

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

10619 SENATE LABOR & COMMERCE

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years;

Leave-in
18 mos.

2-16 letter

#3 use
assoc. position

#2

CUI
\$20,000

CUI
\$20,000

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

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

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan that [WHICH] exceeds \$5,000 plus pledged shares shall be approved by the board of directors;

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

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

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this paragraph, when knowingly done, is considered a forfeiture of the entire interest that the note, bill, or other evidence of debt carries with it, or that has been agreed to be paid on the note, bill, or other evidence of debt; if a greater rate of interest has been paid, the person by whom it has been paid or the person's legal representatives may recover back from the credit union taking or receiving it the entire amount of interest paid, but the

1 action must be commenced within two years from the time the usurious
2 collection was made;

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

5 (ix) loans shall be paid or amortized under regulations
6 adopted by the commissioner that consider the needs or conditions of
7 the borrowers, the amounts and duration of the loans, the interests of
8 the members and the credit union, and other factors established in
9 regulations adopted by the commissioner;

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

13 (xi) a credit union with assets of less than \$3,000,000
14 may make real estate loans with maturities in excess of 15 years only
15 with the approval of the commissioner;

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

19 (C) loans to other credit unions require the approval of the
20 board of directors of the loaning credit union:

21 (D) loans to credit union association require the approval of
22 the board of directors of the credit union and may not exceed one percent of
23 the paid-in and unimpaired capital and surplus of the credit union;

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

30 * Sec. 50. AS 06.45.060(7) is amended by adding new subparagraphs to read:

31 (L) in bankers' acceptances issued by a financial institution

1 whose accounts are insured by an agency of the federal government;

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

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

12 * **Sec. 51.** AS 06.45.060 is amended by adding a new paragraph to read:

13 (16) issue solicited or unsolicited credit cards or other similar credit
14 granting devices to a member for obtaining money, goods, services or anything else of
15 value; notwithstanding (5)(A)(vi) of this section and AS 45.45.010, when credit is
16 extended under this section, the credit union may impose a service charge at a monthly
17 rate as agreed upon by contract between the credit union and the member receiving the
18 credit granting device, but the credit union may not hold the member liable for charges
19 made on a credit card or other credit granting device before its acceptance by the
20 member; before an unsolicited card is considered accepted by the member, the
21 member shall execute and furnish to the credit union a written statement of
22 acceptance; in addition, a credit union may charge fees for credit cards or other similar
23 credit granting devices.

24 * **Sec. 52.** AS 06.45 is amended by adding a new section to read:

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

28 (b) A state credit union may establish, maintain, and operate an automated
29 teller machine at a location other than credit union premises by notifying the
30 department 30 days before the date of establishment. An automated teller machine
31 operated off credit union premises shall be made available on a nondiscriminatory

1 basis for use by other depository institutions authorized to do business in the state and
2 their customers, upon the agreement of the other depository institutions to pay a fair
3 and equitable amount for the use of the machine.

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

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

8 (2) the manner of operation and the kinds of transactions that the
9 machine will perform;

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

12 (4) other information required by the department.

13 (d) A state credit union may invest in a corporation organized to operate
14 machines that perform automated teller services for two or more depository
15 institutions.

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

19 * Sec. 53. AS 06.05.005(b)(3), 06.05.175, 06.05.272(d), 06.05.990(18); and
20 AS 06.20.330(a) are repealed.

21 * Sec. 54. The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 TRANSITION: REGULATIONS. Notwithstanding sec. 57 of this Act, the
24 Department of Community and Economic Development may immediately proceed to adopt
25 regulations necessary to implement the changes made by this Act. The regulations take effect
26 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
27 statutory changes.

28 * Sec. 55. The uncodified law of the State of Alaska is amended by adding a new section to
29 read:

30 INSTRUCTION TO REVISOR. The revisor of statutes is instructed to change the
31 heading of

1 (1) AS 06.05.555 from "Certificate of authority for interstate and international
2 branching" to "Certificate of authority for interstate state bank and international bank
3 branching"; and

4 (2) AS 06.05.565 from "Applicability of title to interstate or international
5 banks, to out-of-state depository institutions, and to bank holding companies" to
6 "Applicability of title to interstate state banks, interstate national banks, international banks,
7 and bank holding companies."

8 * **Sec. 56.** Section 54 of this Act takes effect immediately under AS 01.10.070(c).

