditions render a plan
7 of reorganization unfair or its execution impractical, the department may modify the
8 plan or liquidate the trust company.

9 **Sec. 06.26.780. Involuntary liquidation powers.** (a) When liquidating a
10 trust company, the department may exercise any power incidental to liquidating a trust
11 company, but it may not, without the approval of the superior court,

12 (1) sell trust company assets having an appraised value in excess of
13 \$100,000;

14 (2) compromise or release a claim that exceeds \$100,000 exclusive of
15 interest;

16 (3) make full payment on a claim, other than a claim upon an
17 obligation incurred by the department, before preparing and filing a schedule of the
18 department's determinations under AS 06.26.790(d)(3).

19 (b) Within six months after beginning the liquidation of a trust company, the
20 department may terminate an executory contract for services or advertising to which
21 the trust company is a party or an obligation of the trust company as a lessee. A lessor
22 who receives 60 days' notice of the department's decision to terminate a lease does not
23 have a claim for rent other than rent accrued to the date of termination or for damages
24 due to the termination.

25 (c) As soon as practical after beginning the involuntary liquidation of a trust
26 company, the department shall take the steps necessary to terminate all fiduciary
27 positions held by the trust company, to surrender all property held by the trust
28 company as a fiduciary, and to settle the trust accounts of the trust company.

29 **Sec. 06.26.790. Claims.** (a) As soon as practical after beginning the
30 liquidation of a trust company, the department shall

31 (1) mail a notice of the liquidation proceedings to the last known post

1 office address of each depositor, creditor, lessee of a safe deposit box, bailor of
2 property, and trustor and beneficiary of trust assets held by the trust company;

3 (2) post a notice of the proceedings conspicuously on the premises of
4 the trust company; and

5 (3) publish a notice that the department determines to be appropriate
6 for the proceedings.

7 (b) The department shall mail with the notice sent under (a)(1) of this section a
8 statement of the amount shown on the trust company's records to be the claim of the
9 depositor or creditor. The notice must also include a demand that a person who is
10 entitled to property held by the trust company as bailee or trustee or in a safe deposit
11 box of the trust company withdraw the property within 30 days. The notice must
12 direct those depositors and creditors who claim amounts different from the amounts in
13 the notice to file their claims with the trust company under the procedure described in
14 the notice and before a specified date. The specified day may not be less than 60 days
15 from the date of the first publication of the notice.

16 (c) A safe deposit box whose contents have not been removed within 30 days
17 after demand shall be opened. The department shall retain the contents of the box and
18 the other unclaimed property held by the trust company as bailee until the conclusion
19 of the liquidation proceedings. At the conclusion of the liquidation proceedings under
20 this section, the property held by the department under this subsection is considered
21 abandoned, and the department shall deliver the property to the Department of
22 Revenue under AS 34.45.110 - 34.45.780.

23 (d) Within six months after the last day specified in the notice for the filing of
24 claims, or within a longer period if allowed by the superior court, the department shall

25 (1) reject a claim that it determines to be invalid;

26 (2) determine the amount, if any, owing to each known creditor or
27 depositor and the priority class of the person's claim under this chapter;

28 (3) prepare a schedule of its determinations for filing in the superior
29 court;

30 (4) publish a notice in a newspaper once each week for three
31 successive weeks, of the times and places where the schedule of determinations will

1 be available for inspection and the date when the department will file its schedule in
2 court; the date may not be sooner than 30 days after the first publication.

3 (e) Within 30 days after the filing with the superior court of the department's
4 schedule under (d)(3) of this section, a creditor, depositor, or stockholder may file
5 with the court an objection to a determination. The court shall hear and determine the
6 filed objections after the notice to the department and interested claimants that the
7 court establishes. If the court sustains an objection, the court shall direct that the
8 schedule be modified appropriately.

9 (f) After filing its schedule, the department may make partial distribution to
10 the holders of the claims that are undisputed or are allowed by the court if an adequate
11 reserve is established for the payment of disputed claims. As soon as practicable after
12 the determination of all objections, the department shall make the final distribution.

13 (g) The following claims have priority in liquidation proceedings, in the order
14 listed:

15 (1) obligations incurred by the department in liquidating the trust
16 company;

17 (2) wages and salaries of officers and employees earned during the
18 three-month period preceding the department's possession in an amount not exceeding
19 \$3,000 for each person;

20 (3) fees and assessments owed by the trust company to the department;

21 (4) deposits;

22 (5) claims secured by trust company assets.

23 (h) After the payment of all other claims, including interest at the rate of 10.5
24 percent a year, the department shall pay claims that are otherwise valid but that were
25 not filed within the time prescribed.

26 (i) If the sum available for a class of creditors is insufficient to provide
27 payment in full, the sum shall be distributed pro rata to the claimants in the class.

28 (j) Unclaimed property remaining after the completion of the liquidation
29 proceedings under this section is presumed abandoned, and the property shall be
30 delivered to the Department of Revenue for handling under AS 34.45.110 - 34.45.780.

31 (k) After payment of the expenses of the liquidation and the claims against the

1 trust company arising from its fiduciary obligations in this state under AS 06.26.760 -
2 06.26.800, the receiver shall distribute any remaining money or other assets from the
3 liquidation of the trust company's fiduciary operations in this state equitably among, as
4 applicable, the receivers for liquidation of the trust company's fiduciary operations in
5 other states of the United States and under the laws of the United States, for payment
6 of the expenses of liquidation and claims against the trust company's fiduciary
7 operations. If the trust company's fiduciary operations are not being liquidated in
8 another state or under the laws of the United States, the receiver shall, after satisfying
9 the requirements of AS 06.26.760 - 06.26.800, pay any remaining money or other
10 assets from the liquidation of the trust company's fiduciary operations in this state to
11 the trust company.

12 (l) When the receiver has completed the liquidation of the trust company's
13 fiduciary operations in this state, the receiver shall, with notice to the department,
14 petition the court for an order declaring the trust company's fiduciary operations in this
15 state properly wound up under AS 06.26.760 - 06.26.800. Upon the filing of the
16 petition, the court shall proceed as provided in AS 06.26.760 - 06.26.800.

17 (m) An order issued by the court under a petition filed under (l) of this section
18 may only declare the trust company's fiduciary operations in this state have been
19 properly wound up and may not declare the trust company is dissolved. The court
20 may make whatever additional orders and grant whatever additional relief that the
21 court determines is proper under the evidence submitted.

22 (n) After an order is issued under (m) of this section declaring the trust
23 company's fiduciary operations in this state are properly wound up,

24 (1) the trust company shall, except for any further winding up, cease
25 acting as a fiduciary in this state or in any jurisdiction; and

26 (2) the receiver shall promptly file with the department a copy of the
27 order certified by the clerk of the court.

28 **Sec. 06.26.80J. Federal Deposit Insurance Corporation as receiver or**
29 **liquidator.** The department may appoint the Federal Deposit Insurance Corporation
30 or its successor as receiver for a trust company that the department has taken
31 possession of if the deposits of the trust company are insured by that corporation or its

1 successor. Upon filing with the court a certificate indicating the acceptance of the
2 appointment by the Federal Deposit Insurance Corporation or its successor, the
3 possession of and title to all the assets, business, and property of the trust company are
4 transferred to that corporation. The department is then relieved of all responsibility
5 and liability with respect to the reorganization or liquidation of the trust company.
6 The Federal Deposit Insurance Corporation or its successor may liquidate, reorganize,
7 merge, or consolidate the trust company in the manner permitted by the laws of the
8 United States or by this chapter, and possesses all the rights, powers, duties, and
9 obligations of the department in the liquidation, reorganization, merger, or
10 consolidation of the trust company under this chapter.

11 **Article 11. Interstate State Trust Company, Interstate National**
12 **Trust Company, and International Trust Company Offices.**

13 **Sec. 06.26.810. Fiduciary operations at a branch or trust office.** (a) An
14 interstate state trust company, interstate national trust company, or international trust
15 company may not act as a fiduciary in this state unless the trust company maintains a
16 trust office in this state as permitted under AS 06.26.810 - 06.26.895.

17 (b) If an interstate state trust company, interstate national trust company, or
18 international trust company establishes or acquires a trust office in this state under
19 AS 06.26.810 - 06.26.895, the trust company may conduct at the trust office any
20 activity that a trust company may conduct at a trust office under this chapter.

21 **Sec. 06.26.820. Establishing or acquiring a trust office.** If an interstate state
22 trust company, interstate national trust company, or international trust company that
23 does not operate a trust office in this state meets the requirements of AS 06.26.810 -
24 06.26.895, the trust company may establish a new trust office in this state or acquire a
25 trust office in this state that is in existence at the time of acquisition.

26 **Sec. 06.26.830. Requirement of notice.** To establish a new trust office or
27 acquire a trust office that is in existence at the time of acquisition in this state under
28 AS 06.26.810 - 06.26.895, an interstate state trust company, interstate national trust
29 company, or international trust company shall provide, or cause its home jurisdiction
30 regulator to provide, written notice of the proposed transaction to the department on or
31 after the date on which the trust company applies to its home jurisdiction regulator for

1 approval to establish or acquire the trust office. The trust company shall file with the
2 notice and maintain a copy of a resolution adopted by the board of the trust company
3 authorizing the establishment or acquisition of the office and shall pay the filing fee
4 established by the department by regulation.

5 **Sec. 06.26.840. Conditions for approval.** (a) An interstate state trust
6 company or international trust company may not establish or acquire a trust office in
7 this state under AS 06.26.810 - 06.26.895 unless

8 (1) the trust company confirms in writing to the department that, while
9 the trust company maintains a trust office in this state, the trust company will comply
10 with all applicable laws of this state, including, except where the context or this
11 section indicates otherwise, the provisions of this chapter applicable to trust
12 companies organized under this chapter;

13 (2) the trust company provides satisfactory evidence to the department
14 of compliance with the

15 (A) requirements for foreign corporations under AS 10.06; and

16 (B) applicable requirements of its home jurisdiction regulator
17 for establishing or acquiring and maintaining the office;

18 (3) the department, acting within 90 days after receiving notice under
19 AS 06.26.830, certifies to the home jurisdiction regulator that the requirements of
20 AS 06.26.810 - 06.26.895 have been met and the notice has been approved or, if
21 applicable, that any conditions imposed by the department under (b) of this section
22 have been satisfied;

23 (4) the department receives evidence from the trust company that the
24 department determines clearly demonstrates that the establishment or acquisition will
25 serve the public interest and well-being; the evidence must address the factors listed in
26 AS 06.26.090(b); and

27 (5) the department has received all required fees and the affidavit of
28 publication required by AS 06.26.100(b).

29 (b) An interstate state trust company or international trust company may begin
30 acting as a fiduciary at a trust office on the 91st day after the date that the department
31 receives the notice under (a) of this section for the trust office unless the department

1 specifies a differem date.

2 (c) The department may extend the 90-day period of review provided by (a) of
3 this section if the department determines that the written notice raises issues that
4 require additional information or additional time for analysis by the department. If the
5 department extends the 90-day period of review, the trust company may establish the
6 trust office only after written approval by the department.

7 (d) The department may deny an interstate state trust company or international
8 trust company permission to establish or acquire the trust office if the department finds
9 that the trust company lacks sufficient financial resources to undertake the proposed
10 expansion without adversely affecting its safety or soundness or that the proposed trust
11 office would be contrary to the public interest. When acting on the notice provided
12 under (a) of this section, the department shall consider the views of the home
13 jurisdiction regulator.

14 (e) If an interstate state trust company or international trust company is not
15 required by AS 10.06 or another law of this state to maintain a registered agent in this
16 state, the trust company shall file a written consent with the department permitting the
17 commissioner to act as the agent for the trust company for service of process in a court
18 action arising out of or connected with the proposed trust office.

