

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

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Tony Knowles, Governor

Alaska Department of Community and Economic Development

Division of Banking, Securities, and Corporations

P.O. Box 110807, Juneau, AK 99811-0807

Telephone: (907) 465-2521 • Fax: (907) 465-2549 • TDD: (907) 465-5437

Email: dbsc@dced.state.ak.us • Website: www.dced.state.ak.us/bsc/bsc.htm

March 27, 2001



The Honorable Randy Phillips
Chairman, Senate Labor and Commerce Committee
Alaska Senate
State Capitol Room 103
Juneau, AK 99801-1182

Dear Chairman Phillips:

RE: Requested comments on privacy in SB 66

At the last hearing on SB 66, you asked the division to provide you with written comments on the amendments proposed by the Alaska Bankers Association and with a written statement concerning privacy. We respectfully submit the attached documents in response to that request.

As you will see, our comments on the association's proposed amendments include some suggestions for amending SB 66 with which we agree. Also, please note the footnote on the first page of the policy statement. We will let you know as soon as we get some clarification on the applicability of the Fair Credit Reporting Act (FCRA) to information sharing among affiliates. Under the broadest interpretation, the FCRA may apply to all information shared between affiliates. This would mean the opt-in provision in SB 66 would apply to information sharing between nonaffiliated third parties. Under that interpretation, the FCRA would require financial institutions to provide customers an opt-out opportunity for sharing with affiliates in order to avoid certain reporting requirements of the FCRA. Under a narrow interpretation, the FCRA deals with a smaller subset of information in a financial institution's records. In either case, we do not believe any amendment to SB 66 will be required because of this issue.

We will be happy to discuss these with the committee on Thursday, March 29, 2001.

Yours truly,

Franklin T. Elder
Director

Enclosures (2)

Comments on the Bankers Association's Proposed Amendments Regarding Privacy and Certain Definitions in SB 66

Sec. 06.01.028(a)

It is not clear to us why the proposed amendment differentiates between "records" and "information contained in such records." Current law and SB 66's proposed privacy section refer only to records, and the implication is that there is no difference between the records and the information in the records. If the bankers association is suggesting a difference, we would need to hear what that is, and why it is necessary to make the distinction. Otherwise, it would seem superfluous.

It is not clear to us why the proposed amendment needs to specify that disclosure of the records and information may not be made to a person or government. Current law and SB 66's proposed privacy section prohibits disclosure except under certain circumstances, period. We do not see the point to specifying "person or government." Further, that specification raises the question as to whether disclosure is possible as long as it is not directly to a person or government. Also, Sec. 01.10.060(a)(8) of Alaska Statutes defines a person as indicated in part:

Sec. 01.10.060(a)(8). In the laws of the state, unless the context otherwise requires...
"person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person:

This could be used, or it could be modified to specifically include newer forms of organizations such as a limited liability company, limited partnership, and limited liability partnership. This comment also goes to the association's proposed definition of "person" at proposed Sec. 06.01.050(4).

Since an exception in current law and SB 66's proposed privacy section includes compelling disclosure by court or administrative agency order, subpoena, or other process under the supervision of a court, it hardly seems necessary to specify "government" in the association's proposed amendment. Unless the association members have been approached by governmental agencies that have asserted that nondisclosure does not cover them, this seems like a superfluous inclusion. Indeed, current law and SB 66's section appears clearer in that all disclosure is prohibited unless permitted under specified provisions.

Sec. 06.01.028(a)(2)

We see no value in combining the exception for disclosure required by statute and regulation with the exception for disclosure by subpoena, etc. That produces unnecessary confusion when reading the proposed AS 06.01.028(c) that references (a)(2), but appears to limit its effect to disclosures under subpoenas, etc. Current law and SB 66's proposed privacy section keeps these exceptions separate.

We do not agree with the phrase "having jurisdiction of the financial institution" since that may be interpreted to exclude subpoenas from administrative agencies pursuing investigations of securities or insurance fraud. We would not want to be in a position where the banking section of the division of banking, securities and corporations must ask the division to issue a subpoena that is needed by one of the other legitimate investigative agencies of the state

The Senate Labor and Commerce Committee, however, may want to consider adding a provision specifically for federal and state financial institution examiners having jurisdiction over the financial institution in the normal course of their examination. We only mention this because of the slight wording change in AS 06.01.028(a) from current AS 06.05.175. The current law prohibits making the information "public." As SB 66 went through the drafting process, the lack of a definition of making information public evidently lead to the change to may not be disclosed. Certainly, AS 06.05.175 was never meant to limit disclosure to bank examiners, because their examinations are confidential also.

Now that we read the section again in connection with the notification requirement under both proposals, the Committee may wish to make it very clear that this prohibition of disclosure does not apply to federal or state bank examiners and their supervisors. This was brought to our attention also because the bankers association's proposal specifically mentions "or a government" in its AS 06.01.028. We doubt that the association intends to block access to records by examiners, and we also doubt that banks currently notify customers under AS 06.05.175(b) when an examiner reviews these records. With all this in mind, a clarifying subsection under SB 66's proposed AS 06.01.028(a) providing for disclosure to state and federal examiners and their supervisors might be appropriate.

Sec. 06.01.028(a)(3)

This subsection refers to the first 9 sections in the Gramm-Leach-Bliley Act (GLBA) dealing with the disclosure of nonpublic personal information. Generally speaking, this allows financial institutions to share nonpublic personal information freely among affiliates and to share this information with nonaffiliated third parties, if the customers have been given adequate opportunity to opt-out of the sharing and have not done so. Section 524 of the GLBA protects the states' ability to establish and enforce more stringent protections, as ultimately determined by the Federal Trade Commission (FTC).

We object to this on the grounds that this provision goes well beyond the consumer protections afforded Alaskans for over 30 years in the Alaska Banking Code at AS 06.05.175(a)(3). That section, reproduced in SB 66 at AS 06.01.028(a)(3), preserves the right to privacy of depositors and customers of financial institutions that we believe Alaskans want and the Alaska Constitution (at section 1.22) requires. We expand on these comments in the separate statement with respect to privacy.

What is dropped from Sec. 06.01.028(a)?

We note that the bankers association's proposed amendment drops two subsections from SB 66's provision that were also carried over from the current law at AS 06.05.175. The subsections are AS 06.01.028(a)(4) and (5). The first provides for verification of sufficient funds, and the second provides for verification of payment habits to financial institutions and specified credit reporting agencies. The value of deleting long-standing subsections from the privacy provision is not clear to us. We doubt the bankers association members have plans not to verify funds and provide payment history to credit reporting agencies. If these are covered adequately elsewhere, we would ask the association to show it, and to explain why they excluded these subsections, and if there is any difference between provisions elsewhere on which they would rely and these current provisions. Even if these provisions are provided for elsewhere, it might be better to be a

bit superfluous in this case to avoid any implications that might be drawn from the deletion of long-standing provisions.

Sec. 06.01.028(b)

This subsection of the bankers association's proposed amendment deals with a requirement by the court or administrative agency to reimburse the financial institution for reasonable costs in complying with an order or other process. We agree that financial institutions should be reimbursed for reasonable costs. We provide for that at AS 06.01.028(c) at section 3, page 3, lines 10-13 of the Committee Substitute (CS). However, we realize that amended language is needed because the old language was restricted to court orders, since the old AS 06.05.175(a)(1) was limited to court orders. When that subsection is expanded to include administrative orders in SB 66, we realize it is necessary to expand (c) as follows:

(Section 3, page 3, lines 8-11) Replace (c) with new language as follows:

(c) When disclosure of financial institution records is compelled under (a)(1) of this section, the document shall provide for the reimbursement of the financial institution for the reasonable costs incurred in complying with the order.

We recommend this amendment to the Committee. This amendment provides for reimbursement of reasonable costs for compliance with any process under (a)(1), whereas the current language only references court actions, and avoids the repetitious list of processes in (a)(1).

So, our general comment is that our amended (c) does what the association's (b) does, and does not contain the phrase "but is not required." Some argument could be made that financial institutions benefit from enforcement actions against law violators, and so the matter of reimbursement should not rise to such a prominent level in the decision of whether the institution needs to comply with the order. While we agree that institutions should be reimbursed, we are uncomfortable with saying the institution is not required to comply with an order simply because of a disagreement over the amount of reimbursement.

Sec. 06.01.028(c)

This section of the association's proposed amendment deals with the requirement to notify depositors or customers about the disclosure made under certain subsections. We see a number of problems with the drafting of this section.

First, (c) covers disclosures under (a)(3) and (b), yet (a)(3) is the GLBA and (b) only relates to reimbursement of costs. We doubt that the association really intends that notification be made each time the institution discloses nonpublic personal information to an affiliated or nonaffiliated third party. While that might provide interesting feedback from customers and depositors, that goes beyond any proposal we contemplate. So, unless otherwise informed, we assume the association would not want to include (a)(3) and (b) in this subsection.

Current law at AS 06.05.175(b) requires notification, if possible, before disclosure is made under an order or statute or regulation. If prior notification is not possible, "immediate" notification is required. Finally, notification is not allowed for disclosure under a search warrant, or a court order issued at the behest of a grand jury. In SB 66's AS 06.01.028(b), this is generally carried over, but with some modification.

Please note, however, that we recommend a slight amendment for this subsection as follows:

(Section 3, page 3, lines 5-9 of the CS) Replace the sentence beginning "However, notification..." with the following sentence:

However, notification either before or after disclosure may not be made if disclosure is made under a process included (a)(1) of this section and the document requiring disclosure on its face requires the financial institution not to notify the depositor or customer.

This amendment covers more accurately the processes provided for in (a)(1) of the section, and also clarifies that the financial institution shall not notify the customer if the order, subpoena, or similar document states on its face that the customer is not to be notified.

As amended, our subsection now covers administrative orders as well. Also, we continue to require notification before disclosure, as under current law, except as prohibited elsewhere in the subsection. We replace the more confusing "immediate" requirement with a requirement to notify the customer "as soon as practicable after disclosure is made" if prior notification was not possible. We understand these kinds of criteria are not a "bright line." On the other hand, it may be advantageous for a financial institution to be able to argue over what is "as soon as practical" than to miss an unforgiving deadline. Finally, in our amendment to this subsection, we make it clear that the document requesting disclosure must contain a statement on its face that the customer is not to be notified. This is an added requirement on courts and agencies from the current provision for an outright prohibition from disclosure for search warrants and grand-jury-requested court orders.

The bankers association's proposed amendment sets a bright line for notification by mail within 3 business days of the receipt of the order. It drops the requirement for prior notification where possible. The main purpose of prior notice is to allow the customer to take steps to block the disclosure. Current and proposed law in SB 66 recognizes that prior notice is not always possible, and provides for that. This seems to us to be preferred to one that does not contemplate prior notice at all.

Further, the association's proposed (c) requires the mail notification "unless the order is, or is accompanied by, a court order that expressly directs the financial institution not to notify or inform the depositor or customer." No administrative agency could ever get a court order like that to accompany its subpoena. The association has requested clarity so they know when to notify and not to notify the customer. We believe SB 66 provides that clarity by requiring the order to state on its face that the customer is not to be notified. The institution should be adequately protected if it relies in good faith on the face of the document.

What provisions are dropped entirely from Sec. 06.01.028?

We note that the bankers association's proposed amendment dropped SB 66's subsection AS 06.01.028(d). This new subsection establishes liability of the financial institution to their customers for actual damages resulting from intentional violations of the section. Liability does not apply if the institution relies in good faith on any provision of the section. This seems patently reasonable to us. It is not an onerous provision, since customers would have to show both damages and intent under SB 66.

The association's proposed amendment also does not include the division's proposed amendment adding a new subsection (e) that provides for disclosing information to a person, whether affiliated or not, necessary to provide essential services of a financial institution. This could cover check printers, statement printers, auditors, outside accountants, etc. All these are necessary to provide the institution's essential services. They would need to be bound not to disclose information also.

The association's proposed amendment does not include the division's proposed amendment adding a new subsection (f) that provides for applying the privacy provisions to entities under AS 10.13 (the Alaska BIDCO Act). As we explained to the Committee in hearing, our goal was to include BIDCOs under the privacy provision, not under other provisions of Title 6 that do not apply to a BIDCO. Thus, we dropped reference to BIDCOs and CFAB from the definitions of "state financial institutions" and added the BIDCO as a subsection in the privacy section.

Sec. 06.01.050 Definitions

The bankers association's proposed amendment deletes the new definitions of "financial institution" and "state financial institution" in SB 66. It also applies its definitions to all of Title 6 and not simply Chapter 01. This latter change seems unnecessary to us. The definitions are already tied to each chapter and we would recommend continuing that.

Concerning the definitions themselves, however, we do not agree with deleting SB 66's list of entities included in the definition of "financial institution." We believe this list is instructive and informative. We do not know why the association proposes dropping the list from the definition. We doubt they believe this would drop national banks from any provision of Title 6, since the state clearly has regulatory responsibility in interstate branching, and, under the GLBA, setting privacy provisions. So, absent any other information, we would not support deleting the list from that definition.

On the other hand, we have no real objection to replacing "institution" with "person," as the association suggests, since the current definition of "financial institution" as an "institution" sounds a bit circular. As mentioned above, however, the association's proposed definition of "person" is not adequate. Something like the following would be better:

"Person" means a corporation, company, limited liability company, partnership, limited partnership, limited liability partnership, firm, association, organization, business trust, or society, as well as a natural person.

In our proposed amendment to SB 66, we already proposed deleting reference to AS 10.13 and AS 44.81 from the definition of "state financial institution." The association's definition also deletes "or that is subject to examination by the department under this title." This definition is found at section 5, page 4, and section 43, page 18 of the Committee Substitute (CS) handed out at the last hearing.

Our primary purpose for including the phrase was to use this in AS 06.05.065 that regulates potential conflicts of interest between the institutions we examine and our examining staff, the director, and the commissioner. That is why SB 66 (at section 8, page 5, lines 8-16 of the CS) deleted "that has a certificate of authority under this title" and inserted "state" in front of

financial institution. "State financial institution" also is found in AS 06 05.065(b)(4) at section 9, page 5, line 23 of the CS.

We would have no objection to the association's suggestion of deleting "or that is subject to examination by the department under this title." In the two definitions described above as long as the Committee also modified sections 8 and 9. The Committee could consider the following changes:

(Sec. 8, page 5, lines 14-15 of the CS) Amend AS 06.05.065(a) as follows:

A person subject to this section may not borrow money from a [FINANCIAL INSTITUTION THAT HAS A CERTIFICATE OF AUTHORITY UNDER THIS TITLE] person that is subject to examination by the department, except as provided in this section.

(Sec. 9, page 5, lines 23-26 of the CS) Amend AS 06.05.065(b)(4) as follows:

(4) be indebted to a [STATE FINANCIAL INSTITUTION] person that is subject to examination by the department upon an installment debt incurred by the employee in the purchase of goods for personal use only and transferred to the financial institution in the regular course of business, including debts for household goods, mobile homes, motor vehicles, or boats; or

We would ask the Committee to please be sure to leave in the CS the amended language for AS 06.05.065(b)(5) at section 9, pages 5-6, lines 27-3 in order to remove the other reference to state financial institution in AS 06.05.065. These suggestions are offered in case the Committee would want to adopt the association's proposed deletion of the phrase "or that is subject to examination by the department under this title" from the definitions of "state financial institution" in sections 5 and 43 of the CS (but also deleting reference to AS 10.13 and AS 44.81), and to use the words "a person" to replace the words "an institution" in the definition of "financial institution" at section 4, page 3, line 27 and at section 40, page 17, line 29 of the CS. We have no objection to those changes as described.