9 * **Sec. 57.** Except as provided in sec. 56 of this Act, this Act takes effect July 1, 2001.

LEGAL SERVICES

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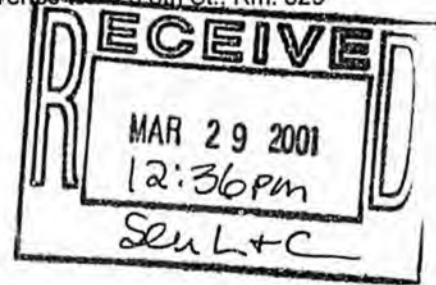
MEMORANDUM

March 29, 2001

SUBJECT: CSSB 66() relating to financial institutions
(Work Order No. 22-GS1026F)

TO: Senator Randy Phillips
Attn: Kim Ross

FROM: *tb*
Theresa L. Bannister
Legislative Counsel



This memo accompanies a draft of the bill described above and, except as indicated below in some of my comments, incorporates the changes that you requested.

1. Examination schedule. This change is found in the amendment to AS 06.01.015(a).
2. Sec. 06.01.028 rewrite. Sec. 06.01.028(b) uses the language from the "C" version because subsection (b) of the requested rewrite appeared to raise a possible separation of powers issue. This issue was raised because the proposed rewrite stated that a financial institution did not have to comply with a subpoena that did not include a provision for the institution's compliance costs. This may have been interpreted to be interfering with the inherent judicial power of the judicial branch. Sec. 06.01.028(b) in this "F" version appears to accomplish the same purpose (requiring compensation) without authorizing a person to disregard a court order.

Since subsection (b) may affect the court rules, a reference to the court rules has been added to the title, and a bill section has been added at the end of the bill explaining the effect of the subsection on the court rules.

Sec. 06.01.028(d) appeared in the "C" version but not in the "A" version and may not have been reviewed by the persons proposing the rewrite. It has been left in since it appears to have some practical merit and since it does not seem to directly conflict with the rest of the rewrite. It can be removed if you do not want it left in.

Sec. 06.01.028(e) was rewritten as a definition, which it appeared to be.

The proposed definition of "government" was not included in the section because the term did not appear elsewhere in the section.

Senator Randy Phillips

March 29, 2001

Page 2

3. AS 06.01.050. Most of the proposed changes to AS 06.01.050 proposed by the Alaska Bankers Association do not appear in this version. The change from "title" to "chapter" was not made, primarily because each of the chapters in the title already appears to have its own definitions. A definition of "person" is not really needed since there is a general, very inclusive definition of "person" at AS 01.10.060 that applies to every statute unless otherwise defined for that statute. The draft retains the "C" version of paragraph (3). However, it does not use "person" instead of "institution" because I did not know if it would be appropriate to cover individuals. If the listing in (3) is not sufficient, I can switch to "person" and delete "individual" if desired. This same definition also appears in sec. 41. Finally, "state financial institution" does not appear outside AS 06.01 and AS 06.05, and the bill already contains a definition for the term in AS 06.05.

4. Sec. 06.05.426(b). It was not necessary to make the changes requested for this subsection because they already appeared in the "C" version.

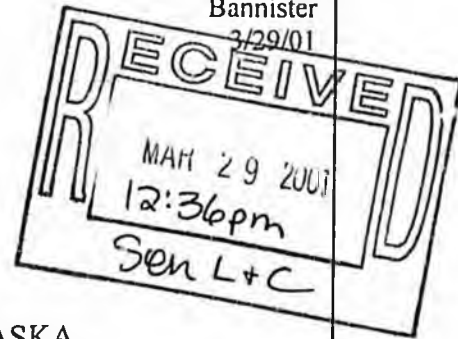
If I may be of further assistance, please advise.

TLB:lmb:med

01-115.lmb

Enclosure

22-GS1026\F
Bannister
3/29/01



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; amending**
5 **Rule 45, Alaska Rules of Civil Procedure, Rules 17 and 37, Alaska Rules of Criminal**
6 **Procedure, and Rule 24, Alaska Bar Rules; and providing for an effective date."**

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (3) made in compliance with 15 U.S.C. 6801 - 6809 and the
27 regulations adopted under those sections.

28 (b) When disclosure of financial institution records is compelled by a
29 subpoena, a search warrant, or another court or administrative agency order under
30 (a)(2) of this section, the court or administrative agency shall provide in the order for
31 the reimbursement of the financial institution for the reasonable costs incurred in

1 complying with the order.