19 (f) An interstate national trust company may not establish or acquire a trust
20 office in this state unless the trust company provides satisfactory evidence to the
21 department of compliance with the applicable requirements of its home jurisdiction
22 regulator for establishing or acquiring and maintaining the office.

23 **Sec. 06.26.850. Representative office business; registration.** (a) An
24 interstate state trust company, intersta'e national trust company, or international trust
25 company may not provide fiduciary services, but may otherwise engage in trust
26 business, at a representative office as permitted by AS 06.26.810 - 06.26.895.

27 (b) Subject to the requirements contained in AS 06.26.810 - 06.26.895, an
28 interstate state trust company, interstate national trust company, or international trust
29 company may establish or acquire representative offices in any location in this state.

30 (c) If an interstate state trust company or international trust company that does
31 not maintain a trust office in this state wants to establish or acquire a representative

1 office in this state, the trust company shall file a notice with the department on a form
2 prescribed by the department. The trust company shall furnish a copy of a resolution
3 adopted by its board authorizing the establishment or acquisition of the representative
4 office and shall pay the filing fee established by the department by regulation. The
5 notice required under this subsection must provide the name of the trust company, the
6 location of the proposed representative office, and satisfactory evidence that the trust
7 company is chartered or otherwise organized in another jurisdiction to act as a
8 fiduciary.

9 (d) An interstate state trust company or international trust company may
10 commence business at a representative office on the 61st day after the date that the
11 department receives the notice required under (c) of this section unless the department
12 specifies a different date.

13 (e) The department may extend the 60-day period of review provided by (d) of
14 this section if the department determines that the written notice raises issues that
15 require additional information or additional time for analysis by the department. If the
16 60-day period of review is extended, the trust company may establish the
17 representative office only after written approval by the department.

18 (f) In addition to the other requirements of this section, in order to receive
19 permission to establish or acquire a representative office in this state, an interstate
20 state trust company or international trust company must have sufficient financial
21 resources to undertake the proposed expansion without adversely affecting its safety or
22 soundness and the proposed representative office may not be contrary to the public
23 interest. When acting on the notice provided under (c) of this section, the department
24 shall consider the views of the home jurisdiction regulator.

25 (g) The department may determine by order that an interstate state trust
26 company or international trust company does not meet the requirements for
27 establishing or acquiring a representative office in this state under this section. An
28 order issued under this subsection is effective on the date of its issuance or on another
29 date as the department may determine.

30 (h) An interstate national trust company shall give the department notice of its
31 intent to establish or acquire a representative office in this state.

1 **Sec. 06.26.860. Additional trust offices.** If an interstate state trust company
2 or international trust company maintains a trust office in this state under AS 06.26.810
3 - 06.26.895, the trust company may establish or acquire additional trust offices or
4 representative offices in this state to the same extent and in the same manner that a
5 trust company may establish or acquire branch offices in this state under the
6 procedures for establishing or acquiring branch offices under AS 06.26.160.

7 **Sec. 06.26.870. Examinations; periodic reports; cooperative agreements;
8 assessment of fees.** (a) When the department considers it necessary to protect the
9 public interest, the department or a competent person designated by the department
10 may examine an interstate state trust company or international trust company that has
11 a trust office or a representative office in the state. The trust company shall pay a fee
12 established under AS 06.01.010 for the examination.

13 (b) The department may require periodic reports from an interstate state trust
14 company or international trust company if the trust company maintains a trust office in
15 this state and from a bank holding company that controls the trust company. The
16 reports shall be made under oath and filed as frequently as required by the department.
17 The reports must contain the information and detail that the department determines to
18 be appropriate as required under regulations adopted by the department.

19 (c) If an interstate state trust company or international trust company
20 maintains a trust office or a representative office in this state, the trust company may
21 be assessed and, if assessed, shall pay supervisory and examination fees as required by
22 the laws of this state and regulations of the department. Fees may be shared with other
23 governmental regulators or any organization affiliated with or representing
24 governmental regulators under agreements between the department and the regulators
25 or organization.

26 **Sec. 06.26.880. Enforcement.** (a) Consistent with AS 06.01.030 and
27 regulations adopted by the department under AS 06.01.030 or this chapter, the
28 department may determine that

29 (1) an office maintained by an interstate state trust company or
30 international trust company is being operated in violation of a provision of the laws of
31 this state or in an unsafe and unsound manner; or

1 (2) an interstate state trust company or international trust company is
2 engaged in an activity that the trust company may not engage in under this chapter.

3 (b) If either of the conditions in (a) of this section exists, the department may
4 take the enforcement actions it would be empowered to take if the office or the
5 company were a trust company established under this chapter, including issuing an
6 order temporarily or permanently prohibiting the trust company from acting as a
7 fiduciary in this state.

8 (c) If a matter involves extraordinary circumstances that require immediate
9 action, the department may take any action permitted by this section without providing
10 notice or an opportunity for a hearing before taking the action. The department shall
11 promptly give notice to the home jurisdiction regulator of each enforcement action
12 taken against an interstate state trust company or international trust company and, to
13 the extent practicable, shall consult and cooperate with the home jurisdiction regulator
14 when pursuing and resolving an enforcement action.

15 **Sec. 06.26.890. Notice of subsequent merger, consolidation, or closing.** If
16 an interstate state trust company, interstate national trust company, or international
17 trust company maintains a trust office or a representative office in this state under this
18 chapter, the trust company shall give at least 60 days' prior written notice, or, in the
19 case of an emergency transaction, shorter notice that is consistent with applicable state
20 and federal law, to the department of

21 (1) a merger, consolidation, or other transaction that would cause a
22 change of control with respect to the trust company or any bank holding company that
23 controls the trust company if an application would be required to be filed under 12
24 U.S.C. 1817(j) (Change in Bank Control Act of 1978) or 12 U.S.C. 1841 - 1850 (Bank
25 Holding Company Act of 1956);

26 (2) a transfer of all or substantially all of the trust accounts or trust
27 assets of the trust company to another person;

28 (3) the closing or other disposition of any trust office of the trust
29 company in this state.

30 **Sec. 06.26.895. Definitions.** In AS 06.26.810 - 06.26.895,

31 (1) "international trust company" means an international trust company

1 whose home office is not located in this state;

2 (2) "interstate national trust company" means an interstate national
3 trust company whose home office is not located in this state;

4 (3) "interstate state trust company" means an interstate state trust
5 company whose home office is not located in this state.

6 **Article 12. Miscellaneous Provisions.**

7 **Sec. 06.26.900. Powers of department.** The department may

8 (1) exercise general supervision over trust companies, interstate trust
9 companies, and international trust companies, and the subsidiaries and affiliated
10 corporations of trust companies, interstate state trust companies, and international trust
11 companies;

12 (2) in addition to other authority in this chapter to adopt regulations,
13 adopt regulations necessary to interpret and implement this chapter, including
14 regulations providing for the retention and preservation of records;

15 (3) review and approve or disapprove applications for trust companies
16 under AS 06.26.090, trust company branch offices under AS 06.26.160, representative
17 offices under AS 06.26.170, and trust offices and representative offices under
18 AS 06.26.810 - 06.26.895;

19 (4) issue permits authorizing trust company holding companies to do
20 business in this state;

21 (5) determine for each trust company the amount of paid-in capital
22 necessary to operate under AS 06.26.120;

23 (6) review and approve transfers of trust company ownership under
24 AS 06.26.450;

25 (7) perform examinations of trust companies, branch offices,
26 representative offices, and subsidiaries of trust companies and private fiduciaries
27 under AS 06.01.015 and this chapter;

28 (8) relieve a trust company from the examination requirements of
29 AS 06.01.015 if the trust company's deposits are insured by the Federal Deposit
30 Insurance Corporation, a successor of the Federal Deposit Insurance Corporation, or
31 another agency of the United States that insures trust company deposits;

1 (9) approve under AS 06.26.190 the operation of a branch trust
2 company on a schedule different than normal banking days;

3 (10) approve the operation by a trust company of an automated teller
4 machine in accordance with AS 06.05;

5 (11) approve certain trust company subsidiaries;

6 (12) approve the acceptance by a trust company of the trust company's
7 stock or of the stock of the trust company's holding company as security for a loan
8 under circumstances approved by the department;

9 (13) restrict the withdrawal of deposits from a trust company if the
10 department finds that extraordinary circumstances make restriction necessary for the
11 proper protection of depositors;

12 (14) require a trust company to

13 (A) maintain its capital and reserve accounts in amounts
14 determined appropriate by the department;

15 (B) observe the methods and standards that the trust company
16 adopts for determining the value of various types of assets;

17 (C) charge off part or all of an asset that has not been lawfully
18 acquired;

19 (D) write down an asset to its market value;

20 (E) record liens and other interests in property;

21 (F) obtain a financial statement from a borrower or prospective
22 borrower to the extent that the trust company can obtain the statement;

23 (G) obtain insurance against damage to real property taken as
24 security;

25 (H) search or obtain insurance on the title to real property taken
26 as security;

27 (I) maintain adequate insurance against risks as the department
28 determines necessary and appropriate for the protection of depositors and the
29 public;

30 (J) charge off that portion of an asset classified as a loss, or
31 charge off or reserve up to 50 percent of loans classified as doubtful, in a state

1 or federal report of examination; or

2 (K) charge off all debts owed to the trust company in which
3 interest is past due and unpaid for a period of six months, unless the debt
4 principal is adequately secured and the trust company is in the process of
5 collection;

6 (15) require the board of directors of a trust company to hold a meeting
7 under AS 06.26.520;

8 (16) order the removal of a board member of a trust company under
9 AS 06.26.510;

10 (17) order a trust company to suspend the payment of dividends under
11 AS 06.26.120 and regulations adopted by the department;

12 (18) require a trust company to increase its capital accounts under
13 AS 06.26.120;

14 (19) take possession of a trust company in the manner provided in
15 AS 06.26.730 - 06.26.750, and operate, reorganize, or liquidate the trust company after
16 taking possession;

17 (20) issue an order under AS 06.01.030 that the department determines
18 is necessary to ensure compliance with this chapter; and

19 (21) exercise other powers expressly or implicitly granted under this
20 chapter.

21 **Sec. 06.26.905. Cooperative agreements.** (a) The department may enter into
22 cooperative, coordinating, or information-sharing agreements with other governmental
23 regulators or with an organization affiliated with or representing governmental
24 regulators to handle the periodic examination or other supervision of a trust office that
25 is located in this state and owned by an interstate state trust company or of a trust
26 office that is located in a host state and owned by a trust company. Under the
27 agreements, the department may accept reports of examination and reports of
28 investigation instead of conducting the department's own examinations or
29 investigations.

30 (b) The department may enter into joint enforcement action agreements with
31 other governmental regulators having concurrent jurisdiction over a trust company that

1 is located in this state and owned by an interstate state trust company organized in
2 another state or over a trust office that is located in a host state and owned by a trust
3 company.

4 (c) Notwithstanding the existence of an agreement under this section, the
5 department may at any time make an examination or take independent supervisory or
6 enforcement action if the department determines that the examination or action is
7 necessary or appropriate to carry out the department's responsibilities under this
8 chapter or to ensure compliance with the laws of this state.