Comments on the bankers association's proposal to amend AS 06.05.015

We testified before the committee that several provisions of the current statutes and regulations make the association's proposed amendment to AS 06.05.015 unnecessary, because we already have sufficient flexibility to set the examination schedule at any appropriate interval, and we have never had a complaint about our examination schedule. We do not disagree with the underlying intent of the proposal that, as expressed to us by association members, is to limit exams to only those necessary to accomplish our responsibility for monitoring the safety and soundness of the institutions. After discussing this with the association member who provided testimony, we agreed that this amendment could be withdrawn, and a much simpler amendment considered by the Committee, as follows:

(At page 1, line 13 of the CS) Add a new section amending AS 06.01.015(a) as follows:

(a) Financial institutions regulated under this title are subject to at least one examination [EACH YEAR] during an 18-month period. The department may conduct additional examinations at its discretion.

In addition, since we discussed with the Committee our policy of coordinating examinations with the Federal Deposit Insurance Corporation (FDIC) and the National Credit Union Administration (NCUA), it would be appropriate to update the policy section at AS 06.01.040. This could be accomplished by adding a new section as follows:

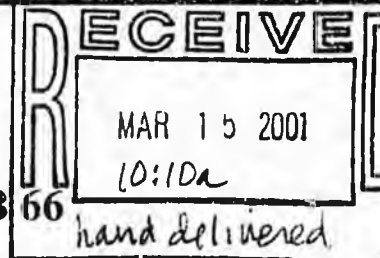
Amend AS 06.01.040 by inserting a new section (at page 3, line 26 of the CS, and renumber subsequent sections) to read:

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

If the bankers association agrees with these and withdraws the proposed amended AS 06.01.015, we need not make comments on the drafting of that proposal. If the association does not agree, then we would need to point out some drafting problems.

Comments on the bankers association's proposal to amend Court Rules

After speaking with the department of law on this question, we believe there is no need for a change of court rules to accommodate the proposed language of AS 06.01.028(c) requiring provision for reimbursement of reasonable expenses incurred by a financial institution in meeting the terms of a subpoena or other court order. Essentially the same provision already is included in current AS 06.05.175(d). SB 66 applies this to "financial institutions" and not just "banks," and the reimbursement extends to administrative orders and not just court orders.



Comments on the Privacy Policy Reflected in SB 66

While it is possible to be verbose and philosophical in describing something called a Privacy Policy, it is also possible to state it simply. In SB 66, we have proposed AS 06.01.028 (as amended) to maintain the current right of depositors and customers of financial institutions in Alaska to determine affirmatively whether nonpublic personal information about them, residing in the records of the financial institutions, will be shared by the institutions with others, whether affiliated with those institutions or not.¹ This is the same protection and right these depositors and customers of banks have had for over 30 years in Alaska. Now that the Gramm-Leach-Bliley Act (GLBA) has removed the depression-era prohibitions of affiliations of banks, insurance companies, and securities firms, it is even more important to ensure the protection of the privacy of the Alaskans who are customers of these institutions.

While we agree with the industry that these records are records of the financial institutions, we believe Alaskans reserve the right to determine how and if the content of those records will be shared. We also believe the Alaska Constitution (at section 1.22) requires it. By affirmatively determine its use, we mean that the institutions must continue to obtain specific prior approval to share information from the customer, unless it is a type of information or for a purpose that is provided for in federal or state law. For example, public information about a customer is not confidential. This type of information might be published in a phone book. Also, information for credit reporting agencies, responses to court and administrative orders, and verification of sufficient funds will not require a customer's approval. But sharing of nonpublic, personal information not covered by exceptions should be approved by the customer. For the last 30 years, Alaska law has provided this protection.

In the jargon of the discussion on privacy, this is called opt-in. In an opt-in system, the institutions must obtain the affirmative authorization of customers to share nonpublic information. The GLBA provides no limitations on sharing information among affiliates and only requires an opt-out system for sharing nonpublic information with nonaffiliated third parties. Under an opt-out system, the institutions must provide reasonable opportunity to customers to say no to sharing, but, if they do not respond, then the institutions are free to share. With opt-in, customers are out unless they ask to be in. With opt-out, customers are in unless they ask to be out. Since many people do not respond to requests from institutions, these people would be in under the opt-out system, which is exactly why institutions prefer this system.

Fortunately, section 524 of the GLBA provides states the right to adopt more restrictive privacy provisions than those in the GLBA. The Federal Trade Commission (FTC) can determine

¹ We are still looking in to the question of whether the Fair Credit Reporting Act (FCRA) preempts state restrictions on information sharing among affiliates. Clearly, there are some pieces of transactional information that are covered by the FCRA that may be shared among affiliates. The FCRA requires an opt-out provision for financial institutions to avoid certain reporting requirements. The question is, does the FCRA cover all of the nonpublic personal information on customers, or a subset of the information. If we ultimately determine it covers all information sharing among affiliates, then this privacy policy statement would apply only to sharing with nonaffiliated third parties, and comments regarding affiliates would be null. Either way, SB 66 would not need to be amended, since any limitation of information sharing among affiliates determined to be covered by the FCRA would have no effect. SB 66, like current law, does not specifically refer to affiliated and nonaffiliated third parties.

whether a state has done that, or gone too far. It is important, however, to remember that opt-in and opt-out are only mechanisms by which customers ultimately end up on a list of customers that the institutions can share information about or on a list of customers they cannot share information about. This is not a restriction on sharing, but on the appropriate way to determine whose information is shared.

Some simply might say this is the way Alaskans have had it for over 30 years, and there is no reason to change that now. In fact, with increased concern about information about all citizens so easily obtained by others, there is probably more reason to be concerned now than there was 30 years ago. But, let us also remember what information we are talking about protecting. It is nonpublic personal information. This is personally identifiable financial information that the customer has provided the institution in order to obtain certain financial products or services. For example, this information includes a credit application for a home, car, home improvement, or credit card; account balances; payment and overdraft history; purchases on credit cards and debit cards; information obtained from an Internet collection device called a "cookie," or from a consumer report. It is very easy to see that financial institutions have a large amount of detail about customers because customers use services of these institutions. Indeed, the vast majority of citizens use at least one service of financial institutions.

The privacy provision in SB 66 reflects the policy, however, that because customers use financial institutions to open checking or share accounts, to obtain loans, or to purchase certificates of deposit, does not mean the customers want their nonpublic personal information shared for other purposes totally unrelated. The financial institutions require customers to provide certain information for certain services, and customers provide this information specifically because they desire those services. It is another matter entirely when the institutions propose to use that information for marketing services not directly related to, or required for, the purpose for which the information is obtained.

And, with whom would financial institutions share the information? There are two types, affiliated and nonaffiliated third parties. Affiliated third parties are entities under some common ownership and control of the financial institution. Under the GLBA, this now might be an insurance company or a securities firm. In fact, in a financial holding company, it may be almost any kind of company. Nonaffiliated third parties are everyone else in the world.

Some customers may want the institutions to share information with affiliates in order to be apprised of specific and targeted services and products from the "family of firms." Some may prefer not to receive these solicitations, preferring to seek them out for themselves when they desire those kinds of products. We suspect most Alaskans will be very reluctant to agree to have their nonpublic information potentially shared with everyone, especially if it were explained in plain language what was being shared and with whom.

Whether the mechanism used is opt-in or opt-out does make a big difference. Experience so far suggests that the opt-out system comes with privacy policy statements and opt-out forms in small print brochures included as statement stuffers with no return envelope or postage. These are not conducive to generating a response, which, under the opt-out system, means the customer will be counted in. We cannot know, but we suspect, that an opt-in system would come with privacy policy statements and opt-in forms in large, colorful brochures explaining the benefits and

providing a self-addressed, stamped envelope. Admittedly, this would be more expensive and less attractive for the financial institutions. But, a privacy policy is supposed to protect the people.

The American Bankers Association (ABA) website contains a policy statement entitled "The Devastating Effect of Opt-in Restrictions." Let us take a look at a few of the claims. The ABA claims opt-in will raise the price of goods and services. We agree that opt-in costs the institutions more to put a person on the "okay to share" list. We are not convinced that the overall cost to society is higher, however, when we consider factors such as increased fraud resulting from easier access to very nonpublic information.

The ABA statement suggests that "integrated" systems will keep a person from having to "start from scratch" in applying for loans. Evidently, the statement's writer has never applied to refinance a mortgage at the same institution.

The ABA statement says that opt-in will prevent people from getting services like consolidated statements. But, institutions now can outsource printing of statements to a third party without sending them the customers' credit files. Also, if this product really requires sharing nonpublic personal information not covered by the exceptions in state or federal law, and this service is important to customers, they will opt in.

The ABA statement suggests that opt-in will stop consumer transactions, as debit card, credit card, and check-cashing networks would not be able to be developed to supply the needed historical information. This ignores the fact Alaska's law allows verification of sufficient funds. These kinds of networks have been in place for years, and do not depend on sharing nonpublic personal information about customers.

The ABA statement suggests that financial institutions will not be able to recognize and respond to customers needs in an opt-in system. They must be assuming most people would not opt in. If they do not opt in, it is true that the insurance or securities affiliate would have difficulty in doing targeted solicitations of financial institutions' customers, but the financial institutions themselves should be able to respond to the financial needs of their customers under either system.

Finally, the ABA statement claims that opt-in is impractical and costly to administer. The statement said in one case the institution had to make five calls to the customer before obtaining permission to share. By describing how difficult it is to obtain affirmative approval of their customers, however, the ABA statement calls into question whether this is being driven by customer demand or by desires of the financial institutions to use the information in different ways. We believe financial institutions would be able to obtain permission from a certain percentage of their customers by creative and attractive brochures that explain in plain language the benefits to the customers of this sharing. We also believe that people who do not respond to these overtures should not end up on the "okay to share" list by default.

Certainly, it is understood that the GLBA and other laws such as the Fair Credit Reporting Act (FCRA) place some limitations on any statement on privacy reflected in SB 66. For example, under the GLBA, states may not have insurance laws that prevent or significantly interfere with

bank insurance sales, marketing or cross-marketing activities. Under the FCRA, certain transaction information may be shared with affiliates, and it provides for an opt-out system.

We suggest, however, that opt-in does not create a conflict with other provisions of law. Indeed, where the institutions can prove a conflict, those restrictions would be null. We believe all of these institutions that can now affiliate under the GLBA can find a way to cross-market their products without sharing all of the nonpublic personal information about their customers with each other and with everyone else. There must be some subset of information that financial institutions really, really need for this purpose.

If the financial institutions could identify that information subset, the legislature and we could consider it. Maybe we all could agree on an opt-out system for that information subset and an opt-in system for the other nonpublic, personal information. But, unless and until the financial institutions identify that subset of information, we must deal with the question of what is to be allowed with all of the information in the customers' files. If that is the question, we say let the customers affirmatively indicate, as provided in SB 66, if it is okay to share their nonpublic personal information with others. It has been that way for over 30 years in Alaska. We see no compelling reason to change now.

Tony Knowles, Governor

Alaska

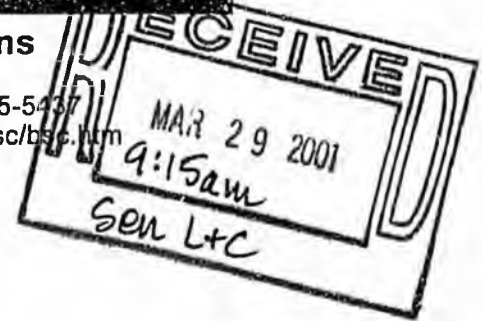
**Department of Community
and Economic Development**

Division of Banking, Securities, and Corporations

P.O. Box 110807, Juneau, AK 99811-0807

Telephone: (907) 465-2521 • Fax: (907) 465-2549 • TDD: (907) 465-5437

Email: dbsc@dced.state.ak.us • Website: www.dced.state.ak.us/bsc/bsc.htm



March 29, 2001

The Honorable Randy Phillips
Chairman, Senate Labor and Commerce Committee
Alaska Senate
State Capitol Room 103
Juneau, AK 99801-1182

Dear Chairman Phillips:

RE: Follow-up on FCRA and Privacy in SB 66

In our letter dated March 27, 2001, we informed you that we had asked the department of law to advise us regarding the applicability of the Fair Credit Reporting Act (FCRA) on privacy provisions in SB 66. They reviewed the FCRA and spoke with legal counsel at the Federal Deposit Insurance Corporation (FDIC). Dan Robinson, Assistant Attorney General, provided us with a memorandum summarizing his review, and it is attached to this letter for your information.

As you can see, Dan discovered that it is most likely that the FCRA preempts state restrictions on information sharing among affiliates. States may pass restrictions after January 1, 2004. While his discussions with the FDIC suggested that privacy is a hot topic in Washington, and specifically with the relationship of the FCRA and the Gramm-Leach-Bliley Act (GLBA), it is our opinion that a challenge of that preemption has little likelihood of success.

Therefore, as we mentioned in our previous letter, this means the opt-in provision in SB 66 applies to information sharing with nonaffiliated third parties only. The FCRA requires financial institutions to provide customers an opt-out opportunity for sharing with affiliates in order to avoid certain reporting requirements of the FCRA. Under current federal law, it is our position that the FCRA preempts applying the opt-in provision to information sharing with affiliates. We continue to believe, as the memorandum states, that no amendment to SB 66 is required because of this issue.

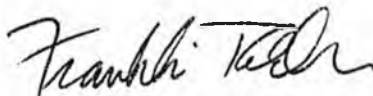
We have been informed that the bankers association continues to desire an opt-out provision for sharing with nonaffiliated third parties. It continues to be our position that consumer protection and the Alaska Constitution call for a continuation of the opt-in requirement for sharing with nonaffiliated third parties that has been in the Alaska Banking Code for over thirty years.

The Honorable Randy Phillips

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We will be happy to discuss these with the committee on Thursday, March 29, 2001.

Yours truly,

A handwritten signature in cursive script, appearing to read "Franklin T. Elder".

Franklin T. Elder
Director

Enclosure (1)

MEMORANDUM

State of

Department of



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

DATE: March 28, 2001

FILE NO: 663-01-0158

TEL. NO: (907) 465-3600

FROM: *DR*
Dan Robinson
Assistant Attorney General
Commercial Section

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

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

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

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

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

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

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

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

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

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

CHAPTER: Consumer Affairs Laws and Regulations

SECTION: Fair Credit Reporting Act

Section 300

I. Background and Summary

The Fair Credit Reporting Act (FCRA) [15 USC 1681-1681u] became effective on April 25, 1971. The FCRA is part of a group of acts contained in the Federal Consumer Credit Protection Act [5 USC 1601 *et seq.*], such as the Truth in Lending Act and the Fair Debt Collection Practices Act. Congress subsequently passed the Consumer Credit Reporting Reform Act of 1996 (Reform Act), which substantially revised the FCRA. These revisions generally became effective on September 30, 1997. Minor amendments to the FCRA were made in 1997 and 1998. The Gramm-Leach-Bliley Act of 1999 made additional changes, including provisions permitting regulations to be adopted to implement the requirements of the FCRA.