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

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

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

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

14 (e) In this section, "financial institution" means a person subject to the
15 regulation of the department under this title, including a BIDCO licensed under
16 AS 10.13 (Alaska BIDCO Act).

17 * Sec. 5. AS 06.01.050(3) is amended to read:

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

23 * Sec. 6. AS 06.01.050 is amended by adding a new paragraph to read:

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

27 * Sec. 7. AS 06.05.005(a) is amended to read:

28 (a) The department shall

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

31 (2) adopt regulations necessary to implement this chapter, including

1 regulations providing for the retention and preservation of state bank records;

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

6 (4) issue permits authorizing certain acquisitions by bank holding
7 companies [TO DO BUSINESS IN THIS STATE] under AS 06.05.235 and
8 06.05.570;

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

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

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

15 * **Sec. 8.** AS 06.05.050 is repealed and reenacted to read:

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

18 (1) published by the state bank in a newspaper of general circulation
19 published in the place where the state bank is located; if a newspaper of general
20 circulation is not published in that place, the report shall be published in the
21 newspaper of general circulation published nearest to that place; or

22 (2) posted

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

24 (B) in the lobby of the principal office and all branches of the
25 state bank.

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

30 * **Sec. 9.** AS 06.05.065(a) is amended to read:

31 (a) A bank examiner of the department who deals with the regulation of

1 financial institutions, a special agent selected by the department to do work relating to
2 financial institutions, the commissioner or deputy commissioner, or the director of
3 banking may not be an officer, employee, director, trustee, attorney, shareholder, or
4 partner of a financial institution, or receive, directly or indirectly, a payment or
5 gratuity from a financial institution. A person subject to this section may not borrow
6 money from a state financial institution [THAT HAS A CERTIFICATE OF
7 AUTHORITY UNDER THIS TITLE], except as provided in this section.

8 * Sec. 10. AS 06.05.065(b) is amended to read:

9 (b) A person subject to this section may

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

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

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

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

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

26 * Sec. 11. AS 06.05.205 is repealed and reenacted to read:

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

1 state bank.

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

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

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

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

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

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

30 (5) loans or extensions of credit to, or secured by unconditional takeout
31 commitments or guarantees of, any department, agency, bureau, board, commission,

1 or establishment of the United States or a corporation wholly owned directly or
2 indirectly by the United States are not subject to a limitation based on unimpaired
3 capital and unimpaired surplus;

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

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

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

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

31 (10) loans or extensions of credit, arising from the discount by dealers

1 in dairy cattle of paper given in payment for dairy cattle and carrying a full recourse
2 endorsement or unconditional guarantee of the seller, that are secured by the cattle
3 being sold are subject under this section, notwithstanding the collateral requirements
4 set out in (b) of this section, to a maximum limitation equal to 25 percent of
5 unimpaired capital and unimpaired surplus.

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

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

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

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

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

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

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

26 * Sec. 12. AS 06.05.209(b) is amended to read:

27 (b) A state bank may issue a credit card or other similar credit granting device
28 to a customer for obtaining money, goods, services, or anything else of value, and,
29 notwithstanding AS 45.45.010, the state bank, when credit is extended under this
30 section, may impose a service charge at a monthly rate as agreed upon by contract
31 between the state bank and the customer receiving the credit granting device

1 [THAT RESULTS IN AN ANNUAL RATE NOT IN EXCESS OF 17 PERCENT ON
2 THE OUTSTANDING BALANCE. HOWEVER, IN ADDITION, WHEN CASH IS
3 ADVANCED UNDER THIS SECTION, THE BANK MAY IMPOSE A SETUP
4 CHARGE THAT DOES NOT EXCEED THREE PERCENT OF THE FUNDS
5 ADVANCED, OR \$12, WHICHEVER IS LESS, EXCEPT THAT ON LOANS OF
6 UNDER \$100 A MINIMUM NOT EXCEEDING \$3 MAY BE CHARGED].

7 * **Sec. 13.** AS 06.05.210(a) is amended to read:

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

18 * **Sec. 14.** AS 06.05.210 is amended by adding a new subsection to read:

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

22 * **Sec. 15.** AS 06.05 is amended by adding a new section to read:

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

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

31 (2) the holding company provides the department with copies of all

1 correspondence concerning the application;

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

5 (4) the department does not issue a letter denying financial holding
6 company status within 30 days after the approval by the Federal Reserve System.