9 **Sec. 06.26.910. Appeals.** (a) A person may appeal to the department

- 10 (1) a denial of an application under AS 06.26.090(e);
11 (2) an order under AS 06.26.120 to increase or adjust capital;
12 (3) a denial under AS 06.26.150 of a change of the location of a home
13 office under AS 06.26.150;
14 (4) a denial under AS 06.26.160 of permission for a trust company to
15 establish a branch office;
16 (5) a denial under AS 06.26.170 of permission to establish or acquire
17 a representative office;
18 (6) a denial under AS 06.26.180(d) of permission to establish an office
19 outside this state;
20 (7) a denial of a private fiduciary exemption under AS 06.26.200 and
21 06.26.210;
22 (8) the conditions or limitations established for an exemption under
23 AS 06.26.200(d);
24 (9) the revocation of an exemption under AS 06.26.230;
25 (10) a denial of permission for a private fiduciary to convert to a trust
26 company under AS 06.26.240;
27 (11) a denial under AS 06.26.470 of an application to acquire control
28 of a trust company;
29 (12) the disapproval under AS 06.26.650 of a conversion, merger, or
30 consolidation;
31 (13) a denial under AS 06.26.840(d) of permission to establish or

1 acquire a trust office in this state;

2 (14) a denial under AS 06.26.850(g) of permission to establish or
3 acquire a representative office in this state; and

4 (15) a denial under AS 06.26.860 of permission for additional trust
5 offices or representative offices.

6 (b) The department shall adopt regulations, consistent with the provisions of
7 this chapter, establishing the procedures for appeals allowed under (a) of this section.

8 (c) The provisions of AS 44.62 (Administrative Procedure Act), including
9 judicial review under AS 44.62.560, apply to an appeal under this chapter to the extent
10 the provisions of AS 44.62 do not conflict with the procedures established under (b) of
11 this section or other provisions of this chapter.

12 **Sec. 06.26.920. Civil enforcement.** The department may bring any
13 appropriate civil court action against a person who the department determines has
14 committed or is about to commit a violation of this chapter.

15 **Sec. 06.26.930. Trust company reports to the department; publication of**
16 **reports.** (a) A trust company shall make at least four reports of its condition each
17 year to the department as required by and on forms prescribed by the department.
18 Each report shall be signed by a duly authorized officer of the trust company verified
19 by at least one independent director, and each verifying director shall certify under
20 oath that the director has personal knowledge of the facts stated in the report and that
21 the facts are true. Each report must exhibit in detail and under appropriate headings
22 the resources and liabilities of the trust company and must be received by the
23 department within 30 calendar days after the end of the period covered by the report.

24 (b) The department may require that a trust company submit special reports
25 whenever the department considers a report necessary in order to obtain full
26 knowledge of the trust company's condition.

27 (c) In addition to the other reports required by this section, a trust company
28 shall make at least one report of income and dividends to the department each year.
29 The trust company shall submit the report to the department within 30 calendar days
30 after the end of the calendar or fiscal year covered by the report.

31 (d) All of the reports of condition required by this section shall be made

1 available to all customers on request and at no charge to the customer.

2 **Sec. 06.26.940. Remedy of person damaged by violation.** In addition to any
3 other remedies available under law to the person, a person who suffers damages as a
4 result of a violation of this chapter by a person subject to this chapter may bring an
5 action in court against the person violating this chapter to recover the damages. In this
6 section, "person subject to this chapter" means a trust company, a private fiduciary, an
7 exempt private fiduciary, a person who is required to obtain a certificate of authority
8 under AS 06.26.090, and an interstate state trust company or international trust
9 company.

10 **Sec. 06.26.950. Limitation on powers.** This chapter does not allow a trust
11 company to engage in banking.

12 **Article 13. General Provisions.**

13 **Sec. 06.26.960. Application of laws relating to general business**
14 **corporations.** (a) Unless expressly authorized by this chapter, a trust company may
15 not take an action that is authorized by AS 10.06 regarding its corporate status, capital
16 structure, or a matter of corporate governance and for which AS 10.06 requires a filing
17 with the department unless the trust company first makes the required filing with the
18 department and receives the department's approval.

19 (b) The department may adopt regulations to alter or supplement the
20 procedures and requirements of AS 10.06 applicable to an act taken under this chapter
21 by a trust company.

22 **Sec. 06.26.990. Definitions.** (a) In this chapter, unless the context otherwise
23 requires,

24 (1) "banking" has the meaning given in AS 06.05.990;

25 (2) "board" means board of directors;

26 (3) "certificate of authority" means the certificate of authority issued to
27 a corporation under AS 06.26.110;

28 (4) "chapter" includes regulations adopted under this chapter;

29 (5) "commissioner" means the commissioner of community and
30 economic development;

31 (6) "customer" means a person using the services of a trust company or

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- a private fiduciary, and includes a depositor;
- (7) "department" means the Department of Community and Economic Development;
- (8) "depository" means a person authorized by state or federal law to accept deposits of trust assets;
- (9) "exempt private fiduciary" means a private fiduciary that has received an exemption under AS 06.26.200;
- (10) "family member" means an individual who is related, including relation established by adoption, within the fourth degree by blood or marriage, to the individual whom the relationship is measured;
- (11) "fiduciary" means a person to whom the property of another person is entrusted for a purpose specified in a trust instrument or by a court order;
- (12) "fiduciary operations" means operations performed by a fiduciary;
- (13) "fiduciary services" means services of a fiduciary;
- (14) "financial institution" has the meaning given in AS 06.05.990;
- (15) "governmental regulator" means a governmental agency responsible for regulating persons who act as fiduciaries;
- (16) "home jurisdiction regulator" means the governmental agency responsible for regulating an interstate state trust company, interstate national trust company, or international trust company in the jurisdiction where the trust company is chartered or otherwise organized;
- (17) "insider" has the meaning given in 12 C.F.R. 215.2;
- (18) "international trust company" means an organization that provides fiduciary services and has offices in countries other than the country in which the home office of the entity is located;
- (19) "interstate national trust company" means an organization
 - (A) that is chartered as a bank by the United States;
 - (B) whose powers are limited to providing fiduciary services;
 and
 - (C) that has offices in a state of the United States other than the state in which the home office of the organization is located;

- 1 (20) "interstate state trust company" means an organization that
2 (A) provides fiduciary services;
3 (B) holds a charter, license, certificate, or other type of
4 authorization from this or another state of the United States that authorizes the
5 organization to provide fiduciary services; and
6 (C) has offices in a state of the United States other than the
7 state in which the home office of the organization is located;
- 8 (21) "issuer" has the meaning given in AS 45.55.990;
9 (22) "national bank" has the meaning given in AS 06.05.990;
10 (23) "private fiduciary" means a person who acts as a fiduciary, is not
11 exempt under AS 06.26.020(a) or (c), and does not provide or offer fiduciary services
12 to the general public;
- 13 (24) "provide or offer fiduciary services to the general public" means
14 to make any sales, solicitations, offers, arrangements, agreements, or transactions to
15 provide fiduciary services, regardless of whether a fee, commission, or any other type
16 of remuneration is charged or received;
- 17 (25) "purchasing trust company" means a trust company purchasing all
18 or substantially all of the assets of another trust company;
- 19 (26) "representative office" means an office that provides support
20 services for a trust company, but at which the trust company does not provide
21 fiduciary services;
- 22 (27) "resident of this state" means an individual who is physically
23 present in Alaska and who intends to remain indefinitely in Alaska;
- 24 (28) "selling trust company" means a trust company selling all or
25 substantially all of its assets;
- 26 (29) "state bank" has the meaning given in AS 06.05.990;
27 (30) "state financial institution" means an institution organized under
28 this title if the deposits of the institution are insured by an agency of the federal
29 government;
- 30 (31) "trust account" means an account at a trust company for trust
31 assets;

1 (32) "trust assets" means assets held in trust for another person;

2 (33) "trust company" means a person who is organized under this
3 chapter to act as a fiduciary and to provide fiduciary services to the general public;

4 (34) "trust company assets" means assets that are not trust assets and
5 that are owned by a trust company;

6 (35) "trust holding company" means an organization formed for the
7 purpose of owning a trust company;

8 (36) "trust office" means an office that provides fiduciary services;

9 (37) "within the fourth degree" means a child, a grandchild, a great-
10 grandchild, a parent, a sister, a brother, a niece, a nephew, a grandniece, a
11 grandnephew, a grandparent, an aunt, an uncle, a first cousin, a great-grandparent, a
12 great-aunt, a great-uncle, and a great-great-grandparent.

13 (b) In AS 06.26.220, 06.26.450 - 06.26.470, 06.26.510, 06.26.860, and
14 06.26.880, "control" means owning, or holding with the power to vote, 25 percent or
15 more of the voting securities or other capital stock.

16 **Sec. 06.26.995. Short title.** This chapter may be cited as the Revised Alaska
17 Trust Company Act.

18 * **Sec. 3.** AS 13.36.025 is amended by adding a new subsection to read:

19 (b) The provisions of (a) of this section are not intended to override any
20 provision of AS 06.26, and AS 06.26 governs to the extent of any conflict.

21 * **Sec. 4.** AS 13.36.320(a) is amended to read:

22 (a) If at least one qualified person serves as trustee of a trust whose state
23 jurisdiction provision is valid, effective, and conclusive under AS 13.36.035(c), then
24 the following persons also may serve as trustees even though they are not qualified
25 persons:

26 (1) individuals who do not reside in the state [ALASKA];

27 (2) trust companies that have their principal place of business outside
28 the state [OF ALASKA] and that are not organized under AS 06.26 [AS 06.25]; and

29 (3) banks that have their principal place of business outside the state
30 [OF ALASKA] or that are not organized under AS 06.05.

31 * **Sec. 5.** AS 13.36.390(2) is amended to read:

1 (2) "qualified person" means

2 (A) an individual who, except for brief intervals, military
3 service, attendance at an educational or training institution, or for absences for
4 good cause shown, resides in this state, whose true and permanent home is in
5 this state, who does not have a present intention of moving from this state, and
6 who has the intention of returning to this state when away;

7 (B) a trust company that is organized under AS 06.26
8 [AS 06.25] and that has its principal place of business in this state; or

9 (C) a bank that is organized under AS 06.05, or a national
10 banking association that is organized under 12 U.S.C. 21 - 216d, if the bank or
11 national banking association possesses and exercises trust powers and has its
12 principal place of business in this state;

13 * Sec. 6. AS 21.66.250 is amended to read:

14 **Sec. 21.66.250. Trust funds.** Except as provided in AS 34.80, trust funds or
15 assets held in a fiduciary capacity by a title insurance company that is authorized to do
16 a trust business shall be invested in accordance with AS 06.26 [AS 06.25].

17 * Sec. 7. AS 34.77.100(a) is amended to read:

18 (a) An arrangement is a community property trust if one or both spouses
19 transfer property to a trust, the trust expressly declares that some or all the property
20 transferred is community property under this chapter, and at least one trustee is a
21 qualified person whose powers include or are limited to maintaining records for the
22 trust on an exclusive or a nonexclusive basis and preparing or arranging for the
23 preparation of, on an exclusive or a nonexclusive basis, any income tax returns that
24 must be filed by the trust. A community property trust is enforceable without
25 consideration. Both spouses or either spouse may be a trustee. The trust must be
26 signed by both spouses. In this subsection, "qualified person" means

27 (1) an individual

28 (A) who, except for brief intervals, military service, attendance
29 at an educational or training institution, or absences for good cause shown,
30 resides in this state;

31 (B) whose true and permanent home is in this state;

1 (C) who does not have a present intention of moving from this
2 state; and

3 (D) who intends to return to this state when away;

4 (2) a trust company that is organized under AS 06.26 [AS 06.25] and
5 that has its principal place of business in this state; or

6 (3) a bank that is organized under AS 06.05 or a national banking
7 association that is organized under 12 U.S.C. 21 - 216d if the bank or national banking
8 association possesses and exercises trust powers and has its principal place of business
9 in this state.

10 * Sec. 8. AS 06.25.010, 06.25.020, 06.25.030, 06.25.040, 06.25.050, 06.25.080, 06.25.085,
11 06.25.090, 06.25.100, 06.25.105, 06.25.110, 06.25.120, 06.25.130, 06.25.140, 06.25.150,
12 06.25.160, 06.25.170, 06.25.180, 06.25.190, 06.25.200, 06.25.210, 06.25.215, 06.25.220,
13 06.25.230, 06.25.240, 06.25.255, 06.25.260, 06.25.270, 06.25.280, 06.25.290, 06.25.300,
14 06.25.310, 06.25.315, and 06.25.350 are repealed.