The purposes of the FCRA, as amended, include the following:

- to regulate aspects of the consumer reporting industry;
- to place disclosure obligations on users of consumer reports;
- to establish requirements applicable to the furnishing of information to consumer reporting agencies; and
- to require timely responses to consumer inquiries regarding information maintained by consumer reporting agencies.

The FCRA places restrictions on the use of consumer reports and, in certain instances, requires the deletion of information from them.

Financial institutions may be subject to the FCRA as:

- procurers and users of information (for example, as credit grantors, purchasers of dealer paper, or when opening deposit accounts);

- furnishers and transmitters of information (by reporting information to consumer reporting agencies or other third parties, or to affiliates);
- marketers of credit or insurance products; or
- employers.

Generally, financial institutions will not be considered to be consumer reporting agencies; however, it is possible for them to become consumer reporting agencies. Therefore, financial institutions should exercise careful scrutiny of their operations to ensure that they comply with the requirements of the FCRA as applicable.

II. Relation to State Laws and Administrative Enforcement

Section 624 [15 USC 1681t] preempts certain state law requirements while generally preserving the rights of states to legislate on matters covered by the FCRA (but only to the extent that state laws are *not inconsistent* with the FCRA). Areas where state requirements/prohibitions are entirely preempted include:

- furnishing and using consumer reports in connection with any credit or insurance transaction that is not initiated by the consumer; and
- the duties of a person taking adverse action with respect to a consumer under sections 615 (a) and (b).

In general, state requirements/prohibitions are preempted with respect to the exchange of information among affiliates. In addition, certain other areas of state laws are preempted as provided by section 624.

Section 621 [15 USC 1681s] establishes responsibilities for administrative enforcement of the FCRA. The Federal Trade Commission (FTC) is authorized to enforce the requirements for certain persons other than banks, savings associations, and credit unions. The banking and thrift super-



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visory agencies are authorized to enforce the FCRA with respect to their supervised institutions. State law enforcement officials also may enforce the FCRA through court actions. Federal regulators, however, have a right to intervene in any action brought by a state.

III. Important Definitions

There are a number of definitions used throughout the FCRA. The more important definitions that financial institutions and examination staff should be aware of include the following:

Consumer

A "consumer" is defined as an individual.

Consumer Report

A "consumer report" is any written, oral, or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for:

- credit or insurance to be used primarily for personal, family, or household purposes;
- employment purposes; or
- any other purpose authorized under section 604 [15 USC 1681b]. (Refer to section IV, "Requirements on Consumer Reporting Agencies.")

The term "consumer report" does not include:

- any report containing information solely about transactions or experiences between the consumer and the institution making the report;
- any communication of that transaction or experience information among entities related by common ownership or affiliated by corporate control (for example, different banks that

are members of the same holding company, or subsidiary companies of a bank);

- communication of other information among persons related by common ownership or affiliated by corporate control if
 - it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons; and
 - the consumer is given the opportunity, before the time that the information is communicated, to direct that the information not be communicated among such persons.
- any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;
- any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer, such as a lender who has received a request from a broker conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 615 [15 USC 1681m]; or
- a communication described in section 603(o) [15 USC 1681a(o)] (which relates to certain reports to prospective employers).

Person

A "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

Investigative Consumer Report

An "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer re-

ported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

Adverse Action

The term "adverse action" has the same meaning as used in section 701(d)(6) [15 USC 1691(d)(6)] of the Equal Credit Opportunity Act (ECOA). Under the ECOA, it means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Under the ECOA, the term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit. The term has the following additional meanings for purposes of the FCRA:

- a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with the underwriting of insurance;
- a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee;
- a denial or cancellation of, an increase in any charge for, or any other adverse or unfavorable change in the terms of, any license or benefit described in section 604(a)(3)(D) [15 USC 1681b(a)(3)(D)]. (Refer to section IV. A., "Permissible Purposes for Furnishing or Using Consumer Reports"); and
- an action taken or determination that is (a) made in connection with an application made by, or transaction initiated by, any consumer, or in connection with a review of an account to determine whether the consumer continues

to meet the terms of the account, and (b) adverse to the interests of the consumer.

Employment Purposes

The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

Consumer Reporting Agency

The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

IV. Requirements on Consumer Reporting Agencies

Consumer reporting agencies have substantial obligations placed upon them by the FCRA. These obligations are summarized below. Financial institutions and other persons that are users or furnishers of information from or to consumer reporting agencies should also be aware of the obligations of the consumer reporting agencies since certain requirements on the agencies will affect requirements on users or furnishers of information.

A. Permissible Purposes for Furnishing or Using Consumer Reports

Section 604 [15 USC 1681b] prohibits a consumer reporting agency from furnishing a consumer report, except for the following purposes.

In addition to furnishing consumer reports in connection with credit or insurance pre-screens, a consumer reporting agency may furnish a consumer report:

- when the consumer has authorized the release in writing;
- pursuant to a court order or subpoena issued by a federal grand jury;
- to an agency administering a state plan under section 454 of the Social Security Act [42 USC 654] to establish or modify child support awards;
- in response to a request by a state or local child support enforcement agency, if proper certification is provided; or
- to a person the consumer reporting agency has reason to believe
 - intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer;
 - intends to use the information for employment purposes;
 - intends to use the information for underwriting insurance involving the consumer;
 - intends to use the information for determining the consumer's eligibility for a license or other benefit granted by a government instrumentality that is required by law to consider an applicant's financial responsibility or status;
 - intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or
 - otherwise has a legitimate business need for the information, either in connection with a business transaction initiated by the consumer, or to review an account to determine whether the consumer continues to meet the terms of the account.

This last provision permits an institution to obtain consumer reports, for example, for deposit serv-

ices, such as a consumer opening a transaction account. Consumers who are turned down when attempting to open an account because of information contained in a consumer report must be provided an adverse action notification. (Refer to section V, "Requirements on Users of Consumer Reports.")

Disclosures containing medical information. A consumer reporting agency cannot furnish a consumer report containing medical information about a consumer without the consumer's consent in the following circumstances:

- for employment purposes; or
- in connection with a credit or insurance transaction.

Disclosures to government agencies. Consumer reporting agencies, under section 608 [15 USC 1681f], may furnish to government agencies (federal, state, or local) identifying information on any consumer that is limited to the consumer's name, address, former addresses, places of employment, or former places of employment. This is a specific exemption from the general requirements of section 604 of the FCRA. Special rules under section 604 apply when a U.S. government agency head makes a written finding that a consumer report is relevant to a national security investigation being carried on by the agency.

Disclosures to the Federal Bureau of Investigation (FBI). Consumer reporting agencies are required to furnish information to the FBI when it requests the information pursuant to an authorized foreign counterintelligence investigation. Section 625 [15 USC 1681u] provides specific requirements on how the FBI and the consumer reporting agency must comply with the provisions of the FCRA in this area.

B. Information Contained in Consumer Reports

Section 605 [15 USC 1681c] contains limitations on the type of information contained in consumer reports and the length of time it may be reported by a consumer reporting agency. Examples of information that must be excluded from a consumer report are as follows:

- bankruptcy cases that antedate the report by more than ten years measured from the date of entry of the order for relief or the date of adjudication;
- civil suits, civil judgments and records of arrest that, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period;
- paid tax liens which, from date of payment, antedate the report by more than seven years;
- accounts placed for collection or charged off which antedate the report by more than seven years. (The reporting periods have been lengthened for certain adverse information pertaining to U.S. Government-insured or -guaranteed student loans, or pertaining to national direct student loans. Refer to sections 430A(f) and 463(c)(3) of the Higher Education Act of 1965 [20 USC 1080a(f) and 20 USC 1087cc(c)(3)], respectively);
- any other adverse information, other than records of convictions of crimes, which antedates the report by more than seven years.

These time restrictions do not apply in the case of a consumer report to be used in connection with

- a credit transaction involving, or which may reasonably be expected to involve, a principal amount of \$150,000 or more;
- the underwriting of life insurance involving, or which may reasonably be expected to involve, a face value of \$150,000 or more; or
- the employment of any individual at an annual salary that equals, or which may reasonably be expected to equal, \$75,000 or more.

Indication of closure of account by consumer. If a consumer reporting agency is notified pursuant to section 623(a)(4) [15 USC 1681s-2(a)(4)] that a credit account of a consumer was voluntarily closed by the consumer, the agency is to indicate that fact in any consumer report that includes information related to the account.

Indication of dispute by consumer. If a consumer reporting agency is notified pursuant to section 623(a)(3) [15 USC 1681s-2(a)(3)] that information regarding a consumer which was furnished to the agency is disputed by the consumer, the agency is to indicate that fact in each consumer report that includes the disputed information.

Information on overdue child support obligations. In contrast to prohibitions on reporting certain information, section 622 [15 USC 1681s-1] requires a consumer reporting agency to include, in any consumer report furnished by the agency, information on the failure of the consumer to pay overdue support where the information (a) is provided or verified by a specified government agency and (b) antedates the report by seven years or less.

C. Investigative Consumer Reports

According to section 606 [15 USC 1681d], an investigative consumer report may not be procured or caused to be prepared unless the consumer has been provided a clear and accurate disclosure by the person requesting the report that an investigative consumer report may be obtained. This disclosure must contain a statement in writing of the consumer's right to request additional disclosures about the report, and a summary of the consumer's rights under the FCRA, mailed or otherwise delivered to the consumer not later than three days after the date on which the report was first requested. The person procuring the report from the consumer reporting agency (or causing it to be prepared) must certify to the consumer reporting agency that the person has complied with these disclosure requirements and will comply in the event the consumer exercises his or her right to request additional disclosures.

D. Compliance Procedures

Section 607 [15 USC 1681e] requires consumer reporting agencies to maintain reasonable procedures to avoid violations of section 605 and limit distribution of consumer reports only to persons with a permissible purpose under section 604. Section 607 requires consumer reporting agencies to follow reasonable procedures in preparing consumer reports to assure maximum possible accu-

racy of the information that they report on consumers.

Section 607 also establishes rules for persons who obtain consumer reports for resale to other parties. Information generally must be provided back to the consumer reporting agency as to the identity of the end user of the report and each permissible purpose for which it was furnished to the end user.

Consumer reporting agencies may not prohibit the disclosure of the contents of a consumer report to the consumer by the user of the report, if adverse action has been taken by the user based in whole or in part on the report.

E. Disclosures to Consumers

Under sections 609 and 610 [15 USC 1681g and 1681h], a consumer reporting agency, upon request from a consumer, must clearly and accurately disclose the following information to the consumer in writing (unless the consumer has authorized another form of disclosure, including electronic means, if available from the agency) when it is provided proper identification:

- all information in the consumer's file at the time of the request (except that information about credit scores or other risk scores or predictors relating to the consumer need not be disclosed).
- the sources of the information (except that sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed, provided that in the event an action is brought, such sources would be available to the plaintiff under appropriate discovery procedures).
- in general, the identity of each person that procured a consumer report
 - for employment purposes, during the two years preceding the request, or
 - for any other purpose, during the one year preceding the request.

Identification must include the name of the person or, if applicable, the trade name under which such person conducts business, and upon the consumer's request, the address and telephone number of the person.

- dates, original payees, and amounts of any checks upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure; and
- a record of all inquiries received during the one-year period preceding the request that identified the consumer in connection with a credit or insurance transaction not initiated by the consumer.

The consumer reporting agency shall provide, with each written disclosure made pursuant to the above requirements, a written summary of the consumer's rights in a form prescribed by the FTC. Consumer reporting agencies that maintain consumer files on a nationwide basis (refer to section 603(p) [15 USC 1681a (p)]) must include a toll-free telephone number.

F. Procedures in Case of Disputed Accuracy

Under section 611 [15 USC 1681i], if the consumer disputes the completeness or accuracy of any information contained in a consumer file, and the consumer notifies the agency directly, the consumer reporting agency must:

- reinvestigate, at no charge, and record the current status of the disputed information, or delete the item from the file, generally within 30 days of receiving notice from the consumer; and
- provide notification of the dispute to any person that provided any item of the information in dispute, within five business days from the agency's receipt of notice of the dispute.

The 30-day time period above may be extended up to an additional 15 days if the consumer submits additional relevant information during the 30-day period, but no such extension may be made if the information that is the subject of the reinvestigation is found during the 30-day period to be inaccurate or incomplete or the consumer

reporting agency determines that the information cannot be verified.

A consumer reporting agency may terminate a reinvestigation of a consumer dispute if it makes a reasonable determination that the dispute is frivolous or irrelevant. If it makes such a determination, it must notify the consumer within five business days. The notice must include the reasons for the determination and identify any information required to investigate the disputed information.

If, after any reinvestigation of any information disputed by a consumer, an item of information is found to be inaccurate or incomplete or cannot be verified, the consumer reporting agency must promptly delete or modify the information, as appropriate. The information cannot be reinserted into the file unless the person who furnishes the information certifies that the information is complete and accurate. If the information is reinserted, the consumer reporting agency must notify the consumer of the reinsertion in writing within five business days. The notice must include (a) the business name and address of any furnisher contacted and the telephone number of such furnisher, if reasonably available, or of any furnisher that contacted the consumer reporting agency, in connection with the reinsertion, and (b) a notice of the consumer's right to add a statement to the file disputing the accuracy or completeness of the information.

A consumer reporting agency must maintain reasonable procedures to prevent the reappearance in a consumer's file, and in consumer reports on the consumer, of information that is deleted, other than information that has been properly reinserted. Consumer reporting agencies that maintain consumer files on a nationwide basis must have an automated system through which a furnisher of information may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other such consumer reporting agencies.

Within five business days after completion of a reinvestigation, a consumer reporting agency must notify the consumer of the results of the investigation by mail or other means authorized by

the consumer and available to the agency. If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The statement, or a clear and accurate summary thereof, must be put in any subsequent consumer report containing the disputed information, unless there are reasonable grounds to believe that the dispute is frivolous or irrelevant.

G. Permissible Charges for Disclosures

Section 612 [15 USC 1681j] provides that a consumer reporting agency may not impose any charge on a consumer for providing any notification or disclosure required by the FCRA, except for those authorized under this section. A consumer reporting agency may impose a reasonable charge on a consumer when it:

- makes a disclosure to the consumer pursuant to section 609 [15 USC 1681g]. That charge must not exceed \$8.50 for the year 2000 (the amount is to be adjusted annually by the FTC, based on changes in the consumer price index) and must be indicated before the consumer reporting agency provides the disclosure; and
- provides the notification pursuant to section 611(d) [15 USC 1681i(d)] at any time after the 30-day period beginning on the date of the notice of the results of the reinvestigation. That charge may not exceed the amount the agency would impose on each recipient of the notification for a consumer report, and must be indicated before furnishing the information.

According to section 611(d) [15 USC 1681i(d)], following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency must, at the request of the consumer, furnish notification that the item has been deleted, or the statement or summary of dispute referred to above, to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received

a consumer report for any other purpose, which contained the deleted or disputed information.