7 * Sec. 16. AS 06.05.245 is amended to read:

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

16 * Sec. 17. AS 06.05.272(b) is amended to read:

17 (b) Under this section, a state bank's total investment in its subsidiaries
18 may not exceed that which is permissible for a federally chartered bank's total
19 investment in all subsidiaries as set out in 12 U.S.C. 24a, as amended [BANK
20 MAY INVEST IN SUBSIDIARIES AN AMOUNT EQUAL TO THE LESSER OF
21 20 PERCENT OF ITS TOTAL ASSETS OR 50 PERCENT OF ITS TOTAL
22 CAPITAL ACCOUNTS]. Loans to subsidiaries are considered investments subject to
23 the limitations of this subsection.

24 * Sec. 18. AS 06.05.301(a) is amended to read:

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

29 * Sec. 19. AS 06.05.350(d) is amended to read:

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

31 (1) engage in the business of receiving deposits, discounting evidences

1 of indebtedness, or receiving money for transmission;

2 (2) represent that the person is [, OR ACTS FOR,] a bank; or

3 (3) use any form of the word "bank" in the person's name unless
4 the person is a state bank formed under this title or a bank formed under the
5 authority of another state or an agency of the federal government, or unless it is
6 clear that the use does not represent that the person is a bank; the prohibition in
7 this paragraph does not apply to a food bank, blood bank, or similar
8 organization that cannot readily be confused with a bank [AN ARTIFICIAL OR
9 CORPORATE NAME THAT PURPORTS TO BE OR SUGGESTS THAT IT IS
10 THE NAME OF A BANK].

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

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

15 * Sec. 21. AS 06.05.426(b) is amended to read:

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

24 * Sec. 22. AS 06.05.426(c) is repealed and reenacted to read:

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

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

29 (2) the manner of operation and the kinds of transactions that the
30 machine will perform;

31 (3) the names of the other depository institutions that will share the

1 machine's services; and

2 (4) other information required by the department.

3 * **Sec. 23.** AS 06.05.426(d) is amended to read:

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

8 * **Sec. 24.** AS 06.05.426 is amended by adding a new subsection to read:

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

12 * **Sec. 25.** AS 06.05.435(c) is amended to read:

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

20 * **Sec. 26.** AS 06.05.435 is amended by adding new subsections to read:

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

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

27 * **Sec. 27.** AS 06.05.550 is amended to read:

28 **Sec. 06.05.550. Authority of international bank, [OR] interstate state**
29 **bank, or interstate national bank to branch.** (a) An international bank, [OR] an
30 interstate state bank, or an interstate national bank whose deposits are insured by
31 the Federal Deposit Insurance Corporation [,] may acquire a branch bank as the result

1 of a merger or consolidation of the international bank, [OR] interstate state bank, or
2 interstate national bank with, or the purchase of all or substantially all of the assets
3 of, a state bank, a national bank with its principal office in this state, or a branch of the
4 state bank or national bank, unless the state bank or national bank is a recently formed
5 bank.

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

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

16 * Sec. 28. AS 06.05.555(a) is amended to read:

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

- 21 (1) all information and fees required under AS 06.05.399;
- 22 (2) the name of the bank and the address of its principal office;
- 23 (3) if an international bank, the country under whose laws it is
24 organized;
- 25 (4) the amount of the bank's capital actually paid in cash and the
26 amount subscribed for and unpaid;
- 27 (5) a complete and detailed statement of the bank's financial condition;
- 28 (6) the names of all other states and countries in which the bank is
29 admitted or qualified to do business;
- 30 (7) a copy of the bank's charter, articles of incorporation, and bylaws,
31 as applicable;

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

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

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

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

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

18 * **Sec. 30.** AS 06.05.555(c) is amended to read:

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

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

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

25 (1) if an interstate state bank,

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

29 (B) the bank supervisor of the home state of the bank has
30 agreed to provide to the department the examination reports that the
31 department determines sufficient to permit the department to determine on a

1 current basis the financial condition of the bank;

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

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

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

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

9 * **Sec. 32.** AS 06.05.555(e) is amended to read:

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

18 * **Sec. 33.** AS 06.05.555(f) is amended to read:

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

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

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

24 * **Sec. 34.** AS 06.05 is amended by adding a new section to read:

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

31 * **Sec. 35.** AS 06.05.565(a) is amended to read:

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

5 * **Sec. 36.** AS 06.05.565(c) is amended to read:

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

10 * **Sec. 37.** AS 06.05.565(d) is amended to read:

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

16 * **Sec. 38.** AS 06.05.565(e) is amended to read:

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

27 * **Sec. 39.** AS 06.05.565 is amended by adding a new subsection to read:

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

31 * **Sec. 40.** AS 06.05.570(a) is amended to read:

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

19 * Sec. 41. AS 06.05.990(13) is amended to read:

20 (13) "financial institution" means an institution subject to the
21 regulation of the department under this title; in this paragraph, "institution"
22 includes a commercial bank, savings bank, credit union, premium finance
23 company, small loan company, bank holding company, financial holding
24 company, trust company, and savings and loan association;

25 * Sec. 42. AS 06.05.990(19) is repealed and reenacted to read:

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

28 * Sec. 43. AS 06.05.990(22) is amended to read:

29 (22) "recently formed bank" means a state bank or national bank that
30 conducts a banking business in the state and that commenced the banking business in
31 the state on or after July 1, 1982, and that has not been in existence and continuously

1 operating in the state for a period of three years or more; "recently formed bank" does
2 not include

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

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

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

18 * Sec. 44. AS 06.05.990(24) is amended to read:

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

22 * Sec. 45. AS 06.05.990 is amended by adding new paragraphs to read:

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

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

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

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

6 * **Sec. 46.** AS 06.15.100 is repealed and reenacted to read:

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

8 (1) receive remuneration as trustee except reasonable fees for
9 attendance at meetings of trustees or for services as a member of a committee of
10 trustees;

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

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

17 * **Sec. 47.** AS 06.15 is amended by adding a new section to read:

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

21 * **Sec. 48.** AS 06.20.010 is amended by adding a new subsection to read:

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

26 * **Sec. 49.** AS 06.45.020(a) is amended to read:

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

30 (1) the name of the credit union;

31 (2) the location of the credit union and the territory in which it will

1 operate;

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

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

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

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

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

11 * Sec. 50. AS 06.45.060(5) is amended to read:

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

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

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

24 (ii) a loan to finance the purchase of a mobile home
25 that [, WHICH] is secured by a first lien on the mobile home, to be
26 used as the residence of a credit union member, or for the repair,
27 alteration, or improvement of a residential dwelling that is the residence
28 of a credit union member must [SHALL] have a maturity not to exceed
29 20 [15] years unless the loan is insured or guaranteed under (iii) of this
30 subparagraph;

31 (iii) a loan secured by the insurance or guarantee of the

1 federal government, of a state government, or an agency of either may
2 be made for the maturity and under the terms and conditions specified
3 in the law under which the insurance or guarantee is provided;

4 (iv) a loan or aggregate of loans to a director or member
5 of the supervisory or credit committee of the credit union making the
6 loan that [WHICH] exceeds \$20,000 [\$5,000] plus pledged shares shall
7 be approved by the board of directors;

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

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

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

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

27 (ix) loans shall be paid or amortized under regulations
28 adopted by the commissioner that consider the needs or conditions of
29 the borrowers, the amounts and duration of the loans, the interests of
30 the members and the credit union, and other factors established in
31 regulations adopted by the commissioner;

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

4 (xi) a credit union with assets of less than \$3,000,000
5 may make real estate loans with maturities in excess of 15 years only
6 with the approval of the commissioner;

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

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

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

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

21 * **Sec. 51.** AS 06.45.060(7) is amended by adding new subparagraphs to read:

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

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

28 (N) in obligations of, or issued by, a state or political
29 subdivision of the state, except that a credit union may not invest more than 10
30 percent of its unimpaired capital and surplus in the obligations of any one
31 issuer, exclusive of general obligations of the issuer; in this subparagraph,

1 "political subdivision of the state" includes an agency, corporation, or
2 instrumentality of a state or political subdivision;

3 * **Sec. 52.** AS 06.45.060 is amended by adding a new paragraph to read:

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

15 * **Sec. 53.** AS 06.45 is amended by adding a new section to read:

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

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

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

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

30 (2) the manner of operation and the kinds of transactions that the
31 machine will perform;

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

3 (4) other information required by the department.

4 (d) A state credit union may invest in a corporation organized to operate
5 machines that perform automated teller services for two or more depository
6 institutions.