15 * Sec. 9. The uncodified law of the State of Alaska is amended by adding a new section to
16 read:

17 COURT RULE CHANGES. (a) AS 06.26.020(d), enacted by sec. 2 of this Act,
18 amends Rule 7.2, Alaska Rules of Professional Conduct, by prohibiting certain advertising by
19 certain exempt attorneys and their law firms.

20 (b) AS 06.26.760(b)(2), enacted by sec. 2 of this Act, amends

21 (1) Rule 6, Alaska Rules of Civil Procedure, by postponing the deadlines for
22 the filing of pleadings and other documents by a trust company in a civil action when the
23 Department of Community and Economic Development has taken possession of the trust
24 company;

25 (2) Rule 12, Alaska Rules of Civil Procedure, by postponing the deadlines for
26 serving an answer to a complaint, a third-party answer, a reply to a counterclaim, a cross-
27 claim, and an answer to a cross-claim by a trust company in a civil action when the
28 Department of Community and Economic Development has taken possession of the trust
29 company;

30 (3) Rule 40, Alaska Rules of Criminal Procedure, by postponing the deadlines
31 set in the Alaska Rules of Criminal Procedure for the filing of documents by a trust company

1 in a criminal action when the Department of Community and Economic Development has
2 taken possession of the trust company;

3 (4) Rule 204, Alaska Rules of Appellate Procedure, by postponing the
4 deadlines for the filing of appeals to the supreme court and the court of appeals by a trust
5 company when the Department of Community and Economic Development has taken
6 possession of the trust company;

7 (5) Rule 403, Alaska Rules of Appellate Procedure, by postponing the
8 deadline for the filing of petitions for review or cross-petitions for review by a trust company
9 when the Department of Community and Economic Development has taken possession of the
10 trust company;

11 (6) Rule 502, Alaska Rules of Appellate Procedure, by postponing the
12 deadlines set in the Alaska Rules of Appellate Procedure for the filing of documents by a trust
13 company when the Department of Community and Economic Development has taken
14 possession of the trust company;

15 (7) Rule 602, Alaska Rules of Appellate Procedure, by postponing the
16 deadlines for the filing of appeals to the superior court from a district court or an
17 administrative agency by a trust company when the Department of Community and Economic
18 Development has taken possession of the trust company;

19 (8) Rule 611, Alaska Rules of Appellate Procedure, by postponing the
20 deadlines set in the Alaska Rules of Appellate Procedure for the filing of petitions for review
21 to the superior court from a district court of an administrative agency by a trust company
22 when the Department of Community and Economic Development has taken possession of the
23 trust company.

24 * Sec. 10. The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 TRANSITION. (a) The certificate of authority of a trust company incorporated under
27 former AS 06.25 before January 1, 2002, remains in effect until the department either issues
28 the trust company an amended certificate of authority under (c) of this section or revokes the
29 certificate of authority issued under former AS 06.25 under (d) of this section.

30 (b) An existing trust company shall, before April 1, 2002, submit to the department, if
31 the capital of the trust company

1 (1) meets the minimum capital requirements, a request that the department
2 issue the trust company an amended certificate of authority; the request must be accompanied
3 by

4 (A) a statement signed under oath by an officer of the trust company
5 that the capital of the trust company meets the minimum capital requirements; and

6 (B) a copy of a balance sheet for the trust company showing that the
7 capital of the trust company meets the minimum capital requirements; or

8 (2) does not meet the minimum capital requirements, a plan acceptable to the
9 department to meet the minimum capital requirements before January 1, 2007, and a request
10 that the department issue the trust company an amended certificate of authority.

11 (c) Notwithstanding AS 06.26.110(a), enacted by sec. 2 of this Act, upon satisfaction
12 of the requirements of (b)(1) or (2) of this section by an existing trust company, the
13 department shall issue the trust company an amended certificate of authority under AS 06.26,
14 enacted by sec. 2 of this Act.

15 (d) The department may revoke the certificate of authority issued to an existing trust
16 company under former AS 06.25 if the trust company fails to comply with the submittal
17 requirements of (b) of this section that apply to the trust company.

18 (e) If the department issues, under (c) of this section, an amended certificate of
19 authority to an existing trust company that submitted a plan under (b)(2) of this section, the
20 department may revoke the amended certificate of authority if the trust company fails to meet
21 the minimum capital requirements before January 1, 2007.

22 (f) In this section,

23 (1) "department" means the Department of Community and Economic
24 Development;

25 (2) "existing trust company" means a trust company that has a certificate of
26 authority issued under former AS 06.25 before January 1, 2002;

27 (3) "minimum capital requirements" means the minimum capital requirements
28 under AS 06.26.120(a), enacted by sec. 2 of this Act.

29 * Sec. 11. The uncodified law of the State of Alaska is amended by adding a new section to
30 read:

31 TRANSITION: REGULATIONS. The Department of Community and Economic

1 Development may proceed to adopt regulations necessary to implement the changes made by
2 secs. 1 - 8 of this Act. The regulations take effect under AS 44.62 (Administrative Procedure
3 Act), but not before January 1, 2002.

4 * **Sec. 12.** Sections 10 and 11 of this Act take effect immediately under AS 01.10.070(c).

5 * **Sec. 13.** Except as provided in sec. 12 of this Act, this Act takes effect January 1, 2002.

22-LS0139\L
Bannister
4/19/01

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 Rules 7.2**
4 **and 7.3, 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 offer fiduciary services
28 to the general public with regard to noncharitable trusts, and observes the requirements
29 applicable to trustees under AS 13.36.225 - 13.36.290 (Alaska Uniform Prudent
30 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) serves as a trustee of a trust created by the person's family
11 members;

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

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

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

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

27 (15) acts as a guardian or receiver if the person is appointed as a
28 guardian or receiver by a court of this or another state;

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

31 (17) serves as a trustee of one or more trusts in which the settlor is not

1 a family member of the person, except that the person may not at any one time serve
2 as a trustee for trusts that cumulatively have more than 20 different settlors; in this
3 paragraph, a husband and wife who create a joint trust are considered to be one settlor.

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

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

13 (d) In addition to any other requirements established for the exemption, to
14 maintain an exemption under this section, a person who is exempt under (a) or (c) of
15 this section may not offer fiduciary services to the general public.

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

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

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

25 **Sec. 06.26.040. Name of trust company.** (a) A person may not use the
26 words "trust" or "trust company" or any other words in a manner that could reasonably
27 be expected to convey the impression that the person is acting as a fiduciary unless the
28 person is authorized to act as a fiduciary under AS 06.26.010.

29 (b) This section does not prohibit the use of the words "trust" or "trust
30 company" in the name of a corporation that is in existence as of the effective date of
31 this Act and that is not subject to this chapter if the corporation was originally

1 organized under the laws of this state and has not, since the date of its original
2 organization, amended or restated its articles of incorporation to delete from its name
3 the words "trust" or "trust company."

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

7 (1) acting as trustee under a written agreement;

8 (2) receiving money and other property as trustee for investment in
9 real or personal property;

10 (3) acting as a trustee and performing the fiduciary duties committed
11 or transferred to it by a court;

12 (4) receiving money or other assets under AS 06.35;

13 (5) acting as an executor, an administrator, or a trustee of the estate of
14 a deceased person;

15 (6) acting as a custodian, guardian, conservator, or trustee for a minor
16 or an incapacitated person;

17 (7) acting as a successor fiduciary to a depository;

18 (8) receiving for safekeeping any type of personal property;

19 (9) acting as a custodian, an assignee, a transfer agent, an escrow
20 agent, a registrar, or a receiver;

21 (10) acting as an investment adviser, an agent, or an attorney-in-fact in
22 any agreed upon capacity;

23 (11) exercising additional powers expressly authorized by a regulation
24 adopted under this chapter; and

25 (12) exercising an incidental power that is reasonably necessary to
26 enable it to fully exercise the powers expressly conferred according to commonly
27 accepted fiduciary customs and usage.

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

31 (c) A trust company may contribute to community solicitations, or to

1 charitable, philanthropic, or benevolent instrumentalities that operate to promote
2 public welfare, amounts that its board considers appropriate and in the interests of the
3 trust company.

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

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

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

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

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

20 **Sec. 06.26.060. Organizers.** One or more persons may organize a trust
21 company.

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

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

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

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

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

31 (4) the period for which the trust company is organized, whether

1 limited or perpetual;

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

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

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

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

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

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

27 (b) The department may grant a certificate of authority only if the department
28 receives evidence from the applicant that the department determines demonstrates that
29 the establishment of the proposed trust company will serve public convenience and
30 well-being. The evidence must address the following factors:

31 (1) the market to be served;

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

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

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

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

17 (6) whether the persons organizing the trust company are acting in
18 good faith.

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

24 (d) An applicant shall pay under AS 06.01.010 the investigation expenses
25 incurred by the department in processing an application for a certificate of authority.
26 When submitting an application to the department, the applicant shall pay the
27 department \$2,000 as an advance payment of the investigation expenses incurred by
28 the department. If the investigation expenses incurred by the department are less than
29 \$2,000, the department shall promptly refund the excess to the applicant. If the
30 investigation expenses incurred by the department are greater than \$2,000, the
31 department may obtain reimbursement from the applicant.

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

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

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

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

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

- (a) The department may not deliver a certificate of authority to a person to act as a trust company until the person has
- (1) received cash or marketable securities in at least the full amount of the capital required under AS 06.26.120 from subscriptions for the issuance of shares;
 - (2) elected or qualified the initial officers and directors named in the

1 application for the certificate of authority or other officers and directors approved by
2 the department; and

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

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

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

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

- 24 (1) the nature and type of business conducted;
25 (2) the nature and degree of liquidity of the assets held by the trust
26 company other than trust assets;
27 (3) the amount of fiduciary assets being managed;
28 (4) the type of fiduciary assets held and the depository of those assets;
29 (5) the complexity of the fiduciary duties and degree of discretion
30 undertaken;
31 (6) the competence and experience of management;

1 (7) the extent and adequacy of internal controls;

2 (8) the presence or absence of annual unqualified audits by an
3 independent certified public accountant;

4 (9) the reasonableness of the trust company's plans for retaining or
5 acquiring additional capital; and

6 (10) the existence and adequacy of insurance held by the trust
7 company to protect its customers, beneficiaries, and grantors.

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

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

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

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

22 **Sec. 06.26.130. Capital notes or debentures.** (a) A trust company may, with
23 the written consent of the department, and if authorized by its articles of incorporation
24 or approved by persons owning two-thirds of the stock of the trust company entitled to
25 vote, issue convertible or nonconvertible capital notes or debentures. The principal
26 amount of notes and debentures outstanding at any time may not exceed 33 1/3
27 percent of the capital stock and surplus fund of the trust company on the date of
28 issuance. The rate and term are subject to the approval of the department, but the term
29 may not exceed 20 years.

30 (b) A trust company may not retire capital notes or debentures if the
31 retirement creates an impairment of its capital. Capital notes and debentures are

1 subordinated in right of payment in the event of insolvency or liquidation of the trust
2 company to the prior payment of all deposits and all claims of other creditors except
3 the holders of securities on a parity with the capital notes and debentures and the
4 holders of securities expressly subordinated to the capital notes and debentures.

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

8 **Article 3. Operation of Offices.**

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

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

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

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

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

30 (1) filing a written notice with the department setting out the name of
31 the trust company, the street address of the proposed branch office, and a description

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of the activities proposed to be conducted at the branch office;

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

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

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

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

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

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

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

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

(b) The department has 60 days from the date the department receives the notice filed under (a) of this section to review the establishment or acquisition of a representative office, and the trust company may begin operating the representative office on the 61st day after the date the department receives the notice, unless the department specifies a different date.