A consumer reporting agency that maintains a file on a consumer must make all disclosures required by section 609 [15 USC 1681g] at no charge if the consumer has requested them under section 609 within 60 days after receiving:

- a notice of adverse action pursuant to section 615 [15 USC 1681m]; or
- notification from a debt collection agency affiliated with the consumer reporting agency stating that the consumer's credit rating has been or may be adversely affected.

The consumer reporting agency also must make the disclosures required by section 609 [15 USC 1681g] at no charge, once in any 12-month period, if the consumer requests them and certifies in writing that he or she:

- is unemployed and intends to apply for employment in the 60-day period beginning on the date on which the certification is made;
- is a recipient of public welfare assistance; or
- has reason to believe that the file on the consumer at the agency contains inaccurate information due to fraud.

H. Public Record Information for Employment Purposes

Under section 613 [15 USC 1681k], a consumer reporting agency that furnishes a consumer report for employment purposes and for that purpose compiles and reports public record information that is likely to have an adverse effect upon a consumer's ability to obtain employment generally must:

- at the time the public record information is reported to the user of the report, notify the consumer that public record information is being reported, together with the name and address of the person to whom the information is being reported; or

- maintain strict procedures to ensure that such public record information is complete and up to date.

I. Restrictions on Investigative Consumer Reports

Section 614 [15 USC 1681i] provides that when a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than public record information) may be included in a subsequent consumer report, unless the information:

- has been verified in the process of making the subsequent report; or
- was received within the three-month period preceding the date the subsequent report is furnished.

V. Requirements on Users of Consumer Reports

A. Information Obtained from a Consumer Report

Section 615(a) [15 USC 1681m(a)] requires that if any person takes any adverse action with respect to any consumer that is based in whole or in part on any information contained in a consumer report, the person must:

- provide oral, written, or electronic notice of the adverse action to the consumer;
- provide to the consumer orally, in writing, or electronically, the name, address, and telephone number of the consumer reporting agency from which it received the information (including a toll-free telephone number established by the agency, if the consumer reporting agency maintains files on a nationwide basis); and a statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the consumer the specific reasons why the adverse action was taken; and
- provide the consumer an oral, written, or electronic notice of the consumer's right to

obtain a free copy of the consumer report within 60 days of receiving notice of the adverse action, and the consumer's right to dispute the accuracy or completeness of any information in the consumer report with the consumer reporting agency.

B. Information Obtained from a Source Other Than a Consumer Report

Section 615(b)(1) [15 USC 1681m(b)(1)] provides that if consumer credit is denied or the charge for such credit is increased, partially or wholly on the basis of information obtained from a person other than a consumer reporting agency bearing upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user:

- must clearly and accurately disclose the consumer's right to file a written request for the reasons for the adverse action; and
- if it receives such a request within 60 days after the consumer learns of the adverse action, must, within a reasonable period of time, disclose the nature of the adverse information.

C. Information Obtained from an Affiliate

Section 615(b)(2) [15 USC 1681m(b)(2)] provides that if a user takes an adverse action involving credit (taken in connection with a transaction initiated by a consumer), insurance or employment, it must notify the consumer of the adverse action, if it took the action based in whole or part on information provided by an affiliate that:

- bears upon the consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living; and
- is not information solely as to the transactions or experiences with the consumer on the part of the person furnishing the information, or information in a consumer report.

The notification must inform the consumer that the consumer may obtain a disclosure of the nature of the information relied upon by making a written request within 60 days of transmittal of the adverse action notice. If the consumer makes such a request, the user must disclose the nature of the information not later than 30 days after receiving the request.

D. Using Consumer Reports for Employment Purposes

Section 604(b)(2) [15 USC 1681b(b)(2)] generally requires the written permission of the consumer to procure a consumer report for "employment purposes." Moreover, a clear and conspicuous disclosure that a consumer report may be obtained for employment purposes generally must be provided in writing to the consumer prior to procuring a report.

Prior to taking any adverse action as to employment based in whole or in part on the consumer report, the user must generally provide to the consumer:

- a copy of the report; and
- the FTC notice described within section 609(c)(3) [15 USC 1681g].

At the time a user of the report takes adverse action in an employment situation, an adverse action notice, as required by section 615, also must be provided to the consumer.

VI. Responsibilities Placed on Furnishers of Information

Section 623 [15 USC 1681s-2] contains a number of new requirements for persons furnishing information to consumer reporting agencies.

Duties of furnishers to provide accurate information. A person may, but need not, specify an address for receipt of notices from consumers concerning inaccurate information. If the person specifies such an address, then the person may not furnish information relating to a consumer to any consumer reporting agency if (a) the person has been notified by the consumer, at the specified

address, that the information is inaccurate, and (b) the information is in fact inaccurate. If the person does not specify an address, then the person may not furnish any information relating to a consumer to any consumer reporting agency, if the person knows or consciously avoids knowing that the information is inaccurate.

When a person, who regularly and in the ordinary course of business furnishes information to one or more consumer reporting agencies about the person's transactions or experiences with any consumer, determines that any such information is not complete or accurate, the person must promptly notify the consumer reporting agency of that determination. The person also must provide to the agency any corrections to that information, or any additional information, necessary to make the information provided by the person to the agency complete and accurate and must not thereafter furnish to the agency any of the information that remains incomplete or inaccurate.

If the completeness or accuracy of any information furnished by a person to a consumer reporting agency is disputed to such person by a consumer, that person may not furnish the information to any consumer reporting agency without notice that the information is disputed by the consumer.

Voluntary closures of accounts. Any person, who regularly and in the ordinary course of business furnishes information to a consumer reporting agency regarding a consumer who has a credit account with that person, must notify the agency of the voluntary closure of the account by the consumer in information regularly furnished for the period in which the account is closed.

Notice involving delinquent accounts. A person who furnishes information to a consumer reporting agency about a delinquent account being placed for collection, charged off, or subjected to any similar action must, not later than 90 days after furnishing the information to the consumer reporting agency, notify the agency of the month and year of the commencement of the delinquency that immediately preceded the action.

Duties upon notice of dispute. Whenever a person receives a notice of dispute from a consumer reporting agency regarding the accuracy or completeness of any information provided by the person pursuant to section 611, that person must:

- conduct an investigation regarding the disputed information;
- review all relevant information provided by the consumer reporting agency along with the notice;
- report the results of the investigation to the consumer reporting agency; and
- if the information is found to be incomplete or inaccurate, report those results to all nationwide consumer reporting agencies to which the person previously provided the information.

The investigations, reviews, and reports required to be made must be completed within 30 days. The time period may be extended for 15 days if a consumer reporting agency receives additional relevant information.

Enforcement of the responsibilities of furnishers of information under section 623 (except those described under "Duties Upon Notice of Dispute") is reserved exclusively for the federal and state agencies and officials, including the financial institution regulatory agencies, identified under section 621 [15 USC 1681s]. (Refer to section II, "Relation to State Laws and Administrative Enforcement.")

VII. Pre-Screening Requirements

The practice of using consumer reports for the purpose of selecting pools of individuals for solicitation of financial or other products has expanded substantially since the 1970s. Guidance on these issues is discussed in this section.

A. Firm Offer of Credit or Insurance

The term "firm offer of credit or insurance" means any offer of credit or insurance to a consumer that will be honored if the consumer is determined, based on information in a consumer

report on the consumer, to meet the specific criteria used to select the consumer for the offer, except that the offer may be further conditioned on one or more of the following:

- the consumer being determined, based on information in the consumer's application for the credit or insurance, to meet specific criteria bearing on creditworthiness or insurability, as applicable, that are established
 - before selection of the consumer for the offer; and
 - for the purpose of determining whether to extend credit or insurance pursuant to the offer.
 - verification
 - that the consumer continues to meet the specific criteria used to select the consumer for the offer, by using information in a consumer report on the consumer, information in the consumer's application for the credit or insurance, or other information bearing on the creditworthiness or insurability of the consumer; or
 - of the information in the consumer's application for the credit or insurance, to determine that the consumer meets the specific criteria bearing on creditworthiness or insurability.
 - the consumer furnishing any collateral that is a requirement for the extension of the credit or insurance that was
 - established before selection of the consumer for the offer of credit or insurance; and
 - disclosed to the consumer in the offer of credit or insurance.
- B. Credit or Insurance Transaction Not Initiated by the Consumer

The term "credit or insurance transaction that is not initiated by the consumer" is a new term defined in section 603(m) [15 USC 1681a(m)] for use in dealing with pre-screening issues. The

term does not include the use of a consumer report by a person with whom the consumer has an account or insurance policy for the following purposes:

- reviewing the account or insurance policy; or
- collecting the account.

C. Furnishing Reports in Connection with Credit Transactions not Initiated by the Consumer

Section 604(c) [15 USC 1681b(c)] establishes requirements for consumer reporting agencies when furnishing consumer reports for use in connection with pre-screens. A consumer reporting agency may only furnish a person with a consumer report for pre-screening purposes if:

- the consumer authorizes the agency to provide such report to such person, or
- the transaction consists of a firm offer of credit or insurance and
 - the consumer reporting agency has established the required procedures to permit consumers to elect to be excluded from pre-screened lists; and
 - no such election is in effect as to the consumer.

A person receiving a pre-screened list from a consumer reporting agency may, for each consumer on the list, receive only the following information:

- the name and address of the consumer;
- an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and
- other information about the consumer that does not identify the relationship or experience of the consumer with a particular creditor or other entity.

As indicated above, a consumer reporting agency must establish procedures that allow a consumer

to notify the agency that the consumer elects to be excluded from pre-screen lists furnished by the agency. Notifications can be made through a notification system maintained by the agency or by submitting a signed notice of election form issued by the agency. Exclusion requests made through the notification system expire two years following notification unless earlier withdrawn. If the request is made on the election form, it never expires, although it may be withdrawn.

D. Duties of Users Making Written Solicitations on the Basis of Information from Consumer Files

Under section 615(d) [15 USC 1681m(d)], any person who uses a consumer report on any consumer in connection with any credit or insurance transaction that is not initiated by the consumer and that is provided to that person in accordance with paragraph C. above must provide with each written solicitation, a clear and conspicuous statement that:

- information contained in a consumer's consumer report was used in connection with the offer;
- the consumer received the offer because he or she satisfied the criteria for creditworthiness or insurability used to screen for the offer;
- if applicable, the credit or insurance may not be extended if, after the consumer responds, it is determined that the consumer does not meet the criteria used for screening or any applicable criteria bearing on creditworthiness or insurability, or the consumer does not furnish required collateral; and
- consumers have the right to prohibit use of information in their consumer file in connection with future pre-screened offers of credit or insurance by contacting a notification system established under section 604(e)(5) by the consumer reporting agency that provided the report. The address and toll-free telephone number of the appropriate notification system must be provided.

Record Retention Requirements. Section 615(d)(3) requires a person who makes an offer

of credit or insurance to a consumer in a transaction not initiated by the consumer to maintain on file the criteria used to select the consumer to receive the offer, all criteria bearing on creditworthiness or insurability, as applicable, that are the basis for determining whether or not to extend credit or insurance pursuant to the offer, and any requirement for the furnishing of collateral as a condition of the extension of credit or insurance, until the expiration of the three-year period beginning on the date on which the offer is made to the consumer.

VIII. Civil Liability, Limitation of Actions, and Unauthorized Disclosure

Sections 616 and 617 [15 USC 1681n and 1681o] establish the circumstances under which persons violating the FCRA may be liable for willful or negligent noncompliance. Civil liability awards for violations may include actual damages, court costs, attorneys' fees and, for willful noncompliance, punitive damages.

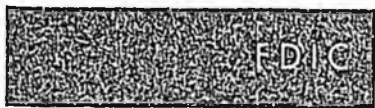
Section 618 [15 USC 1681p] establishes a statute of limitations for bringing actions under the FCRA. The time period is generally two years from the date the liability arises; however, it can be extended for certain willful and material misrepresentations to a date two years after the individual discovers the misrepresentation.

Sections 619 and 620 [15 USC 1681q and 1681r] make it a crime for any person to knowingly and willfully obtain information on a consumer from a consumer reporting agency under false pretenses, and for any officer or employee of a consumer reporting agency to knowingly and willfully provide information concerning an individual to a person not authorized to receive it. The penalty for violation is a fine, imprisonment for up to two years, or both.

Examination Objectives

1. To determine the financial institution's compliance with the FCRA.

Privacy Rule Handbook



Section One Overview of privacy rule requirements

Section Two Get ready for July 1, 2001

Section Three Maintaining compliance beyond July 1, 2001

Section Four Learn the lingo

Last page Other resources

Section One: Overview of privacy rule requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Opt Out Notice

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

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

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

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

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

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

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

Type of notice	Who gets it	Delivery
<p>Opt out notice (only banks that share outside of exceptions)</p>	<ul style="list-style-type: none"> • customers and consumers who are not customers 	<ul style="list-style-type: none"> • before the bank shares nonpublic personal information about the customer or consumer (and the information sharing is not permissible under the privacy rule opt out exceptions)

CORRECTION

THE FOLLOWING DOCUMENT(S)
HAVE BEEN REFILMED TO
ASSURE LEGIBILITY OR PAGINATION



Central Microfilm Services
Department of Education & Early Development
State of Alaska

Section One: Overview of privacy rule requirements

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

- market the bank's own financial products or services
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In addition, the bank must include a separate statement in the privacy notice disclosing the joint marketing agreement.

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Section 1

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

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

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

Privacy Notices

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

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

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

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

- categories of information disclosed under the service provider/joint marketing exception (only those banks relying on this exception)
- consumer's right to opt out (only those banks that disclose outside of exceptions)
- disclosures made under the Fair Credit Reporting Act (only those banks providing the FCRA opt out notice)
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- provides a reasonable method for the consumer to opt out, such as a toll-free telephone number

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

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

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

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

Type of notice	Who gets it	Delivery
Opt out notice (only banks that share outside of exceptions)	<ul style="list-style-type: none"> • customers and consumers who are not customers 	<ul style="list-style-type: none"> • before the bank shares nonpublic personal information about the customer or consumer (and the information sharing is not permissible under the privacy rule opt out exceptions)

Section Two:
Get ready for July 1, 2001

A bank's strategy for achieving full compliance by July 1, 2001, will vary depending on the complexity of the bank and the progress it has already made in complying with the requirements of the rule. The level of effort a bank will expend depends in large part on:

- the bank's previous efforts to assess or disclose information sharing practices
- the bank's decisions about sharing nonpublic personal information after July 1, 2001
- the volume, if any, of consumers and customers who must receive an opportunity to opt out before information sharing with nonaffiliated third parties can take place.

Nearly all banks, however, can take the following four steps to create a comprehensive and effective privacy compliance strategy:

- establish a timeline for compliance
- develop privacy policies and notices
- deliver notices
- prepare to respond to consumers

1. Establish a timeline for compliance

A timeline designating important checkpoints prior to July 1, 2001, is a good place to start and can be instrumental to ensuring timely compliance.

A specific process for certifying completion of the various steps identified in the bank's privacy compliance strategy will help managers keep track of progress. When establishing due dates for specific activities, build in time to receive input and feedback from senior management and other stakeholders. Every bank should consider:

- **Involving the Board of Directors:** A board-approved privacy policy is not required by the rule, but it can be an effective way to involve the board of directors in developing a privacy compliance strategy. A board-sanctioned privacy policy can be useful in communicating the bank's overall privacy commitment and strategy to the entire organization.
- **Involving representatives from each bank department:** Most likely a senior bank officer will oversee development and implementation of the privacy compliance strategy. Nevertheless, participation from each department in the bank will help ensure nothing is overlooked. This approach will also help policy makers identify information sharing practices or consumer privacy issues unique to a specific department or to a financial product or service.

2. Develop privacy policies and notices

Use this opportunity to evaluate and establish institutional privacy objectives, and communicate to potential customers and consumers the bank's customer service philosophy.

- *Create a comprehensive inventory* of information collection and information sharing practices at the

A bank may want to establish timeframes to:

Assess current information sharing practices

Obtain input and approval from management

Prepare to respond to public inquiries

Draft privacy policies and consumer notices

1. Deliver initial notices to customers
2. Deliver opt out notices to consumers and customers as applicable

Process opt out directions from consumers and customers

Section 2

bank. The inventory will help ensure practices are properly disclosed in the bank's privacy notices. For every department, review:

- all applications and forms used to collect information about consumers
- marketing practices
- vendor contracts
- electronic banking and Internet activities
- fee income accounts
- record retention policies

Affiliates: If a bank has any affiliates, the inventory should include information-sharing practices with affiliates. Although the privacy rule does not place any restrictions on information sharing with affiliates, it does require disclosure of these practices in the initial and annual notices. Furthermore, the privacy rule requires the initial and annual notices to include applicable Fair Credit Reporting Act affiliate information sharing opt out notices.

- *Assess current information collection and information sharing practices* in light of the privacy rule obligations and the bank's objectives. Determine which practices should continue after July 1, 2001. This may be a good time to involve the bank's Board of Directors. Consider:
 - whether any current practices would be prohibited under the rule
 - which practices must be disclosed in the privacy notices and whether opt out rights apply
 - whether account numbers are shared only as permitted by the rule
 - whether information received from other financial institutions is shared only as permitted by the rule's reuse and redisclosure limitations

- whether to adopt voluntary privacy standards developed by relevant trade associations. Those standards could be good indicators of industry norms and consumer expectations

- *Draft privacy notice(s).* Create a list of information collection and information sharing practices that must be disclosed to consumers. This list can help you categorize practices per the rule requirements and decide how to structure notices. The privacy rule provides a variety of disclosure options. For example, banks may develop:
 - one initial privacy notice that covers all the information sharing practices of the bank
 - an assortment of initial notices for different customer relationships or different types of financial products or services
 - one initial notice that covers the practices of the bank along with one or more of its affiliates

Likewise, the opt out notice may be structured in a variety of ways.

When drafting privacy notices, consider:

- Sample clauses provided in Appendix A in the rule. Banks may use the sample clauses to the extent they accurately reflect the bank's practices.

Most likely, the initial and annual privacy notices will be identical. If required, the opt out notice may be combined with the initial and annual notices.

- **Fair Credit Reporting Act requirements and information security standards.** The federal banking agencies have issued two proposed rules that may affect the compliance strategy and the content of privacy notices.

The Proposed Security Standards for Customer Information describe the agencies' expectations for implementing technical and physical safeguards to

protect customer information. *The Proposed Fair Credit Reporting Regulations* cover the opt out provisions of the Fair Credit Reporting Act.

Both proposals will be finalized in the near future. When issued, the final rules will be available on the FDIC's Web site: www.fdic.gov. In the meantime, the proposals are posted on the Web site.

3. Deliver notices

- **Identify consumers and customers who must receive the initial and opt out notices.** It is important to identify all groups of existing customers, consumers, and former customers who must get the initial privacy notice and opt out notification. Some banks may need to coordinate several databases and a variety of departments to identify everyone who must receive a notice.

Opt out notices for joint account holders: The privacy rule allows banks to provide a single privacy and opt out notice when two or more consumers jointly obtain a financial product or service.

However, any of the joint consumers may exercise the right to opt out. The opt out notice provided to joint account holders must explain how the bank will treat an opt out direction by a joint consumer and must give one joint consumer the ability to opt out on behalf of all the joint consumers.

- **Establish timeframes for mailing or otherwise delivering notices.** Remember:
 - All existing bank customers must receive an initial privacy notice no later than July 1, 2001.
 - Existing bank customers, consumers who are not customers, and former bank customers have the right to opt out if the bank is sharing nonpublic personal information about them with nonaffiliated third parties outside the exceptions.

- Information sharing subject to opt out cannot continue after July 1, 2001, until the initial and opt out notices are delivered and a reasonable opt out period has elapsed. Therefore, banks that intend to share nonpublic personal information outside the exceptions after July 1, 2001 should deliver notices well before July 1.

4. Prepare to respond to consumers

- **Develop opt out procedures.** All banks sharing nonpublic personal information outside of the exceptions will need to develop procedures for consumers to exercise an opt out, as well as procedures for processing and complying with opt out directions. The opt out procedures should include:
 - tracking the initial opt out opportunity (e.g., the first 30 days after the initial notice is delivered)
 - recording opt outs received from consumers
 - maintaining the opt out mechanism(s), such as a toll-free telephone number, electronic mail, or an opt out form with boxes to check
 - complying with opt out directions received after the initial opt out opportunity elapses
- **Respond to public inquiries.** Customer service representatives and other bank employees should be prepared to answer questions from consumers about the new privacy notices. Depending on the number of employees answering consumer phone calls, it may be a good idea to provide scripts to help employees respond to questions from the public. In addition, it may be helpful to have extra copies of the privacy notice readily available for mailing or handing out to consumers.

Section Three:
Maintaining Compliance Beyond
July 1, 2001

The following activities can help a bank achieve and maintain compliance with the privacy rule.

- **Develop controls to monitor ongoing compliance.** Consider mechanisms for monitoring:
 - delivery of initial and annual notices to customers
 - delivery of initial notice to consumers who are not customers, if applicable
 - compliance with opt out directions, if applicable
 - accuracy of privacy notices, including prior approval for:
 - new marketing arrangements
 - new or renewed vendor contracts
 - disclosure of account numbers
 - affiliate-referral programs
 - reuse of consumer information received from another financial institution
- **Train employees.** All employees should understand the bank's policies and procedures for complying with the privacy rule. Some employees will need to be able to explain the bank's privacy policies to customers and to businesses providing services to the bank.
- **Audit for compliance.** Periodic audits will help management assess risk and verify the effectiveness of the compliance program. The Federal Financial Institutions Examination Council (FFIEC) will release interagency privacy examination procedures before July 1, 2001. The exam procedures will be a useful tool in developing a privacy audit program.

The interagency exam procedures will be mailed directly to insured depository institutions as soon as they are finalized. The procedures will also be available on the FDIC's Web site at www.fdic.gov when complete.

Section Four: Learn the Lingo

Learning the lingo will help you understand and comply with the privacy rule. This section provides an explanation of key terminology.

Who must comply with the FDIC's privacy rule?

The FDIC's privacy rule refers to financial institutions that must comply with the rule as "you." For example, when the rule states that "you must provide a notice" it means all entities subject to this rule must provide a notice. The following definition of "you" explains the types of entities subject to the rule:

You: The banks that must comply with the FDIC's rule are -

- (1) FDIC-supervised banks
- (2) insured state branches of foreign banks
- (3) subsidiaries of FDIC-supervised banks and insured state branches of foreign banks, with certain exceptions, such as insurance and securities or brokerage subsidiaries

Although the FDIC's rule only applies to certain banks and some of their subsidiaries, all financial institutions must comply with similar privacy rules adopted by their supervisory agencies. For example, although securities subsidiaries of FDIC-supervised banks do not have to comply with the FDIC's privacy rule, they do have to comply with a similar privacy rule adopted by the Securities and Exchange Commission.

Who is protected by the privacy rule?

The privacy rule protects "consumers." All consumers receive the same privacy protections.

However, a subset of consumers defined as customers must receive certain disclosures, such as

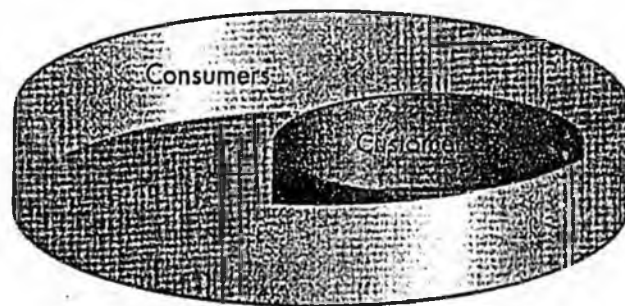
an annual privacy notice, that need not be provided to consumers who are not customers.

Thus, it is important to know the distinction between consumers and customers to understand the different disclosure requirements under the privacy rule.

Consumer: Any individual who is seeking to obtain or has obtained a financial product or service from a bank for personal, family, or household purposes is a consumer of that bank. The definition of consumer includes individuals who:

- apply for a financial product or service (e.g., a loan or a deposit account) for personal, family, or household purposes
- actually obtain a financial product or service (e.g., a loan or a deposit account) for personal, family, or household purposes

Customer: As the following diagram reflects, customers are a subset of consumers. A customer is a consumer with whom a bank has a continuing relationship. Although the rule does not define "continuing relationship," it provides examples of transactions that are and are not considered continuing relationships. Consumers who have a deposit account, obtain a loan, or obtain an investment advisory service are considered customers. See Section 332.3(i).

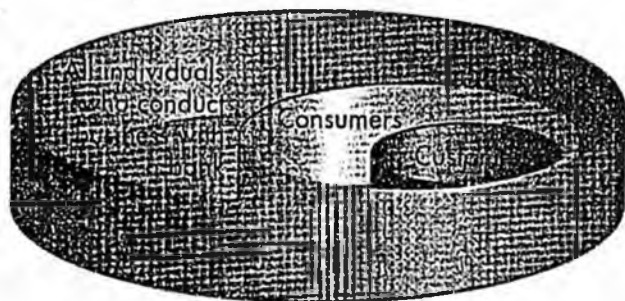


Additional guidance regarding the customer relationship can be found in the Supplemental Information (the preamble) of the rule, which notes that a continuing relationship is established

Section 4

"where a consumer typically would receive some measure of continued service following, or in connection with, a transaction." See page 35168, Federal Register, Vol. 65, No. 106.

The next diagram depicts the relationship between all individuals who do business with a bank and those who meet the regulatory definitions for consumers and customers. As the diagram shows, only a portion of the individuals who conduct business with a bank are consumers under the privacy rule. For example, individuals are not considered consumers under this rule if they are commercial clients, grantors or beneficiaries of trusts for which the bank is trustee, or participants in an employee benefit plan that the banks sponsors.



Information protected by the privacy

The rule identifies three primary categories of information:

- publicly available information
- personally identifiable financial information
- nonpublic personal information

Nonpublic personal information is the category of information protected by the privacy rule. The definitions for publicly available information and personally identifiable financial information work together to describe and define nonpublic personal information.

• *Publicly available information* is any information a bank reasonably believes is lawfully publicly available. The nature of the information, not the source of the information, determines whether it is publicly available information for purposes of the privacy rule. For example, even if a bank obtains customers' telephone numbers or the assessed value of their residences directly from the consumers, this information will be considered publicly available if the bank has a reasonable basis to believe the information could have been lawfully obtained from a public source. A reasonable belief exists if a bank has determined that (a) the information is of the type that is generally available to the public and (b) the individual has not blocked such information from public disclosure. This means, for example, that a bank can consider a customer's phone number to be publicly available, but only if the bank takes steps to determine the phone number is not unlisted.

• *Personally identifiable financial information* is any information a bank collects about a consumer in conjunction with providing a financial product or service. This includes:

- information provided by the consumer during the application process (e.g., name, phone number, address, income)
- information resulting from the financial product or service transaction (e.g., payment history, loan or deposit balances, credit card purchases)
- information from other sources about the consumer obtained in connection with providing the financial product or service (e.g., information from a consumer credit report or from court records)

Personally identifiable financial information also includes any information that "is disclosed in a manner that indicates that the individual is or has been your consumer." See Section 332.3(o)(2)(i)(D). Thus, the very fact that an individual is a consumer of a bank is personally identifiable financial information.

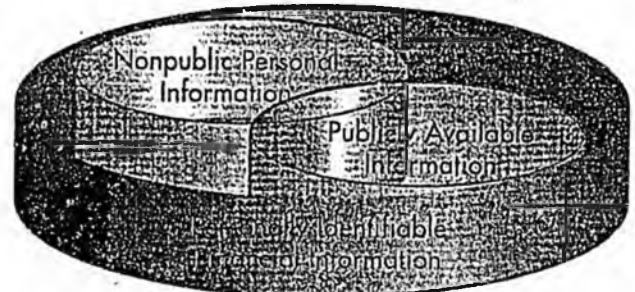
• *Nonpublic personal information*, the category of information protected by the privacy rule, consists of:

1. Personally identifiable financial information that is not publicly available information; and
2. Lists, descriptions, or other groupings of consumers that were either
 - a. created using personally identifiable financial information that is not publicly available information, or
 - b. contain personally identifiable financial information that is not publicly available information.

A list is considered nonpublic personal information if it is generated based on customer relationships, loan balances, or other personally identifiable financial information that is not publicly available. A list is also considered nonpublic personal information if it contains any nonpublic personal information.

For example, in jurisdictions where mortgage documents are public records, the names and address of all individuals for whom a bank held a mortgage would not be nonpublic personal information since it was generated using publicly available information and contained only publicly available information. The list would become nonpublic personal information, however, if it contained current loan balances or if it was generated using only those customers with current mortgage loan balances in excess of a certain amount.

The two categories of nonpublic personal information are depicted in the following diagram.



Who are nonaffiliated third parties?

The privacy rule restricts information sharing with nonaffiliated third parties. The rule defines nonaffiliated third parties as persons or entities except affiliates and persons jointly employed by a bank and a nonaffiliated third party. Affiliates generally include a bank's subsidiaries, its holding company, and any other subsidiaries of the holding company. See Section 332.3(a), Section 332.3(d), and Section 332.3(g).

The privacy rule does not impose limitations on information sharing with affiliates. It does, however, require disclosure of such information sharing policies and practices. (Note: The rules governing the sharing of information between a bank and its affiliates are set forth in the Fair Credit Reporting Act.)

Although the privacy rule most commonly uses the term "nonaffiliated third parties," there are some instances in which a distinction is made between nonaffiliated financial institutions and all other nonaffiliated third parties. Readers should pay particular attention to these distinctions. See Section 332.13.

Other Resources

A variety of resources are available to help banks understand the privacy rule and related issues. Some of the most significant are listed below. All FDIC material can be found at www.fdic.gov.

FDIC Financial Institution Letter titled *Final Rule on the Privacy of Consumers' Financial Information*, (FIL-34-2000 dated June 5, 2000).

FDIC Financial Institution Letter titled *Proposed Regulations Implementing the Fair Credit Reporting Act*, (FIL-71-2000 dated October 26, 2000).

FDIC Financial Institution Letter titled *Proposed Security Standards for Customer Information*, (FIL-43-2000 dated July 6, 2000).