(c) The department may extend the 60-day period of review provided by (b) of

1 this section if the department determines that the written notice raises issues that
2 require additional information or if the department needs additional time for analysis.
3 If the 60-day period of review is extended, the trust company may establish the
4 representative office only after the department approves the office in writing. The
5 department may deny permission to establish or acquire a representative office of the
6 trust company if the department has safety or soundness concerns.

7 **Sec. 06.26.180. Offices outside the state.** (a) With the prior written approval
8 of the department, a trust company may establish a branch office or a representative
9 office outside this state. To establish a branch office or representative office outside
10 this state, a trust company shall

11 (1) submit an application to the department specifying the location of
12 the proposed office, the business to be conducted at the proposed office, and the laws
13 of the jurisdiction where the office will be located that permit the office to be
14 established;

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

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

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

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

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

24 (c) If a trust company submits with the application a certified statement of the
25 governmental regulator for the jurisdiction in which the office is to be located
26 expressly permitting the establishment of the office, the trust company may establish
27 the office by following the procedures under AS 06.26.090, except that the trust
28 company may not establish the office before the 91st day after the date the department
29 receives the notice filed under AS 06.26.160(a) unless the department notifies the trust
30 company that the trust company may establish the office on an earlier date.

31 (d) The department may deny a trust company permission to establish a

1 branch office or representative office outside this state if the department has safety or
2 soundness concerns regarding

3 (1) the market to be served;

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

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

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

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

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

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

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

24 (c) The hours of operation, and any changes in the hours of operation, of a
25 trust company and an interstate state trust company or international trust company
26 maintaining a trust office under AS 06.26.810 - 06.26.895 must be submitted to the
27 department and must be made available to the trust company's customers by mail, by
28 the Internet, or by other means.

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

31 **Article 4. Private Fiduciaries.**

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

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

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

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

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

26 **Sec. 06.26.210. Requirements to apply for and maintain status as a**
27 **private fiduciary.** (a) To obtain an exemption under AS 06.26.200, a private
28 fiduciary shall file an application with the department containing

29 (1) a nonrefundable application fee established by the department by
30 regulation;

31 (2) a detailed statement under oath showing the private fiduciary's

1 assets and liabilities as of the end of the month that precedes the date of the filing of
2 the application with the department;

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

4 (4) a statement under oath that the private fiduciary currently does not
5 offer fiduciary services to the general public and that the private fiduciary will not
6 offer fiduciary services to the general public without the prior written permission of
7 the department;

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

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

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

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

18 (1) may not offer fiduciary services to the general public;

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

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

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

31 (f) Notwithstanding having an exemption under AS 06.26.200, a private

1 fiduciary shall comply with the home office provisions of AS 06.26.150 and shall
2 report to the department any change of address or telephone number within 30 days
3 after the change.

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

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

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

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

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

17 (4) violates a provision of this section applicable to exempt private
18 fiduciaries.

19 (b) If the department determines from examination or other credible evidence
20 that an exempt private fiduciary has violated a requirement of this chapter, the
21 department may by personal delivery or registered or certified mail, return receipt
22 requested, notify the exempt private fiduciary in writing that the department will
23 revoke the private fiduciary's exemption as of a stated date, which may not be before
24 the fifth calendar day after the date that the notification is delivered or mailed. The
25 notification must state the grounds for the revocation with reasonable certainty. After
26 a revocation takes effect, the revocation is final, and the private fiduciary is subject to
27 all of the requirements and provisions of this chapter that are applicable to private
28 fiduciaries not exempt under AS 06.26.200.

29 (c) A private fiduciary shall comply with the provisions of this chapter from
30 which it was formerly exempt within five calendar days after the effective date of a
31 revocation of its exemption under this section. However, if the department determines

1 at the time of revocation that the private fiduciary has been engaging in or attempting
2 to engage in acts intended or designed to deceive or defraud, the department may, in
3 the department's sole discretion, shorten or eliminate the five-calendar-day compliance
4 period.

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

9 (1) file a court action or pursue another remedy provided by this
10 chapter; or

11 (2) refer the private fiduciary to the attorney general for institution of
12 appropriate legal proceedings against the private fiduciary.

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

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

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

29 (d) The department may extend the 60-day period of review provided by (c) of
30 this section if the department determines that the notice raises issues that require
31 additional information or if the department needs additional time for analysis. If the

1 60-day period of review is extended, the private fiduciary may offer fiduciary services
2 to the general public only after written approval by the department.

3 (e) The department may deny a private fiduciary permission to offer fiduciary
4 services to the general public as a trust company if the department finds that the
5 private fiduciary does not meet the requirements of this chapter for trust companies.

6 **Article 5. Investments, Loans, and Deposits.**

7 **Sec. 06.26.250. Regulations on investments.** The department may adopt
8 regulations to establish limits, requirements, or exemptions for particular classes or
9 categories of investment, or limit or expand investment authority for trust companies
10 for particular classes or categories of securities or other property.

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

13 (1) the repayment of money borrowed;

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

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

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

20 **Article 6. Trust Assets.**

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

24 (1) the trust company maintains as security for the deposits a separate
25 fund of securities that may be used for trust investments and that are under the control
26 of a federal reserve bank or a clearing corporation in this state or elsewhere; in this
27 paragraph, "clearing corporation" has the meaning given in AS 45.08.102;

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

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

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

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

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

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

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

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

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

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

Article 7. Ownership.

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

1 corporation or other person who owns voting securities of a trust company.

2 (b) This section does not apply to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 **Sec. 06.26.480. Objection to other transfer.** AS 06.26.450 - 06.26.480 may
28 not be construed to prevent the department from investigating, commenting on, or
29 seeking to enjoin or set aside a transfer of voting securities that evidence a direct or
30 indirect interest in a trust company if the department considers the transfer to be
31 against the public interest.

Article 8. Governance.

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2 **Sec. 06.26.500. Voting securities held as trust assets.** (a) Voting securities
3 of a trust company held by the trust company as trust assets under a will or trust,
4 whether registered in the trust company's own name or in the name of its nominee,
5 may not be voted in the election of directors or on a matter affecting the compensation
6 of directors, officers, or employees of the trust company unless

7 (1) under the terms of the will or trust, the manner in which the voting
8 securities are to be voted may be determined by a donor or beneficiary of the will or
9 trust and the donor or beneficiary actually makes the determination in the matter at
10 issue;

11 (2) the terms of the will or trust expressly direct the manner in which
12 the securities must be voted to the extent that no discretion is vested in the trust
13 company as fiduciary; or

14 (3) the securities are voted solely by a person who is a joint fiduciary,
15 but who is not a person who is affiliated with the trust company, as if the joint
16 fiduciary were the sole fiduciary.

17 (b) Voting securities of a trust company that may not be voted under this
18 section are considered to be authorized but unissued for the purpose of determining the
19 procedures for and results of the vote under this section.

20 **Sec. 06.26.510. Board of directors.** (a) The board of directors of a trust
21 company shall consist of at least five but not more than 25 directors, and the majority
22 of the directors must be residents of this state. The principal executive officer of the
23 trust company is a member of the board and the board's presiding officer unless the
24 board elects a different presiding officer. The presiding officer shall perform the
25 duties designated by the board.

26 (b) Unless the department consents in writing, a person may not serve as a
27 director of a trust company if

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

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

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

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

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

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

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

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

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

Sec. 06.26.520. Board meetings and review of reports. (a) The board of directors of a trust company shall meet at least once every three months. The department or a director may call a special meeting of the board. A majority of the board constitutes a quorum. The board shall keep minutes of each board meeting,

1 including a record of attendance and a record of all votes.

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

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

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

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

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

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

31 (c) A trust committee may elect one or more officers to accept new accounts,

1 subject to the requirements of (b) of this section.

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

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

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

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

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

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

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

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

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

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

26 (c) A trust company may not extend credit to a director, an officer, an
27 employee, a principal shareholder, or an affiliate of the trust company unless the
28 extension of credit

29 (1) is made on substantially the same terms, including interest rates
30 and collateral requirements, as the terms prevailing at the time for comparable
31 transactions by the trust company with persons who are not directors, officers,

1 employees, principal shareholders, or affiliates of the trust company;

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

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

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

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

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

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

22 **Sec. 06.26.585. Policies and procedures.** A trust company shall adopt
23 written policies and procedures regarding decisions or recommendations to purchase
24 or sell a security that is a trust asset to facilitate compliance with federal and state
25 securities laws. These policies and procedures must include the prohibition in
26 AS 06.26.580(¹).

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

30 (1) the determination of policies;

31 (2) the investment and disposition of trust assets; and

1 (3) the direction and review of the actions of each officer, employee,
2 and committee employed or used by the trust company in the exercise of its fiduciary
3 powers.

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

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

11 (1) disclosure is compelled by a court or administrative order;

12 (2) disclosure is required by federal or state law;

13 (3) disclosure is authorized in writing by the customer;

14 (4) disclosure is made to the holder of a negotiable instrument drawn
15 on the trust company as to whether the drawer has sufficient money or other assets in
16 the financial institution to cover the instrument; or

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

25 (b) When disclosure of trust company records is required or allowed under
26 (a)(1) or (2) of this section, the trust company shall notify the customer of the
27 disclosure. If notification before disclosure is not possible, the trust company shall
28 immediately notify the customer of the disclosure or inquiry. However, the trust
29 company may not notify the customer if disclosure is made under a search warrant or
30 under a court order issued at the request of a grand jury.

31 (c) When disclosure of trust company records is compelled by a court order

1 under (a)(1) of this section, the court may provide in the order for the reimbursement
2 of the trust company for the costs allowed by the rules of court and incurred by the
3 trust company to comply with the order.

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

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

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

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

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

1 **Article 9. Organic Change.**

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

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

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

18 (d) A trust company converting to or merging or consolidating with a national
19 bank shall submit to the department a copy of any application to the United States
20 Comptroller of the Currency for a national bank charter or any other application to the
21 United States Comptroller of the Currency to convert, merge, or consolidate when the
22 applications are forwarded to the United States Comptroller of the Currency.

23 **Sec. 06.26.660. Merger or consolidation.** (a) To merge or consolidate under
24 AS 06.26.650, the merging persons shall file with the department the original articles
25 of merger or consolidation, a number of copies of the articles of merger or
26 consolidation equal to the number of trust companies involved in the merger or
27 consolidation, and an application in the form required by the department. The
28 department may require the submission of additional information it considers
29 necessary to make an informed decision.

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

31 (1) the surviving or new trust company will be solvent and have

1 adequate capitalization for its operations and location;

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

5 (3) all obligations and liabilities of each trust company that is a party
6 to the merge, or consolidation have been properly discharged or otherwise lawfully
7 assumed or retained by a trust company or other fiduciary;

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

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

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

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

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

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

23 (a) A trust company with the prior written approval of the department may purchase
24 all or substantially all of the assets of another trust company, including the right to
25 control accounts established with the trust accounts. Except as otherwise expressly
26 provided by another statute, the purchase by a trust company of all or part of the assets
27 of another trust company does not make the purchasing trust company responsible for
28 a liability or obligation of the selling trust company that the purchasing trust company
29 does not expressly assume. Except as otherwise provided by statute, AS 06.26.450 -
30 06.26.480 do not govern or prohibit the purchase by a trust company of all or part of
31 the assets of a person who is not a trust company or an exempt private fiduciary.

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

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

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

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

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

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

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

20 **Sec. 06.26.690. Authority to act as disbursing agent.** A purchasing trust
21 company may hold the purchase price and any additional money or other assets
22 delivered to it by the selling trust company in trust for the selling trust company and
23 may act as an agent of the selling trust company in disbursing the money or other
24 assets by paying the creditors of the selling trust company. If the purchasing trust
25 company acts under a written contract of agency approved by the department that
26 specifically names each creditor and the amount to be paid each creditor, and if the
27 agency is limited to the purely ministerial act of paying creditors the amounts due
28 them as determined by the selling trust company and reflected in the contract of
29 agency and does not involve discretionary duties or authority other than the
30 identification of the creditors named, the purchasing trust company

31 (1) may rely on the contract of agency and the instructions included in

1 it; and

2 (2) is not responsible for

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

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

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

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

25 **Sec. 06.26.720. Sale of assets.** (a) The board of a trust company, with the
26 department's approval, may cause a trust company to sell all or substantially all of its
27 assets, including the right to control accounts established with the trust company for
28 trust assets, without shareholder approval if the department finds

29 (1) the interests of the trust company's creditors and depositors and
30 other customers are not jeopardized because of an unsafe or unsound condition of the
31 trust company;

1 (2) the sale is in the best interest of the trust company's creditors and
2 depositors and other customers; and

3 (3) the Federal Deposit Insurance Corporation or its successor
4 approves the transaction unless the deposits of the trust company are not insured by
5 the Federal Deposit Insurance Corporation or its successor.

6 (b) A sale under this section must include an assumption and promise by the
7 purchaser to pay or otherwise discharge

8 (1) all of the trust company's liabilities to customers;

9 (2) all of the trust company's liabilities for the salaries of the trust
10 company's employees incurred before the date of the sale;

11 (3) the obligations incurred by the department arising out of the
12 supervision or sale of the trust company; and

13 (4) the fees and any other payment due to the department under this
14 chapter and assessments due to the department under AS 06.01.010.

15 (c) This section does not limit the incidental power of a trust company to buy
16 and sell assets in the ordinary course of its operations.

17 (d) The sale by a trust company of all or substantially all of its assets with
18 shareholder approval is considered a voluntary dissolution and liquidation and is
19 governed by AS 06.26.730 - 06.26.800.

20 **Article 10. Dissolution and Liquidation.**

21 **Sec. 06.26.730. Voluntary liquidation.** (a) Without department approval, a
22 trust company may not cease acting as a fiduciary in this state and voluntarily
23 surrender its certificate of authority and as a consequence be relieved of the necessity
24 to comply with the requirements of this chapter.

25 (b) A trust company proposing to cease acting as a fiduciary in this state shall
26 submit to the department

27 (1) a certified copy of a resolution of the trust company's board of
28 directors reflecting the board's decision that the trust company should cease acting as a
29 fiduciary in this state; and

30 (2) the trust company's plan adopted by its board for winding up its
31 fiduciary operations in this state.

1 (c) The department may approve or disapprove the trust company's plan for
2 winding up its fiduciary operations in this state based on the department's evaluation
3 of whether the plan provides adequate protection for those persons and interests for
4 whom the trust company acts as a fiduciary. The department's approval may be
5 subject to any condition the department determines appropriate under the
6 circumstances.

7 (d) During the implementation of a trust company's plan for winding up its
8 fiduciary operations in this state, the department retains the authority to supervise the
9 trust company and may conduct any examination relating to either the trust company
10 or the plan for winding up that the department considers necessary or appropriate.

11 (e) If the department has reason to conclude that the trust company is not
12 safely or expeditiously implementing the approved plan for winding up the trust
13 company's fiduciary operations in this state, the department may

14 (1) begin revocation proceedings under AS 06.26.740;

15 (2) take possession of the trust company's trust business in this state in
16 the same manner, with the same effect, and subject to the same rights accorded to the
17 trust company under AS 06.26.750.

18 (f) The department shall cancel the trust company's certificate of authority if
19 the department approves the trust company's plan for winding up its fiduciary
20 operations in this state and if all of the following conditions that apply to the trust
21 company have been met:

22 (1) the trust company has completed its plan for winding up its
23 fiduciary operations in this state consistent with any conditions that the department
24 imposed on the plan under (c) of this section;

25 (2) the trust company has been relieved under all applicable laws of all
26 duties as trustee, executor, administrator, registrar of stocks and bonds, or any other
27 type of fiduciary position under court, private, or other appointment that the trust
28 company had accepted;

29 (3) if the trust company has its principal place of business in this state,
30 the trust company has, under all applicable laws, wound up its fiduciary operations in
31 each of the other jurisdictions where the trust company solicited appointment or

1 served as a fiduciary, or otherwise acted as a fiduciary;

2 (4) if the trust company has its principal place of business in this state
3 and is not authorized to engage in activities other than acting as a fiduciary, the trust
4 company is being liquidated under AS 06.26.760 - 06.26.800.

5 (g) Upon the department's canceling the trust company's certificate of
6 authority, the trust company may not without obtaining a new certificate of authority
7 act as a fiduciary in this state, or in any jurisdiction.

8 **Sec. 06.26.740. Revocation.** (a) If the department determines that any of the
9 following factors exist, the department may revoke, consistent with AS 06.01.030 and
10 regulations adopted by the department under AS 06.01.030 and this chapter, a trust
11 company's certificate of authority:

12 (1) the existence of the trust company, or its authority to act as a
13 fiduciary, has been terminated or suspended under the laws of the state or other
14 jurisdiction in which the trust company is organized;

15 (2) the trust company's authority to act as fiduciary has been
16 terminated or suspended under the laws of the state or other jurisdiction in which the
17 trust company is organized, or its license to act as a fiduciary has been terminated or
18 suspended under the laws of any other jurisdiction in which the trust company had
19 been authorized to act as a fiduciary;

20 (3) a receiver, liquidator, or conservator has been appointed for the
21 trust company under the laws of the state or other jurisdiction in which the trust
22 company is organized, or for its operation in any other jurisdiction in which the trust
23 company operates;

24 (4) the trust company is violating or has violated or the department has
25 reasonable cause to believe is about to violate

26 (A) a law or regulation;

27 (B) a condition imposed by the department in writing in
28 connection with approving an application or notice under this chapter or
29 granting any other request of the trust company under this chapter;

30 (C) a written agreement that the trust company entered into
31 with the department;

1 (D) a cease and desist order issued by the department under
2 AS 06.01.030;

3 (5) the trust company is engaging in or has engaged in, or the
4 department has reasonable cause to believe the trust company is about to engage in an
5 unsafe or unsound practice;

6 (6) the trust company has ceased to pay its debts in the ordinary course
7 of business, is incapable of paying its debts as they mature, has liabilities in excess of
8 its assets, or is subject to or has applied for an adjudication in bankruptcy,
9 reorganization, or other relief under any bankruptcy, reorganization, insolvency, or
10 moratorium law;

11 (7) the trust company has ceased to act as a fiduciary in this state;

12 (8) the trust company has failed to pay any fees, charges, forfeitures,
13 penalties, or other payment due to the department under this title.

14 (b) If the department has reasonable cause to believe any of the factors
15 identified in (a) of this section is true, and if the department determines it is necessary
16 to protect the persons and interests in this state for whom the trust company acts as a
17 fiduciary or to protect the property in this state to which the trust company holds title
18 as a fiduciary or in which the trust company holds an interest as a fiduciary, the
19 department may immediately suspend the trust company's certificate of authority.

20 **Sec. 06.26.750. Authority to take possession.** If the department revokes a
21 trust company's certificate of authority under AS 06.26.740(a), the department may
22 take possession of the trust company's fiduciary operations in this state and may
23 appoint a receiver for the liquidation of the trust company's fiduciary operations in this
24 state. If the trust company has its principal place of business in this state, the
25 department may take possession of, and appoint a receiver for the liquidation of all the
26 trust company's fiduciary operations wherever they are conducted.

27 **Sec. 06.26.760. Department in possession.** (a) When the department has
28 taken possession of a trust company, it is vested with the full and exclusive power of
29 management and control, including the power to act as a trustee for trust assets, to
30 continue or discontinue the operation of the trust company, to stop or limit the
31 payment of the trust company's obligations, to employ necessary assistants, to execute

1 an instrument in the name of the trust company, to commence, defend, and conduct in
2 the trust company's name any action or proceeding to which the trust company may be
3 a party, to terminate the possession by restoring the trust company to its board, and to
4 reorganize or liquidate the trust company under this chapter. As soon as practicable
5 after taking possession, the department shall make an inventory of the trust assets and
6 the trust company assets and file a copy of the inventory with the superior court.

7 (b) When the department has taken possession, the following dates are
8 postponed until six months after the possession begins:

9 (1) notwithstanding other provisions of law, the date on which any
10 period of limitation fixed by a statute or agreement would otherwise expire on a claim
11 or right of action of the trust company; or

12 (2) the date on which an appeal must be taken or a pleading or other
13 document must be filed by the trust company in any pending court action or other
14 proceeding.

15 (c) A judgment, lien, or attachment may not be enforced against trust company
16 assets while the assets are in possession of the department. Upon the election of the
17 department in connection with a liquidation or reorganization,

18 (1) any lien or attachment, other than an attorney's or mechanic's lien,
19 obtained upon a trust company asset during the department's possession or within four
20 months before beginning that possession may be vacated, except liens created by the
21 department while in possession; and

22 (2) any transfer of trust company assets made after or in contemplation
23 of the trust company's insolvency or in anticipation of the department's takeover, with
24 intent to effect a preference of one creditor over another creditor or to prevent the
25 distribution of the trust company assets according to law, is void.

26 (d) The department may borrow money in the name of the trust company in
27 the department's possession and may pledge trust company assets as security for the
28 loan.

29 (e) All necessary and reasonable expenses resulting from the department's
30 possession of a trust company and of its reorganization or liquidation shall be paid
31 from trust company assets.

1 **Sec. 06.26.770. Reorganization.** (a) If the department decides to reorganize
2 a trust company, the department, after providing an opportunity for a hearing to all
3 interested parties, shall enter an order proposing a reorganization plan. The
4 department shall send a copy of the plan to each depositor and other customers and to
5 each creditor who will not receive payment of a claim in full under the plan and a
6 notice that, unless within 30 days the plan is disapproved in writing by persons
7 holding one-third or more of the aggregate amount of the claims, the department will
8 reorganize the trust company.

9 (b) A plan of reorganization may not be established under this chapter unless,
10 in the opinion of the department,

11 (1) the plan is fair to all classes of depositors, other customers,
12 creditors, and shareholders;

13 (2) subject to a fair adjustment for new capital that a class will pay
14 under the plan, the face amount of the trust company asset interest provided to a class
15 of depositors, other customers, creditors, or shareholders under the plan does not
16 exceed the value of the assets at liquidation less the full amount of the claims of all
17 prior classes;

18 (3) the plan provides for the issuance of common stock in an amount
19 that will provide an adequate ratio to deposits;

20 (4) any exchange of new common stock for obligations or stock of the
21 trust company will be made

22 (A) in the inverse order of the priorities in liquidation of the
23 classes that will retain an interest in the trust company; and

24 (B) upon terms that adjust in a fair manner any change in the
25 relative interest of the respective classes that will be produced by the
26 exchange;

27 (5) the plan assures the removal of a director, an officer, or an
28 employee responsible for a problem identified by the department, including an unsafe,
29 unsound, or unlawful action or the existence of an unsafe or unsound condition;

30 (6) any merger or consolidation provided by the plan complies with
31 this chapter.

1 (c) When in the course of reorganization, supervening conditions render a plan
2 of reorganization unfair or its execution impractical, the department may modify the
3 plan or liquidate the trust company.