FDIC Financial Institution Letter titled *Internet Web Site Privacy Survey Report*, (FIL-113-99 dated December 27, 1999).

FDIC Financial Institution Letter titled *Online Privacy of Consumer Financial Information*, (FIL-86-98 dated August 17, 1998).

Transcript of "*Is It Any of Your Business? Consumer Information, Privacy, and the Financial Services Industry*," an interagency public forum hosted by the FDIC, March 23, 2000.

Office of the Comptroller of the Currency's Bulletin titled *Privacy Laws and Regulations*, (September 8, 2000) available at www.occ.treas.gov.

Office of Thrift Supervision's Memorandum to Chief Executive Officers titled *Privacy Preparedness Check-up*, (September 29, 2000) available at www.ots.treas.gov.

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: SB 66
 (S) Publish Date: 2/5/01

Revision Date/Time (Note if correction): 1/26/2001 3:28PM Dept. Affected: DCED
 Title: Gramm-Leach-Bliley Act Changes to BRU: Banking, Securities, & Corps
Banking Statutes Component: Banking, Securities, & Corps
 Sponsor: Rules Committee
 Requester: Governor Component Number: 1233

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

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

CHANGE IN REVENUES ()	0.0	0.0	0.0	0.0	0.0	0.0
-------------------------------	------------	------------	------------	------------	------------	------------

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 RSS						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2001) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill amends the banking code to conform with federal law changes in the Gramm-Leach-Bliley Act (GLBA) to provide for Financial Holding Companies and increased ability of banks to provide related financial services. The bill also includes industry-requested changes such as publishing information electronically. Also, the bill allows the department to react faster to federal law changes and industry requests to maintain parity and competition between national and state-chartered depository institutions. No negative fiscal impact of this bill is expected.

Prepared by: Franklin T. Elder, Division Director Phone 465-2521
 Division: Banking, Securities, and Corporations Date/Time 1/26/2001 3:28PM
 Approved by: Commissioner Deborah B. Sedwick Date 1/26/2001
 Agency: Department of Community & Economic Development

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STATE OF ALASKA

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Mail Stop 3101

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

MEMORANDUM

March 14, 2001

SUBJECT: Sectional Summary of proposed CSSB 66()
(Work Order No. 22-GS1026\C)

TO: Senator Randy Phillips
Attn: Kim

FROM: *TB*
Theresa L. Bannister
Legislative Counsel

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

Section 1. States a purpose for the bill.

Section 2. AS 06.01.020. Amends the department's authority to order additional powers and limitations for state financial institutions.

Section 3. AS 06.01.028. Adds a new section addressing the confidentiality of a financial institution's depositor and customer records.

Section 4. AS 06.01.050(3). Amends the definition of "financial institution."

Section 5. AS 06.01.050(4). Adds a definition of "state financial institution."

Section 6. AS 06.05.005(a). Amends certain references in the subsection that states what the department's duties are. Corrects the language of (a)(4).

Section 7. AS 06.05.050. Repeals and reenacts this section that establishes the requirements for the publication, notice, and provision of reports by banks of their condition.

Section 8. AS 06.05.065(a). Amends a provision prohibiting department officers and employees from receiving certain loans from state financial institutions, except as otherwise provided in this section

Section 9. AS 06.05.065(b). Rewrites this subsection to address extensions of credit that predate a person's becoming a department officer or employee.

Sectional 3-14 Legal

Section 10. AS 06.05.205. Repeals and reenacts this section that regulates loans and extensions of credit by state banks.

Section 11. AS 06.05.209(b). Amends this subsection dealing with credit cards and other similar credit granting devices to delete a ceiling on the interest rate that can be charged and to allow the interest rate that the parties agree to.

Section 12. AS 06.05.210(a). Removes employees from the coverage of this subsection. It now applies only to loans that state banks may make to their directors and executive officers.

Section 13. AS 06.05.210. Adds a new subsection that makes state bank directors, executive officers, and employees subject to the lending limits imposed by AS 06.05.205.

Section 14. AS 06.05.237. Adds a new section relating to financial holding companies. Allows a holding company formed under this title may apply to the Federal Reserve System for status as a financial holding company. If the status is granted, the financial holding company has powers as a financial holding company authorized by the Federal Reserve System if it meets certain requirements.

Section 15. AS 06.05.245. Makes various changes to the section dealing with the disposition of property not needed in the conduct of a banking business.

Section 16. AS 06.05.272(b). Changes the standard for how much a state bank may invest in its subsidiaries.

Section 17. AS 06.05.301(a). Makes a change to coordinate with a new term defined for the chapter.

Section 18. AS 06.05.350(d). Prohibits the use of "bank" by a person in the person's name unless the person meets certain criteria.

Section 19. AS 06.05.350. Adds a new subsection allowing a person to apply to the department to use "bank" in the person's name.

Section 20. AS 06.05.426(b). Changes the former requirement of department approval to notification of the department when the state bank wants to establish an ATM at a place off the bank's premises. Expands the potential ATM users from banks to other depository institutions.

Section 21. AS 06.05.426(c). Establishes what the notification under (b) must contain.

Section 22. AS 06.05.426(d). Allows a state bank to invest in a corporation that operates ATM machines for "depository institutions."

Section 23. AS 06.05.426(e). Prohibits a person from establishing or operating an ATM machine that accepts deposits unless the deposits are insured by the FDIC or another federally agency that insures deposits.

Section 24. AS 06.05.435(c). Establishes what stock of the state bank of an entity that controls the state bank that each director of the state bank must own.

Section 25. AS 06.05.435. Adds two subsections that clarify additional aspects of the required ownership of stock established by this section.

Section 26. AS 06.05.550. Changes the reference names for certain banks.

Section 27. AS 06.05.555(a). Changes the reference name for certain banks.

Section 28. AS 06.05.555(b). Changes the reference name for certain banks.

Section 29. AS 06.05.555(c). Changes the reference name for certain banks.

Section 30. AS 06.05.555(d). Changes the reference name for certain banks.

Section 31. AS 06.05.555(e). Changes the reference name for certain banks.

Section 32. AS 06.05.555(f). Changes the reference name for certain banks.

Section 33. AS 06.05.557. Adds a new section establishing notice filing requirements for interstate national banks acquiring a branch in this state.

Section 34. AS 06.05.565(a). Changes the reference name for certain banks.

Section 35. AS 06.05.565(c). Changes the reference name for certain banks.

Section 36. AS 06.05.565(d). Changes the reference name for certain banks.

Section 37. AS 06.05.565(e). Allows the department to require periodic reports from interstate state banks and from interstate national banks, and from bank holding companies that control them.

Section 38. AS 06.05.565(g). States that an interstate national bank operating a branch bank in this state is subject to the provisions of AS 06.05.548 and 06.05.550 and the regulations adopted and orders issued under those sections.

Section 39. AS 06.05.570(a). Changes the reference name for certain banks referred to in the subsection.

Section 40. AS 06.05.990. Changes the definition of "financial institution."

Section 41. AS 06.05.990. Rewrites the definition of "loan."

Section 42. AS 06.05.990. Changes reference names in the definition of "recently formed bank."

Section 43. AS 06.05.990. Expands the definition of "state financial institution."

Section 44. AS 06.05.990. Adds definitions for "extension of credit," "financial holding company," "interstate national bank," and "interstate state bank."

Section 45. AS 06.15.100. Rewrites the section that describes the conduct that is prohibited for trustees of mutual banks.

Section 46. AS 06.15.105. Allows a trustee of a mutual bank to borrow money from the mutual bank to the same extent that a director may borrow money under AS 06.05.210.

Section 47. AS 06.20.010. Adds a new section to the Alaska Small Loans Act. Requires a person who is doing business under and as permitted by any law of the state or of the United States relating to banks, savings banks, trust companies, building and loan associations, or credit unions and who is exempt from the licensing requirement in (a) of this section to comply with the other provisions of this chapter.

Section 48. AS 06.45.020(a). Amends a subsection of the Alaska Credit Union Act. Changes the par value requirements.

Section 49. AS 06.45.060(5). Changes the required maturity date for certain loans to members.

Section 50. AS 06.45.060(7). Adds three items in which a credit union may invest its funds.

Section 51. AS 06.45.060. Adds a provision allowing a credit union to issue solicited or unsolicited credit cards or other similar credit granting devices to a member for obtaining money, goods, services or anything else of value.

Section 52. AS 06.45.295. Adds a new section to the Alaska Credit Union Act allowing state credit unions to establish, maintain, and operate ATMs and addressing certain other aspects of ATM operation.

Section 53. Repealer.

Section 54. Authorizes the department to immediately proceed to adopt regulations for the new Act.

Senator Randy Phillips
March 14, 2001
Page 5

Section 55. Provides an instruction to the revisor of statutes regarding changes to the catchlines of two sections

Section 56. Gives sec. 54 an immediate effective date.

Section 57. Gives the Act, except for sec. 54, an effective date of July 1, 2001.

If I may be of further assistance, please advise.

TLB:lmb
01-097.lmb

Tony Knowles, Governor

Alaska

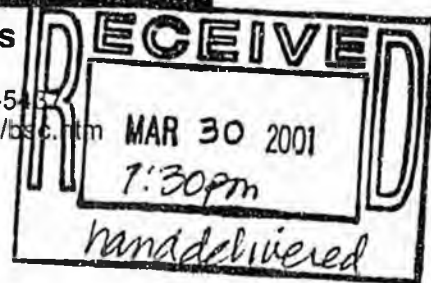
**Department of Community
and Economic Development**

Division of Banking, Securities, and Corporations

P.O. Box 110807, Juneau, AK 99811-0807

Telephone: (907) 465-2521 • Fax: (907) 465-2549 • TDD: (907) 465-5433

Email: dbsc@dced.state.ak.us • Website: www.dced.state.ak.us/bsc/dbsc.htm



March 30, 2001

The Honorable Randy Phillips
Chairman, Senate Labor and Commerce Committee
Alaska Senate
State Capitol Room 103
Juneau, AK 99801-1182

Dear Chairman Phillips:

RE: Changes Needed in Version F of SB 66

In our review of Sec. 4, pages 2-3, lines 16-16 of Version F, we noted some problems. We have outlined those already in our analysis of the bankers association's amendment, but will reiterate them again for Version F.

It is critical that the Committee delete "having jurisdiction of the financial institution" at page 2, line 25. We would not object to words like "of competent jurisdiction," or just delete the language. The testimony the bankers provided stated they currently ignore orders issued by courts that lack jurisdiction now, so this language is not needed. Its presence may make it impossible for anyone but federal or state banking regulators to issue these orders, since they are the only ones with jurisdiction over the financial institution. It makes no sense to put us in that position when there is a securities or insurance investigation being conducted that does not involve our bank regulators.

At page 2, lines 26-27, we request the Committee to delete (a)(3), since we believe adopting the Gramm-Leach-Bliley Act (GLBA) will result in a loss of privacy protection for Alaskans that they have had for decades and which is protected by the Alaska Constitution. The opt-out provision of GLBA is now resulting in institutions issuing notices that are likely not to be read and understood by most Alaskans. They include suggestions that no action is needed. Under opt-out, as the Committee knows, no action will result in sharing or selling this information. It puts the burden of protecting their privacy on the people, and not on the institutions that will be able to sell nonpublic personal information to telemarketers under this provision.

This week, the national press reported that people were upset to learn that a television service was collecting information on what channels people were watching and selling aggregated information to networks. If people are concerned about divulging their television habits, we suspect they will be even more concerned about divulging their check and credit card use habits.

"Promoting a healthy economy and strong communities"

We believe that privacy will be a topic of growing concern in the coming years, and we regret the loss of Alaska's long-standing protections of privacy.

At page 3, lines 2-7, we request the Committee delete (c) and replace it with the subsection we have offered, as follows:

(c) Unless otherwise provided in this subsection, when disclosure of financial institution records is required or allowed under (a)(2) (please note: these references depend on the order of the subsections of (a)) of this section, the financial institution shall notify the depositor or customer of the disclosure before the disclosure is made. If notification before disclosure is not possible, the financial institution shall notify the customer or depositor of the disclosure as soon as practicable after the disclosure is made. However, notification either before or after disclosure may not be made if disclosure is made under a process included (a)(2) of this section and the document requiring disclosure on its face requires the financial institution not to notify the depositor or customer.

Our language is easier on the financial institutions in that it does not require mailing a notice in 3 days, but it also preserves the current law which provides an opportunity of a customer to receive prior notice unless disclosure is prohibited by the order.

If the Committee does not replace the section as we believe it should, it is critical to delete the language at page 3, lines 5-6, "...the order is, or is accompanied by, a court order that expressly directs..." with the following language "...the court or administrative order states on its face that the financial institution shall not notify the depositor or customer, or is accompanied by a court order that expressly directs..." This change is needed because the language in Version F will result in no administrative subpoenas or orders that meet the nondisclosure criteria. An administrative agency will not be able to get such a court order. For example, the language now in Version F will make it almost impossible to conduct securities investigations into Ponzi schemes in the future similar to the World Plus incident in the recent past, without alerting the target who may then be able to hide the money. The entire purpose of this is to allow investigators a chance at recovering assets for defrauded Alaskans.

Version F excludes the language we recommended that makes the financial institutions liable for intentional damage from improperly releasing nonpublic personal information about Alaskans. Our subsection (d) added to Version F would require the following new subsection (f) at page 3, line 17:

(f) A financial institution or any other person is liable to their depositor or customer for intentional violations of this section in an amount equal to actual damages caused by the disclosure of the confidential records of the financial institution pertaining to their depositor or customer. A financial institution or other person that takes an action under this section, relying in good faith on any provision of this section, is not liable to any person for its actions.

Limiting liability to actual damages and to intentional violations sets a relatively high standard for complainants to meet. At the same time, providing no liability for intentional violations that

cause real damage to Alaskans does not make any sense to us. We urge the Committee to include this basic protection for Alaskans.

We also wish to commend the Committee for including in Version F (a)(1) at page 2, line 22. This is needed because, even if you adopt the GLBA with which we disagree, we understand that the GLBA does not cover all accounts and circumstances. It places no restrictions on information sharing with affiliates, and we believe it does not cover commercial and certain agricultural customers. Without subsection (a)(1), there would be no protection for these customers.

We also appreciate the inclusion of subsection (d) at page 3, lines 8-13. The bankers association did not object to this section, but one expressed the opinion that it was superfluous. We do not believe that to be the case. This subsection provides the opportunity for smaller institutions that lack affiliates to be able to share information as needed to provide their services to customers.

We will be happy to discuss these with the Committee, if needed. We have been informed that the House Finance Committee will be hearing the governor's capital budget at 1:30 PM on Tuesday, April 3. The division has a capital project about which we must provide testimony. We respectfully request the Senate Labor and Commerce Committee to take up the CS for SB 66 first on Tuesday, so that we may also attend the House Finance Committee hearing.

Yours truly,

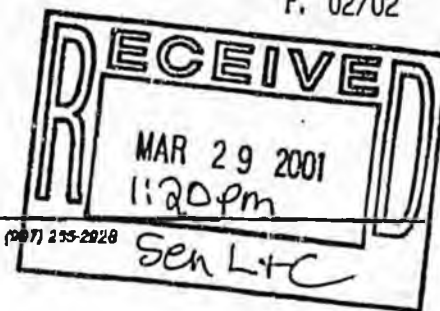


Franklin T. Elder
Director

National Bank of Alaska



Corporate Headquarters P.O. Box 100600 Anchorage, Alaska 99510-0600 (907) 235-2828



RICHARD STRUTZ
PRESIDENT

March 29, 2001

Honorable Randy Phillips, Chairman
Senate Labor and Commerce Committee
State Of Alaska
State Capitol, Room 103
Juneau, Alaska 99801-1182

Re: Senate Bill No. 66, Relating to Financial Institutions

Dear Chairman Phillips and Committee Members:

This letter is to provide written testimony that National Bank of Alaska believes the restrictive opt-in provision in Section 3 of SB66 should be amended by adopting the Alaska Bankers Association's proposed amendment permitting an opt-out rule as allowed under Title V of the Gramm-Leach-Bliley Act of 1999 (GLBA). Title V of GLBA requires financial institutions to issue privacy notices and provides consumers with an annual opportunity to opt-out of information sharing. Financial institution regulators are preparing detailed rules and regulations covering privacy procedures. These rules should be allowed to work before a restrictive opt-in law is passed.

Customers of financial services companies obtain significant benefits from information sharing. Our customers provide us with information because they trust us to protect that information and to use it wisely. To the extent we can share customer information with affiliates and/or third parties this information sharing will provide our customers with more services at lower prices. In addition, it allows NBA to increase the service levels it provides to its customers.

The opt-in restrictions in Section 3 virtually ensures greater customer inconvenience, since under opt-in, a financial service company must contact its customers to obtain permission to make the most innocuous use of non-sensitive information. Such individual consent is often impractical to obtain and use and many out-of-state companies will simply exclude Alaskans from their program and services. Moreover, an opt-in system is significantly more expensive to administer and would impose additional costs on our customers.

The National Bank of Alaska strongly endorses the Alaska Bankers Association amendment to Section 3. SB66.

Sincerely,

Richard Strutz
President



ALASKA STATE LEGISLATURE
SENATOR RANDY PHILLIPS
Senate District L

Senate Labor & Commerce Committee

Session (Jan-May)
State Capitol, Rm 103
Juneau, AK 99801
(907) 465-4949
(907) 465-4979 Fax
Toll Free Anchorage Area
800-478-4950

Interim
P.O. Box 142
Eagle River, AK 99577
(907) 694-4949
(907) 694-4948 Fax

Kim

*SBlele
Amendments
3-28 Wed.*

MEMORANDUM

TO: Terri Bannister
FROM: Senator Randy Phillips *RRP*
SUBJECT: Changes to 22-GS1026\C
HIGH PRIORITY

DATE: 3-28-01 via fax: 4 pages

Please incorporate the 3 proposed amendments to Work Draft CSSB66 as written in the attachment by the Alaska Bankers Association.

Additional changes:

- 1) Change the loan amount on page 21, lines 15 and 21 from \$5,000 to \$20,000.
- 2) Change the examination cycle from a 12-month cycle to an 18-month cycle.

If you have questions, please contact Kim Ross at 3844.

Thank you.

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

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

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

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

(2) required by federal or state statute or regulation or by a subpoena, search warrant or other order directed to the financial institution issued by a court or administrative agency having jurisdiction of the financial institution;
or

(3) made in compliance with sections 501-509 of P.L. 106-102 (15 U.S.C. §§6801-6809) and regulations promulgated thereunder.

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

institution's reasonable costs of complying with the order.

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

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

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

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

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

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

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

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

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

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

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

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



ALASKA STATE LEGISLATURE
SENATOR RANDY PHILLIPS
Senate District L

Session (Jan-May)
State Capitol, Rm 103
Juneau, AK 99801
(907) 465-4949
(907) 465-4979 Fax
Toll Free Anchorage Area
800-478-4950

Interim
P.O. Box 142
Eagle River, AK 99577
(907) 694-4949
(907) 694-4948 Fax

Senate Labor & Commerce Committee

MEMORANDUM

TO: Terri Bannister
FROM: Senator Randy Phillips *Kross*
SUBJECT: Changes to 22-GS1026\C
HIGH PRIORITY

DATE: 3-28-01 @ 1:30 p.m. *Part II*

via fax: *2029*

Please incorporate the following ADDITIONAL amendments to Work Draft CSSB66. These are in addition to the earlier memo this date.

3. (Section 3, page 3, line 18) Insert a new subsection, AS 06.01.028(f):

(f) This section applies to a financial institution subject to the regulation of the department under this title and to entities organized under AS 10.13 (Alaska BIDCO Act).
4. (Section 5, page 3, lines 25-27) Amend the new paragraph to read:

(4) "state financial institution" means a financial institution that is organized under this title, or that is subject to examination by the department under this title.
5. (Section 44, page 18, lines 28-31) Replace language with the following.

(24) "state financial institution" means a financial institution that is organized under this title, or that is subject to examination by the department under this title.
6. (Section 20, page 11, lines 16-20) Replace the sentence starting on line 16 with the following sentence:

An automated teller machine operated off bank premises shall be made available on a nondiscriminatory basis for use by depositors of other depository institutions [banks] authorized to do business in the state [AND THEIR CUSTOMERS], upon the agreement of the other depository institutions [banks] to pay a fair and equitable amount for the use of the machine.

Alaska

Tony Knowles, Governor

Department of Community and Economic Development

Division of Banking, Securities, and Corporations

P.O. Box 110807, Juneau, AK 99811-0807

Telephone: (907) 465-2521 • Fax: (907) 465-2549 • TDD: (907) 465-5437

Email: dbsc@dced.state.ak.us • Website: www.dced.state.ak.us/oscb/bsc.htm

Kim
Amendments
3-28
Wed.

February 26, 2001

The Honorable Randy Phillips
Chairman, Senate Labor & Commerce Committee
State Capitol Room 103
Juneau, AK 99801-1182

Dear Chairman Phillips:

RE: Request for additional amendments to SB 66

Following the initial hearing for SB 66 in the Senate Labor & Commerce Committee, division staff members had the opportunity to discuss certain provisions of the bill with Mr. Ed Crane, president of Alaska Commercial and Agriculture Bank (CFAB) and with the chief executive officer of the state's sole BIDCO (Business and Industrial Development Company). As a result of those discussions, the division respectfully requests the committee make the following amendments:

OK Bankers 1. (Section 3, page 3, line 18) Insert a new subsection, AS 06.01.028(f):

(f) This section applies to a financial institution subject to the regulation of the department under this title and to entities organized under AS 10.13 (Alaska BIDCO Act).

This amendment extends the privacy provision of AS 06.01.028 to BIDCOs (Business and Industrial Development Companies). It is the division's intention not to extend other provisions of Title 6 to these entities. This is needed because there is no similar privacy provision in the Alaska BIDCO Act at AS 10.13. We show this new subsection as (f) because we had recommended a new subsection (e) in our letter to you dated February 16, 2001.

already added
in ISTCS

OK Bankers 2. (Section 5, page 3, lines 25-27) Amend the new paragraph to read:

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

This amendment removes reference to entities organized under AS 10.13 (Alaska BIDCO Act) and AS 44.81 (Alaska Commercial Fishing and Agriculture Bank (CFAB)). Since CFAB has a privacy provision essentially the same as that proposed in this bill, there is no reason to bring CFAB into the definition of a "financial institution" or a "state financial institution." Since the Alaska BIDCO act does not contain such a provision, we have included reference to it in the privacy provision above. Other provisions of Title 6 are not relevant to a BIDCO and so it is appropriate to delete reference to AS 10.13 from the definition of "state financial institution."

"Promoting a healthy economy and strong communities"

2-26 DRED 3 amendments

*OK
Bankers*

(Section 44, page 18, lines 23-31) Replace language with the following.

(24) "state financial institution" means a financial institution that is organized under this title, or that is subject to examination by the department under this title.

This amendment keeps the definition of "state financial institution" in AS 06.05 consistent with the definition in AS 06.01. For the same reasons described earlier, this amendment removes reference to AS 10.13 and AS 44.81.

Thank you for your consideration of SB 66 and of these requested amendments. We look forward to working with your committee on this legislation.

Yours truly,



Franklin T. Elder
Director

Kim
Reed
2-16-01
4:15pm

Tony Knowles, Governor

Alaska Department of Community and Economic Development

Division of Banking, Securities, and Corporations

P.O. Box 110807, Juneau, AK 99811-0807

Telephone: (907) 465-2521 • Fax: (907) 465-2549 • TDD: (907) 465-5437

Email: dbsc@dced.state.ak.us • Website: www.dced.state.ak.us/bsc/bsc.htm

February 16, 2001

The Honorable Randy Phillips
Chairman, Senate Labor & Commerce Committee
State Capitol Room 103
Juneau, AK 99801-1182

Dear Chairman Phillips:

RE: Request clarifying amendments to SB 66

The Division of Banking, Securities, and Corporations thanks you for scheduling a hearing of the Senate Labor and Commerce Committee on SB 66, legislation amending the Financial Institutions Code (AS 06). This bill modernizes the banking code to remove restrictions to activities to be consistent with those permitted under federal law with the passage of the Gramm-Leach-Bliley Act (GLBA) on November 12, 1999. It also provides a consistent application of current customer privacy provisions across various financial institutions. It removes unnecessary regulatory barriers, and allows the division to respond more quickly to industry requests, thus maintaining the attractiveness of the state charter for depository institutions.

In preparation for the hearing with your committee, we recently met with members of the banking industry. They provided us some preliminary comments about some wording in the bill they considered unclear. It was apparent that we did not disagree with the objective of the sections, and so the division agreed to seek some clarifying amendments to the bill to make those sections more clear. The proposed amendments are described below:

1. (Section 3, page 2, lines 10-12) Replace language in lines 10-12 of the new section AS 06.01.028(a) with the following language:

The records of financial institutions pertaining to their depositors and customers are confidential and may not be disclosed except when...

2. (Section 3, page 3, lines 12-15) Replace the first sentence in the new section AS 06.01.028(d) beginning on line 12 with the following sentence:

A financial institution or any other person is liable to their depositor or customer for intentional violations of this section in an amount equal to actual damages caused by the disclosure of the confidential records of the financial institution pertaining to their depositor or customer.

3. (Section 3, page 3, line 18) Insert a new subsection, AS 06.01.028(e):

(e) Nothing in (a)-(d) of this section prohibits a financial institution from disclosing information to a person necessary to provide the essential services of the financial institution to a depositor or customer, if the person receiving the information has a written agreement with the financial institution to be bound by the requirements of (a)-(d) of this section.

- OK
banking* 4. (Section 20, page 11, lines 16-20) Replace the sentence starting on line 16 with the following sentence:

An automated teller machine operated off bank premises shall be made available on a nondiscriminatory basis for use by depositors of other depository institutions [banks] authorized to do business in the state [AND THEIR CUSTOMERS], upon the agreement of the other depository institutions [banks] to pay a fair and equitable amount for the use of the machine.

We believe the amendments described in this letter are mostly clarifying in nature, and would address concerns expressed to us by industry with which we are in agreement. Thank you for your consideration of SB 66 and of these requested amendments. We look forward to working with your committee on this legislation.

Yours truly,



Franklin T. Elder
Director

TRANSACTION REPORT

MAR-28-2001 WED 01:41 PM

FOR: SEN R PHILLIPS

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CS FOR SENATE BILL NO. 66()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the authorizations for certain state financial institutions of certain
2 powers and limitations; relating to confidential financial records of depositors and
3 customers of certain financial institutions; relating to the Alaska Banking Code, Mutual
4 Savings Bank Act, Alaska Small Loans Act, and Alaska Credit Union Act; and
5 providing for an effective date."

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

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

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

13 * Sec. 2. AS 06.01.020(a) is amended to read:

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

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

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

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

12 **Sec. 06.01.028. Depositor and customer records confidential.** (a) The
13 records of financial institutions relating to their depositors and customers are
14 confidential and may not be disclosed except when

15 (1) the financial institution, customer, or depositor is compelled to
16 disclose the records by court order, administrative subpoena or order, or other process
17 issued under supervision of a court or an administrative agency;

18 (2) their disclosure is required by federal or state statute or regulation;

19 (3) disclosure is authorized in writing by the depositor or customer;

20 (4) disclosure is made to the holder of a negotiable instrument drawn
21 on the financial institution as to whether the drawer has sufficient funds in the
22 financial institution to cover the instrument; or

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

31 (b) Unless otherwise provided in this subsection, when disclosure of financial

1 institution records is required or allowed under (a)(1) or (2) of this section. the
2 financial institution shall notify the depositor or customer of the disclosure before the
3 disclosure is made. If notification before disclosure is not possible, the financial
4 institution shall notify the customer or depositor of the disclosure as soon as
5 practicable after the disclosure is made. However, notification either before or after
6 disclosure may not be made if disclosure is made under a subpoena, subpoena duces
7 tecum, search warrant issued by a court, or a court order or subpoena issued at the
8 request of a grand jury if the document requiring disclosure by one of these processes
9 on its face requires confidentiality.

10 (c) When disclosure of financial institution records is compelled by a court
11 order under (a)(1) of this section. the court shall provide in the order for the
12 reimbursement of the financial institution for the reasonable costs incurred in
13 complying with the order.

14 (d) A financial institution or any other person is liable to a depositor or
15 customer for intentional violations of this section in an amount equal to actual
16 damages caused by the disclosure of the confidential records of the financial
17 institution relating to its depositors or customers. A financial institution or other
18 person who takes an action under this section, relying in good faith on a provision of
19 this section, is not liable to any person for its actions.

20 (e) Nothing in (a) - (d) of this section prohibits a financial institution from
21 disclosing information to a person if

22 (1) the disclosure is necessary to provide the essential services of the
23 financial institution to a depositor or customer; and

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

26 * Sec. 4. AS 06.01.050(3) is amended to read:

27 (3) "financial institution" means an institution subject to the regulation
28 of the department under this title; "financial institution" includes a commercial
29 bank, savings bank, credit union, premium finance company, small loan
30 company, bank holding company, financial holding company, trust company and
31 savings and loan association.

1 * Sec. 5. AS 06.01.050 is amended by adding a new paragraph to read:

2 (4) "state financial institution" means a financial institution that is
3 organized under this title, AS 10.13, or AS 44.81, or that is subject to examination by
4 the department under this title.

5 * Sec. 6. AS 06.05.005(a) is amended to read:

6 (a) The department shall

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

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

11 (3) review and approve or disapprove applications for new state banks
12 under AS 06.05.344 [AS 06.05.345], new bank branches under AS 06.05.399, and
13 international bank branches or interstate state bank branches [BRANCH BANKS]
14 under AS 06.05.555:

15 (4) issue permits authorizing certain acquisitions by bank holding
16 companies [TO DO BUSINESS IN THIS STATE] under AS 06.05.235 and
17 06.05.570;

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

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

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

24 * Sec. 7. AS 06.05.050 is repealed and reenacted to read:

25 **Sec. 06.05.050. Publication of reports.** (a) Condensed forms of all reports
26 of condition required by AS 06.05.045(a) shall be immediately

27 (1) published by the state bank in a newspaper of general circulation
28 published in the place where the state bank is located; if a newspaper of general
29 circulation is not published in that place, the report shall be published in the
30 newspaper of general circulation published nearest to that place: or

31 (2) posted

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

2 (B) in the lobby of the principal office and all branches of the
3 state bank.