4 **Sec. 06.26.780. Involuntary liquidation powers.** (a) When liquidating a
5 trust company, the department may exercise any power incidental to liquidating a trust
6 company, but it may not, without the approval of the superior court,

7 (1) sell trust company assets having an appraised value in excess of
8 \$100,000;

9 (2) compromise or release a claim that exceeds \$100,000 exclusive of
10 interest;

11 (3) make full payment on a claim, other than a claim upon an
12 obligation incurred by the department, before preparing and filing a schedule of the
13 department's determinations under AS 06.26.790(d)(3).

14 (b) Within six months after beginning the liquidation of a trust company, the
15 department may terminate an executory contract for services or advertising to which
16 the trust company is a party or an obligation of the trust company as a lessee. A lessor
17 who receives 60 days' notice of the department's decision to terminate a lease does not
18 have a claim for rent other than rent accrued to the date of termination or for damages
19 due to the termination.

20 (c) As soon as practical after beginning the involuntary liquidation of a trust
21 company, the department shall take the steps necessary to terminate all fiduciary
22 positions held by the trust company, to surrender all property held by the trust
23 company as a fiduciary, and to settle the trust accounts of the trust company.

24 **Sec. 06.26.790. Claims.** (a) As soon as practical after beginning the
25 liquidation of a trust company, the department shall

26 (1) mail a notice of the liquidation proceedings to the last known post
27 office address of each depositor, creditor, lessee of a safe deposit box, bailor of
28 property, and trustor and beneficiary of trust assets held by the trust company;

29 (2) post a notice of the proceedings conspicuously on the premises of
30 the trust company; and

31 (3) publish a notice that the department determines to be appropriate

1 for the proceedings.

2 (b) The department shall mail with the notice sent under (a)(1) of this section a
3 statement of the amount shown on the trust company's records to be the claim of the
4 depositor or creditor. The notice must also include a demand that a person who is
5 entitled to property held by the trust company as bailee or trustee or in a safe deposit
6 box of the trust company withdraw the property within 30 days. The notice must
7 direct those depositors and creditors who claim amounts different from the amounts in
8 the notice to file their claims with the trust company under the procedure described in
9 the notice and before a specified date. The specified day may not be less than 60 days
10 from the date of the first publication of the notice.

11 (c) A safe deposit box whose contents have not been removed within 30 days
12 after demand shall be opened. The department shall retain the contents of the box and
13 the other unclaimed property held by the trust company as bailee until the conclusion
14 of the liquidation proceedings. At the conclusion of the liquidation proceedings under
15 this section, the property held by the department under this subsection is considered
16 abandoned, and the department shall deliver the property to the Department of
17 Revenue under AS 34.45.110 - 34.45.780.

18 (d) Within six months after the last day specified in the notice for the filing of
19 claims, or within a longer period if allowed by the superior court, the department shall

20 (1) reject a claim that it determines to be invalid;

21 (2) determine the amount, if any, owing to each known creditor or
22 depositor and the priority class of the person's claim under this chapter;

23 (3) prepare a schedule of its determinations for filing in the superior
24 court;

25 (4) publish a notice in a newspaper once each week for three
26 successive weeks, of the times and places where the schedule of determinations will
27 be available for inspection and the date when the department will file its schedule in
28 court; the date may not be sooner than 30 days after the first publication.

29 (e) Within 30 days after the filing with the superior court of the department's
30 schedule under (d)(3) of this section, a creditor, depositor, or stockholder may file
31 with the court an objection to a determination. The court shall hear and determine the

1 filed objections after the notice to the department and interested claimants that the
2 court establishes. If the court sustains an objection, the court shall direct that the
3 schedule be modified appropriately.

4 (f) After filing its schedule, the department may make partial distribution to
5 the holders of the claims that are undisputed or are allowed by the court if an adequate
6 reserve is established for the payment of disputed claims. As soon as practicable after
7 the determination of all objections, the department shall make the final distribution.

8 (g) The following claims have priority in liquidation proceedings, in the order
9 listed:

10 (1) obligations incurred by the department in liquidating the trust
11 company;

12 (2) wages and salaries of officers and employees earned during the
13 three-month period preceding the department's possession in an amount not exceeding
14 \$3,000 for each person;

15 (3) fees and assessments owed by the trust company to the department;

16 (4) deposits;

17 (5) claims secured by trust company assets.

18 (h) After the payment of all other claims, including interest at the rate of 10.5
19 percent a year, the department shall pay claims that are otherwise valid but that were
20 not filed within the time prescribed.

21 (i) If the sum available for a class of creditors is insufficient to provide
22 payment in full, the sum shall be distributed pro rata to the claimants in the class.

23 (j) Unclaimed property remaining after the completion of the liquidation
24 proceedings under this section is presumed abandoned, and the property shall be
25 delivered to the Department of Revenue for handling under AS 34.45.110 - 34.45.780.

26 (k) After payment of the expenses of the liquidation and the claims against the
27 trust company arising from its fiduciary obligations in this state under AS 06.26.760 -
28 06.26.800, the receiver shall distribute any remaining money or other assets from the
29 liquidation of the trust company's fiduciary operations in this state equitably among, as
30 applicable, the receivers for liquidation of the trust company's fiduciary operations in
31 other states of the United States and under the laws of the United States, for payment

1 of the expenses of liquidation and claims against the trust company's fiduciary
2 operations. If the trust company's fiduciary operations are not being liquidated in
3 another state or under the laws of the United States, the receiver shall, after satisfying
4 the requirements of AS 06.26.760 - 06.26.800, pay any remaining money or other
5 assets from the liquidation of the trust company's fiduciary operations in this state to
6 the trust company.

7 (l) When the receiver has completed the liquidation of the trust company's
8 fiduciary operations in this state, the receiver shall, with notice to the department,
9 petition the court for an order declaring the trust company's fiduciary operations in this
10 state properly wound up under AS 06.26.760 - 06.26.800. Upon the filing of the
11 petition, the court shall proceed as provided in AS 06.26.760 - 06.26.800.

12 (m) An order issued by the court under a petition filed under (l) of this section
13 may only declare the trust company's fiduciary operations in this state have been
14 properly wound up and may not declare the trust company is dissolved. The court
15 may make whatever additional orders and grant whatever additional relief that the
16 court determines is proper under the evidence submitted.

17 (n) After an order is issued under (m) of this section declaring the trust
18 company's fiduciary operations in this state are properly wound up,

19 (1) the trust company shall, except for any further winding up, cease
20 acting as a fiduciary in this state or in any jurisdiction; and

21 (2) the receiver shall promptly file with the department a copy of the
22 order certified by the clerk of the court.

23 **Sec. 06.26.800. Federal Deposit Insurance Corporation as receiver or**
24 **liquidator.** The department may appoint the Federal Deposit Insurance Corporation
25 or its successor as receiver for a trust company that the department has taken
26 possession of if the deposits of the trust company are insured by that corporation or its
27 successor. Upon filing with the court a certificate indicating the acceptance of the
28 appointment by the Federal Deposit Insurance Corporation or its successor, the
29 possession of and title to all the assets, business, and property of the trust company are
30 transferred to that corporation. The department is then relieved of all responsibility
31 and liability with respect to the reorganization or liquidation of the trust company.

1 The Federal Deposit Insurance Corporation or its successor may liquidate, reorganize,
2 merge, or consolidate the trust company in the manner permitted by the laws of the
3 United States or by this chapter, and possesses all the rights, powers, duties, and
4 obligations of the department in the liquidation, reorganization, merger, or
5 consolidation of the trust company under this chapter.

6 **Article 11. Interstate State Trust Company, Interstate National**
7 **Trust Company, and International Trust Company Offices.**

8 **Sec. 06.26.810. Fiduciary operations at a branch or trust office.** (a) An
9 interstate state trust company, interstate national trust company, or international trust
10 company may not act as a fiduciary in this state unless the trust company maintains a
11 trust office in this state as permitted under AS 06.26.810 - 06.26.895.

12 (b) If an interstate state trust company, interstate national trust company, or
13 international trust company establishes or acquires a trust office in this state under
14 AS 06.26.810 - 06.26.895, the trust company may conduct at the trust office any
15 activity that a trust company may conduct at a trust office under this chapter.

16 **Sec. 06.26.820. Establishing or acquiring a trust office.** If an interstate state
17 trust company, interstate national trust company, or international trust company that
18 does not operate a trust office in this state meets the requirements of AS 06.26.810 -
19 06.26.895, the trust company may establish a new trust office in this state or acquire a
20 trust office in this state that is in existence at the time of acquisition.

21 **Sec. 06.26.830. Requirement of notice.** To establish a new trust office or
22 acquire a trust office that is in existence at the time of acquisition in this state under
23 AS 06.26.810 - 06.26.895, an interstate state trust company, interstate national trust
24 company, or international trust company shall provide, or cause its home jurisdiction
25 regulator to provide, written notice of the proposed transaction to the department on or
26 after the date on which the trust company applies to its home jurisdiction regulator for
27 approval to establish or acquire the trust office. The trust company shall file with the
28 notice and maintain a copy of a resolution adopted by the board of the trust company
29 authorizing the establishment or acquisition of the office and shall pay the filing fee
30 established by the department by regulation.

31 **Sec. 06.26.840. Conditions for approval.** (a) An interstate state trust

1 company or international trust company may not establish or acquire a trust office in
2 this state under AS 06.26.810 - 06.26.895 unless

3 (1) the trust company confirms in writing to the department that, while
4 the trust company maintains a trust office in this state, the trust company will comply
5 with all applicable laws of this state, including, except where the context or this
6 section indicates otherwise, the provisions of this chapter applicable to trust
7 companies organized under this chapter;

8 (2) the trust company provides satisfactory evidence to the department
9 of compliance with the

10 (A) requirements for foreign corporations under AS 10.06; and

11 (B) applicable requirements of its home jurisdiction regulator
12 for establishing or acquiring and maintaining the office;

13 (3) the department, acting within 90 days after receiving notice under
14 AS 06.26.830, certifies to the home jurisdiction regulator that the requirements of
15 AS 06.26.810 - 06.26.895 have been met and the notice has been approved or, if
16 applicable, that any conditions imposed by the department under (b) of this section
17 have been satisfied;

18 (4) the department receives evidence from the trust company that the
19 department determines clearly demonstrates that the establishment or acquisition will
20 serve the public interest and well-being; the evidence must address the factors listed in
21 AS 06.26.090(b); and

22 (5) the department has received all required fees and the affidavit of
23 publication required by AS 06.26.100(b).

24 (b) An interstate state trust company or international trust company may begin
25 acting as a fiduciary at a trust office on the 91st day after the date that the department
26 receives the notice under (a) of this section for the trust office unless the department
27 specifies a different date.

28 (c) The department may extend the 90-day period of review provided by (a) of
29 this section if the department determines that the written notice raises issues that
30 require additional information or additional time for analysis by the department. If the
31 department extends the 90-day period of review, the trust company may establish the

1 trust office only after written approval by the department.

2 (d) The department may deny an interstate state trust company or international
3 trust company permission to establish or acquire the trust office if the department finds
4 that the trust company lacks sufficient financial resources to undertake the proposed
5 expansion without adversely affecting its safety or soundness or that the proposed trust
6 office would be contrary to the public interest. When acting on the notice provided
7 under (a) of this section, the department shall consider the views of the home
8 jurisdiction regulator.

9 (e) If an interstate state trust company or international trust company is ~~not~~
10 required by AS 10.06 or another law of this state to maintain a registered agent in this
11 state, the trust company shall file a written consent with the department permitting the
12 commissioner to act as the agent for the trust company for service of process in a court
13 action arising out of or connected with the proposed trust office.

14 (f) An interstate national trust company may not establish or acquire a trust
15 office in this state unless the trust company provides satisfactory evidence to the
16 department of compliance with the applicable requirements of its home jurisdiction
17 regulator for establishing or acquiring and maintaining the office.

18 **Sec. 06.26.850. Representative office business; registration.** (a) An
19 interstate state trust company, interstate national trust company, or international trust
20 company may not provide fiduciary services, but may otherwise engage in trust
21 business, at a representative office as permitted by AS 06.26.810 - 06.26.895.