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

8 * Sec. 8. AS 06.05.065(a) is amended to read:

9 (a) A bank examiner of the department who deals with the regulation of
10 financial institutions, a special agent selected by the department to do work relating to
11 financial institutions, the commissioner or deputy commissioner, or the director of
12 banking may not be an officer, employee, director, trustee, attorney, shareholder, or
13 partner of a financial institution, or receive, directly or indirectly, a payment or
14 gratuity from a financial institution. A person subject to this section may not borrow
15 money from a state financial institution [THAT HAS A CERTIFICATE OF
16 AUTHORITY UNDER THIS TITLE], except as provided in this section.

17 * Sec. 9. AS 06.05.065(b) is amended to read:

18 (b) A person subject to this section may

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

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

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

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

27 (5) retain a preexisting extension of credit that was incurred before
28 commencement of the employment that subjected the person to this section; any
29 renegotiation of a preexisting extension of credit shall be treated as a new
30 extension of credit that is subject to the prohibitions of this section [BE
31 INDEBTED TO A STATE FINANCIAL INSTITUTION FOR A MORTGAGE

1 LOAN SECURED BY THE PERSON'S PRIMARY RESIDENCE. IF THE LOAN
2 CLOSED BEFORE THE PERSON BECAME AN EMPLOYEE SUBJECT TO THIS
3 SECTION].

4 * Sec. 10. AS 06.05.205 is repealed and reenacted to read:

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

11 (b) The total loans and extensions of credit by a state bank to a person
12 outstanding at one time and fully secured by readily marketable collateral having a
13 market value, as determined by reliable and continuously available price quotations, at
14 least equal to the amount of the money outstanding, may not exceed 10 percent of the
15 unimpaired capital and unimpaired surplus of the state bank. The limitation in this
16 subsection is separate from and in addition to the limitation contained in (a) of this
17 section.

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

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

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

27 (3) loans or extensions of credit secured by bills of lading, warehouse
28 receipts, or similar documents transferring or securing title to readily marketable
29 staples are subject to a limitation of 35 percent of unimpaired capital and unimpaired
30 surplus in addition to the general limitations if the market value of the staples securing
31 each additional loan or extension of credit at all times equals or exceeds 115 percent of

1 the outstanding amount of the loan or extension of credit: in order to be considered
2 under this paragraph, the staples must be fully covered by insurance whenever it is
3 customary to insure those staples;

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

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

13 (6) loans or extensions of credit secured by a segregated deposit
14 account in the lending state bank are not subject to a limitation based on unimpaired
15 capital and unimpaired surplus;

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

20 (8) loans or extensions of credit arising from the discount of negotiable
21 or non-negotiable installment consumer paper that carries a full recourse endorsement
22 or unconditional guarantee by the person transferring the paper are subject under this
23 section to a maximum limitation equal to 25 percent of unimpaired capital and
24 unimpaired surplus, notwithstanding the collateral requirements set out in (b) of this
25 section; however, if the state bank's files or the knowledge of its officers of the
26 financial condition of each maker of that consumer paper is reasonably adequate, and
27 an officer of the state bank designated for that purpose by the board of directors of the
28 state bank certifies in writing that the state bank is relying primarily upon the
29 responsibility of each maker for payment of the loans or extensions of credit and not
30 upon any full or partial recourse endorsement or guarantee by the transferor, the
31 limitations of (a) and (b) of this section as to the loans or extensions of credit of each

1 such maker are the sole applicable loan limitations;

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

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

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

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

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

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

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

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

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

* Sec. 11. AS 06.05.209(b) is amended to read:

(b) A state bank may issue a credit card or other similar credit granting device to a customer for obtaining money, goods, services, or anything else of value, and, notwithstanding AS 45.45.010, the state bank, when credit is extended under this section, may impose a service charge at a monthly rate as agreed upon by contract between the state bank and the customer receiving the credit granting device [THAT RESULTS IN AN ANNUAL RATE NOT IN EXCESS OF 17 PERCENT ON THE OUTSTANDING BALANCE. HOWEVER, IN ADDITION, WHEN CASH IS ADVANCED UNDER THIS SECTION, THE BANK MAY IMPOSE A SETUP CHARGE THAT DOES NOT EXCEED THREE PERCENT OF THE FUNDS ADVANCED, OR \$12, WHICHEVER IS LESS. EXCEPT THAT ON LOANS OF UNDER \$100 A MINIMUM NOT EXCEEDING \$3 MAY BE CHARGED].

* Sec. 12. AS 06.05.210(a) is amended to read:

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

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

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

* Sec. 14. AS 06.05 is amended by adding a new section to read:

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Torgerson

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

- (1) at the time of application, the holding company provides the department with a complete copy of the application;
- (2) the holding company provides the department with copies of all correspondence concerning the application;
- (3) the holding company provides the department with a copy of the approval by the Federal Reserve System within 10 days after the holding company receives the approval; and
- (4) the department does not issue a letter denying financial holding company status within 30 days after the approval by the Federal Reserve System.

*Sec. 15. AS 06.05.245 is amended to read:

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

Torgerson

*Sec. 16. AS 06.05.272(b) is amended to read:

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

1 the limitations of this subsection.

2 * Sec. 17. AS 06.05.301(a) is amended to read:

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

7 * Sec. 18. AS 06.05.350(d) is amended to read:

8 (d) Except as authorized under this section, a person may not
9 (1) engage in the business of receiving deposits, discounting evidences
10 of indebtedness, or receiving money for transmission;
11 (2) represent that the person is [, OR ACTS FOR,] a bank; or
12 (3) use any form of the word "bank" in the person's name unless
13 the person is a state bank formed under this title or a bank formed under the
14 authority of another state or an agency of the federal government, or unless it is
15 clear that the use does not represent that the person is a bank; the prohibition in
16 this paragraph does not apply to a food bank, blood bank, or similar
17 organization that cannot readily be confused with a bank [AN ARTIFICIAL OR
18 CORPORATE NAME THAT PURPORTS TO BE OR SUGGESTS THAT IT IS
19 THE NAME OF A BANK].

20 * Sec. 19. AS 06.05.350 is amended by adding a new subsection to read:

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

24 * Sec. 20. AS 06.05.426(b) is amended to read:

25 (b) A state bank may establish, maintain, and operate an automated teller
26 machine at a location other than bank premises by notifying the department 30 days
27 before the date of establishment [WITH THE PRIOR APPROVAL OF THE
28 DEPARTMENT]. An automated teller machine operated off bank premises shall be
29 made available on a nondiscriminatory basis for use by depositors of other
30 depository institutions [BANKS] authorized to do business in the state [AND THEIR
31 CUSTOMERS], upon the agreement of the other depository institutions [BANKS] to

Banks of

1 pay a fair and equitable amount for the use of the machine.

2 * Sec. 21. AS 06.05.426(c) is repealed and reenacted to read:

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

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

7 (2) the manner of operation and the kinds of transactions that the
8 machine will perform:

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

11 (4) other information required by the department.

12 * Sec. 22. AS 06.05.426(d) is amended to read:

13 (d) A state bank may invest in a corporation organized to operate machines
14 that perform automated teller services for two or more depository institutions
15 [BANKS, IF EACH BANK OWNS PART OF THE CAPITAL STOCK OF THE
16 CORPORATION].

17 * Sec. 23. AS 06.05.426 is amended by adding a new subsection to read:

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

21 * Sec. 24. AS 06.05.435(c) is amended to read:

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

29 * Sec. 25. AS 06.05.435 is amended by adding new subsections to read:

30 (h) In the case of an entity that owns more than one bank, a director may use
31 the director's equity interest in the controlling entity to satisfy, in whole or in part, the

1 equity interest requirement for one or all of the controlled banks.

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

5 * Sec. 26. AS 06.05.550 is amended to read:

6 **Sec. 06.05.550. Authority of international bank, [OR] interstate state
7 bank, or interstate national bank to branch.** (a) An international bank, [OR] an
8 interstate state bank, or an interstate national bank whose deposits are insured by
9 the Federal Deposit Insurance Corporation [,] may acquire a branch bank as the result
10 of a merger or consolidation of the international bank, [OR] interstate state bank, or
11 interstate national bank with, or the purchase of all or substantially all of the assets
12 of, a state bank, a national bank with its principal office in this state, or a branch of the
13 state bank or national bank. unless the state bank or national bank is a recently formed
14 bank.

15 (b) An international bank may establish a new branch bank in this state or
16 acquire a recently formed bank [,] if the department approves the establishment or
17 acquisition before the establishment or acquisition occurs. An interstate state bank or
18 interstate national bank may not establish a branch bank in this state unless the
19 establishment occurs through an acquisition under (a) of this section of a bank located
20 in the state. An interstate state bank or interstate national bank may not establish a
21 new branch bank in this state.

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

25 * Sec. 27. AS 06.05.555(a) is amended to read:

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

- 30 (1) all information and fees required under AS 06.05.399;
31 (2) the name of the bank and the address of its principal office;

1 (3) if an international bank, the country under whose laws it is
2 organized;

3 (4) the amount of the bank's capital actually paid in cash and the
4 amount subscribed for and unpaid;

5 (5) a complete and detailed statement of the bank's financial condition;

6 (6) the names of all other states and countries in which the bank is
7 admitted or qualified to do business;

8 (7) a copy of the bank's charter, articles of incorporation, and bylaws,
9 as applicable;

10 (8) if an international bank, evidence satisfactory to the department
11 that the bank is authorized to conduct a banking business under the laws of the country
12 of its organization, and the nature of the bank's business;

13 (9) a properly executed designation of the department as the bank's
14 agent for service of process in an action or proceeding arising out of a transaction
15 involving the branch bank; the designation must include the name and address of the
16 officer, agent, or other person to whom the department is to forward the process; and

17 (10) other information necessary or appropriate for the department to
18 determine whether the bank is entitled to a certificate of authority from the
19 department.

20 * Sec. 28. AS 06.05.555(b) is amended to read:

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

27 * Sec. 29. AS 06.05.555(c) is amended to read:

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

31 * Sec. 30. AS 06.05.555(d) is amended to read:

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

3 (1) if an interstate state bank,

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

7 (B) the bank supervisor of the home state of the bank has
8 agreed to provide to the department the examination reports that the
9 department determines sufficient to permit the department to determine on a
10 current basis the financial condition of the bank;

11 (2) the proposal is consistent with a sound and competitive banking
12 system;

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

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

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

18 * Sec. 31. AS 06.05.555(e) is amended to read:

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

27 * Sec. 32. AS 06.05.555(f) is amended to read:

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

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

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

2 * Sec. 33. AS 06.05 is amended by adding a new section to read:

3 **Sec. 06.05.557. Notice filing for interstate national banks.** An interstate
4 national bank acquiring a branch in this state under AS 06.05.550 shall file a notice of
5 the acquisition with the department along with a copy of the application filed with the
6 agency that primarily regulates the interstate national bank. The notice and copy of
7 the application shall be filed with the department at the same time the application is
8 filed with the agency that primarily regulates the interstate national bank.

9 * Sec. 34. AS 06.05.565(a) is amended to read:

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

14 * Sec. 35. AS 06.05.565(c) is amended to read:

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

19 * Sec. 36. AS 06.05.565(d) is amended to read:

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

25 * Sec. 37. AS 06.05.565(e) is amended to read:

26 (e) The department may require periodic reports from an interstate state
27 bank or an interstate national bank [OUT-OF-STATE DEPOSITORY
28 INSTITUTION] that maintains a branch in this state and from a bank holding
29 company that controls the interstate state bank or interstate national bank [OUT-
30 OF-STATE DEPOSITORY INSTITUTION]. The reports shall be made under oath
31 and filed as frequently as required by the department. The reports must contain the

1 information and detail that the department determines to be appropriate to assure
2 continuing compliance of the interstate state bank or interstate national bank
3 [OUT-OF-STATE DEPOSITORY INSTITUTION] with the provisions
4 [PROVISION] of this title.

5 * Sec. 38. AS 06.05.565 is amended by adding a new subsection to read:

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

9 * Sec. 39. AS 06.05.570(a) is amended to read:

10 (a) An out-of-state bank holding company may acquire and own all or a
11 portion of the voting securities or other capital stock of, or all or substantially all of the
12 assets of, one or more state banks, domestic bank holding companies, or national
13 banks conducting a banking business in the state, unless the state bank or national
14 bank is a recently formed bank. Before an out-of-state bank holding company may
15 acquire a state bank or bank holding company of a state bank doing business in this
16 state, the out-of-state bank holding company shall apply for and obtain a permit from
17 the department. In considering whether to issue a permit, the department shall
18 consider the benefits to the public, the preservation of a competitive banking industry,
19 and the maintenance of a safe and sound bank industry. To assure full protection of
20 the public, the department may require an out-of-state bank holding company that
21 directly or indirectly owns, holds, or controls stock in a state bank or domestic bank
22 holding company to post a bond with the department under conditions established by
23 the department. The amount of the bond may not be more than the product obtained
24 by multiplying the amount of paid-in capital and paid-in surplus of the state bank or
25 domestic bank holding company by the percentage of state bank or domestic bank
26 holding company stock directly or indirectly owned, held, or controlled by the out-of-
27 state bank holding company.

28 * Sec. 40. AS 06.05.990(13) is amended to read:

29 (13) "financial institution" means an institution subject to the
30 regulation of the department under this title: "financial institution" includes a
31 commercial bank, savings bank, credit union, premium finance company, small

1 loan company, bank holding company, financial holding company, trust
2 company, and savings and loan association;

3 * Sec. 41. AS 06.05.990(19) is repealed and reenacted to read:

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

6 * Sec. 42. AS 06.05.990(22) is amended to read:

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

12 (A) a bank organized solely for the purpose of facilitating
13 acquisition of a bank that either has been in existence and continuously
14 operating in the state as a bank for a three-year period, or was conducting a
15 banking business in the state on or before June 30, 1982;

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

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

27 * Sec. 43. AS 06.05.990(24) is amended to read:

28 (24) "state financial institution" means a financial institution that is
29 organized under this title, AS 10.13, or AS 44.81, or that is subject to examination
30 by the department under this title;

31 * Sec. 44. AS 06.05.990 is amended by adding new paragraphs to read:

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

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

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

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

15 * **Sec. 45.** AS 06.15.100 is repealed and reenacted to read:

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

17 (1) receive remuneration as trustee except reasonable fees for
18 attendance at meetings of trustees or for services as a member of a committee of
19 trustees;

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

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

26 * **Sec. 46.** AS 06.15 is amended by adding a new section to read:

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

30 * **Sec. 47.** AS 06.20.010 is amended by adding a new subsection to read:

31 (b) A person who is doing business under and as permitted by any law of the

1 state or of the United States relating to banks, savings banks, trust companies, building
2 and loan associations, or credit unions and who is exempt from the licensing
3 requirement in (a) of this section shall comply with all other provisions of this chapter.

4 * Sec. 48. AS 06.45.020(a) is amended to read:

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

8 (1) the name of the credit union;

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

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

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

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

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

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

20 * Sec. 49. AS 06.45.060(5) is amended to read:

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

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

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