22 (b) Subject to the requirements contained in AS 06.26.810 - 06.26.895, an
23 interstate state trust company, interstate national trust company, or international trust
24 company may establish or acquire representative offices in any location in this state.

25 (c) If an interstate state trust company or international trust company that does
26 not maintain a trust office in this state wants to establish or acquire a representative
27 office in this state, the trust company shall file a notice with the department on a form
28 prescribed by the department. The trust company shall furnish a copy of a resolution
29 adopted by its board authorizing the establishment or acquisition of the representative
30 office and shall pay the filing fee established by the department by regulation. The
31 notice required under this subsection must provide the name of the trust company, the

1 location of the proposed representative office, and satisfactory evidence that the trust
2 company is chartered or otherwise organized in another jurisdiction to act as a
3 fiduciary.

4 (d) An interstate state trust company or international trust company may
5 commence business at a representative office on the 61st day after the date that the
6 department receives the notice required under (c) of this section unless the department
7 specifies a different date.

8 (e) The department may extend the 60-day period of review provided by (d) of
9 this section if the department determines that the written notice raises issues that
10 require additional information or additional time for analysis by the department. If the
11 60-day period of review is extended, the trust company may establish the
12 representative office only after written approval by the department.

13 (f) In addition to the other requirements of this section, in order to receive
14 permission to establish or acquire a representative office in this state, an interstate
15 state trust company or international trust company must have sufficient financial
16 resources to undertake the proposed expansion without adversely affecting its safety or
17 soundness and the proposed representative office may not be contrary to the public
18 interest. When acting on the notice provided under (c) of this section, the department
19 shall consider the views of the home jurisdiction regulator.

20 (g) The department may determine by order that an interstate state trust
21 company or international trust company does not meet the requirements for
22 establishing or acquiring a representative office in this state under this section. An
23 order issued under this subsection is effective on the date of its issuance or on another
24 date as the department may determine.

25 (h) An interstate national trust company shall give the department notice of its
26 intent to establish or acquire a representative office in this state.

27 **Sec. 06.26.860. Additional trust offices.** If an interstate state trust company
28 or international trust company maintains a trust office in this state under AS 06.26.810
29 - 06.26.895, the trust company may establish or acquire additional trust offices or
30 representative offices in this state to the same extent and in the same manner that a
31 trust company may establish or acquire branch offices in this state under the

1 procedures for establishing or acquiring branch offices under AS 06.26.160.

2 **Sec. 06.26.870. Examinations; periodic reports; cooperative agreements;**
3 **assessment of fees.** (a) When the department considers it necessary to protect the
4 public interest, the department or a competent person designated by the department
5 may examine an interstate state trust company or international trust company that has
6 a trust office or a representative office in the state. The trust company shall pay a fee
7 established under AS 06.01.010 for the examination.

8 (b) The department may require periodic reports from an interstate state trust
9 company or international trust company if the trust company maintains a trust office in
10 this state and from a bank holding company that controls the trust company. The
11 reports shall be made under oath and filed as frequently as required by the department.
12 The reports must contain the information and detail that the department determines to
13 be appropriate as required under regulations adopted by the department.

14 (c) If an interstate state trust company or international trust company
15 maintains a trust office or a representative office in this state, the trust company may
16 be assessed and, if assessed, shall pay supervisory and examination fees as required by
17 the laws of this state and regulations of the department. Fees may be shared with other
18 governmental regulators or any organization affiliated with or representing
19 governmental regulators under agreements between the department and the regulators
20 or organization.

21 **Sec. 06.26.880. Enforcement.** (a) Consistent with AS 06.01.030 and
22 regulations adopted by the department under AS 06.01.030 or this chapter, the
23 department may determine that

24 (1) an office maintained by an interstate state trust company or
25 international trust company is being operated in violation of a provision of the laws of
26 this state or in an unsafe and unsound manner; or

27 (2) an interstate state trust company or international trust company is
28 engaged in an activity that the trust company may not engage in under this chapter.

29 (b) If either of the conditions in (a) of this section exists, the department may
30 take the enforcement actions it would be empowered to take if the office or the
31 company were a trust company established under this chapter, including issuing an

1 order temporarily or permanently prohibiting the trust company from acting as a
2 fiduciary in this state.

3 (c) If a matter involves extraordinary circumstances that require immediate
4 action, the department may take any action permitted by this section without providing
5 notice or an opportunity for a hearing before taking the action. The department shall
6 promptly give notice to the home jurisdiction regulator of each enforcement action
7 taken against an interstate state trust company or international trust company and, to
8 the extent practicable, shall consult and cooperate with the home jurisdiction regulator
9 when pursuing and resolving an enforcement action.

10 **Sec. 06.26.890. Notice of subsequent merger, consolidation, or closing.** If
11 an interstate state trust company, interstate national trust company, or international
12 trust company maintains a trust office or a representative office in this state under this
13 chapter, the trust company shall give at least 60 days' prior written notice, or, in the
14 case of an emergency transaction, shorter notice that is consistent with applicable state
15 and federal law, to the department of

16 (1) a merger, consolidation, or other transaction that would cause a
17 change of control with respect to the trust company or any bank holding company that
18 controls the trust company if an application would be required to be filed under 12
19 U.S.C. 1817(j) (Change in Bank Control Act of 1978) or 12 U.S.C. 1841 - 1850 (Bank
20 Holding Company Act of 1956);

21 (2) a transfer of all or substantially all of the trust accounts or trust
22 assets of the trust company to another person;

23 (3) the closing or other disposition of any trust office of the trust
24 company in this state.

25 **Sec. 06.26.895. Definitions.** In AS 06.26.810 - 06.26.895,

26 (1) "international trust company" means an international trust company
27 whose home office is not located in this state;

28 (2) "interstate national trust company" means an interstate national
29 trust company whose home office is not located in this state;

30 (3) "interstate state trust company" means an interstate state trust
31 company whose home office is not located in this state.

1 **Article 12. Miscellaneous Provisions.**

2 **Sec. 06.26.900. Powers of department.** The department may

3 (1) exercise general supervision over trust companies, interstate trust
4 companies, and international trust companies, and the subsidiaries and affiliated
5 corporations of trust companies, interstate state trust companies, and international trust
6 companies;

7 (2) in addition to other authority in this chapter to adopt regulations,
8 adopt regulations necessary to interpret and implement this chapter, including
9 regulations providing for the retention and preservation of records;

10 (3) review and approve or disapprove applications for trust companies
11 under AS 06.26.090, trust company branch offices under AS 06.26.160, representative
12 offices under AS 06.25.170, and trust offices and representative offices under
13 AS 06.26.810 - 06.26.895;

14 (4) issue permits authorizing trust company holding companies to do
15 business in this state;

16 (5) determine for each trust company the amount of paid-in capital
17 necessary to operate under AS 06.26.120;

18 (6) review and approve transfers of trust company ownership under
19 AS 06.26.450;

20 (7) perform examinations of trust companies, branch offices,
21 representative offices, and subsidiaries of trust companies and private fiduciaries
22 under AS 06.01.015 and this chapter;

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

27 (9) approve under AS 06.26.190 the operation of a branch trust
28 company on a schedule different than normal banking days;

29 (10) approve the operation by a trust company of an automated teller
30 machine in accordance with AS 06.05;

31 (11) approve certain trust company subsidiaries;

1 (12) approve the acceptance by a trust company of the trust company's
2 stock or of the stock of the trust company's holding company as security for a loan
3 under circumstances approved by the department;

4 (13) restrict the withdrawal of deposits from a trust company if the
5 department finds that extraordinary circumstances make restriction necessary for the
6 proper protection of depositors;

7 (14) require a trust company to

8 (A) maintain its capital and reserve accounts in amounts
9 determined appropriate by the department;

10 (B) observe the methods and standards that the trust company
11 adopts for determining the value of various types of assets;

12 (C) charge off part or all of an asset that has not been lawfully
13 acquired;

14 (D) write down an asset to its market value;

15 (E) record liens and other interests in property;

16 (F) obtain a financial statement from a borrower or prospective
17 borrower to the extent that the trust company can obtain the statement;

18 (G) obtain insurance against damage to real property taken as
19 security;

20 (H) search or obtain insurance on the title to real property taken
21 as security;

22 (I) maintain adequate insurance against risks as the department
23 determines necessary and appropriate for the protection of depositors and the
24 public;

25 (J) charge off that portion of an asset classified as a loss, or
26 charge off or reserve up to 50 percent of loans classified as doubtful, in a state
27 or federal report of examination; or

28 (K) charge off all debts owed to the trust company in which
29 interest is past due and unpaid for a period of six months, unless the debt
30 principal is adequately secured and the trust company is in the process of
31 collection;

1 (15) require the board of directors of a trust company to hold a meeting
2 under AS 06.26.520;

3 (16) order the removal of a board member of a trust company under
4 AS 06.26.510;

5 (17) order a trust company to suspend the payment of dividends under
6 AS 06.26.120 and regulations adopted by the department;

7 (18) require a trust company to increase its capital accounts under
8 AS 06.26.120;

9 (19) take possession of a trust company in the manner provided in
10 AS 06.26.730 - 06.26.750, and operate, reorganize, or liquidate the trust company after
11 taking possession;

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

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

16 **Sec. 06.26.905. Cooperative agreements.** (a) The department may enter into
17 cooperative, coordinating, or information-sharing agreements with other governmental
18 regulators or with an organization affiliated with or representing governmental
19 regulators to handle the periodic examination or other supervision of a trust office that
20 is located in this state and owned by an interstate state trust company or of a trust
21 office that is located in a host state and owned by a trust company. Under the
22 agreements, the department may accept reports of examination and reports of
23 investigation instead of conducting the department's own examinations or
24 investigations.

25 (b) The department may enter into joint enforcement action agreements with
26 other governmental regulators having concurrent jurisdiction over a trust company that
27 is located in this state and owned by an interstate state trust company organized in
28 another state or over a trust office that is located in a host state and owned by a trust
29 company.

30 (c) Notwithstanding the existence of an agreement under this section, the
31 department may at any time make an examination or take independent supervisory or

1 enforcement action if the department determines that the examination or action is
2 necessary or appropriate to carry out the department's responsibilities under this
3 chapter or to ensure compliance with the laws of this state.

4 **Sec. 06.26.910. Appeals.** (a) A person may appeal to the department

- 5 (1) a denial of an application under AS 06.26.090(e);
6 (2) an order under AS 06.26.120 to increase or adjust capital;
7 (3) a denial under AS 06.26.150 of a change of the location of a home
8 office under AS 06.26.150;
9 (4) a denial under AS 06.26.160 of permission for a trust company to
10 establish a branch office;
11 (5) a denial under AS 06.26.170 of permission to establish or acquire
12 a representative office;
13 (6) a denial under AS 06.26.180(d) of permission to establish an office
14 outside this state;
15 (7) a denial of a private fiduciary exemption under AS 06.26.200 and
16 06.26.210;
17 (8) the conditions or limitations established for an exemption under
18 AS 06.26.200(d);
19 (9) the revocation of an exemption under AS 06.26.230;
20 (10) a denial of permission for a private fiduciary to convert to a trust
21 company under AS 06.26.240;
22 (11) a denial under AS 06.26.470 of an application to acquire control
23 of a trust company;
24 (12) the disapproval under AS 06.26.650 of a conversion, merger, or
25 consolidation;
26 (13) a denial under AS 06.26.840(d) of permission to establish or
27 acquire a trust office in this state;
28 (14) a denial under AS 06.26.850(g) of permission to establish or
29 acquire a representative office in this state; and
30 (15) a denial under AS 06.26.860 of permission for additional trust
31 offices or representative offices.