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

10 * **Sec. 54.** AS 06.05.005(b)(3), 06.05.175, 06.05.272(d), 06.05.990(18); and
11 AS 06.20.330(a) are repealed.

12 * **Sec. 55.** The uncodified law of the State of Alaska is amended by adding a new section to
13 read:

14 **INDIRECT COURT RULE AMENDMENTS.** AS 06.01.028(b), added by sec. 4 of
15 this Act, has the effect of changing Rule 45, Alaska Rules of Civil Procedure, Rules 17 and
16 37, Alaska Rules of Criminal Procedure, and Rule 24, Alaska Bar Rules, because
17 AS 06.01.028(b) requires court orders compelling disclosure to provide for reimbursement of
18 a financial institution's reasonable costs of complying with the order.

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

21 **TRANSITION: REGULATIONS.** Notwithstanding sec. 59 of this Act, the
22 Department of Community and Economic Development may immediately proceed to adopt
23 regulations necessary to implement the changes made by this Act. The regulations take effect
24 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
25 statutory changes.

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

28 **INSTRUCTION TO REVISOR.** The revisor of statutes is instructed to change the
29 heading of

30 (1) AS 06.05.555 from "Certificate of authority for interstate and international
31 branching" to "Certificate of authority for interstate state bank and international bank

1 branching"; and

2 (2) AS 06.05.565 from "Applicability of title to interstate or international
3 banks, to out-of-state depository institutions, and to bank holding companies" to
4 "Applicability of title to interstate state banks, interstate national banks, international banks,
5 and bank holding companies."

6 * Sec. 58. Section 56 of this Act takes effect immediately under AS 01.10.070(c).

7 * Sec. 59. Except as provided in sec. 58 of this Act, this Act takes effect July 1, 2001.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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Juneau, Alaska 99801-1182
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Kim

MEMORANDUM

March 30, 2001

SUBJECT: CSSB 66() relating to financial institutions
(Work Order No. 22-GS1026J)

TO: Senator Randy Phillips
Attn: Kim Ross

FROM: *tlb*
Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

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

If I may be of further assistance, please advise.

TLB:med
01-040.med

Enclosure

22-GS1026J
Bannister
3/30/01

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; amending**
5 **Rule 45, Alaska Rules of Civil Procedure, Rules 17 and 37, Alaska Rules of Criminal**
6 **Procedure, and Rule 24, Alaska Bar Rules; and providing for an effective date."**

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (3) the disclosure is made in compliance with 15 U.S.C. 6801 - 6809
26 and the regulations adopted under those sections;

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

30 (5) an inquiry has been made by a financial institution or by a credit-
31 reporting agency regulated under 15 U.S.C. 1681-1681u (Fair Credit Reporting Act),

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

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

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

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

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

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

25 (e) In this section, "financial institution" means a person subject to the
26 regulation of the department under this title, including a BIDCO licensed under
27 AS 10.13 (Alaska BIDCO Act).

28 * Sec. 5. AS 06.01.050(3) is amended to read:

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

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

3 * **Sec. 6.** AS 06.01.050 is amended by adding a new paragraph to read:

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

7 * **Sec. 7.** AS 06.05.005(a) is amended to read:

8 (a) The department shall

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

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

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

17 (4) issue permits authorizing certain acquisitions by bank holding
18 companies [TO DO BUSINESS IN THIS STATE] under AS 06.05.235 and
19 06.05.570;

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

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

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

26 * **Sec. 8.** AS 06.05.050 is repealed and reenacted to read:

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

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

1 newspaper of general circulation published nearest to that place; or

2 (2) posted

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

4 (B) in the lobby of the principal office and all branches of the
5 state bank.

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

10 * **Sec. 9.** AS 06.05.065(a) is amended to read:

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

19 * **Sec. 10.** AS 06.05.065(b) is amended to read:

20 (b) A person subject to this section may

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

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

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

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

29 (5) retain a preexisting extension of credit that was incurred before
30 commencement of the employment that subjected the person to this section; any
31 renegotiation of a preexisting extension of credit shall be treated as a new

1 extension of credit that is subject to the prohibitions of this section [BE
2 INDEBTED TO A STATE FINANCIAL INSTITUTION FOR A MORTGAGE
3 LOAN SECURED BY THE PERSON'S PRIMARY RESIDENCE, IF THE LOAN
4 CLOSED BEFORE THE PERSON BECAME AN EMPLOYEE SUBJECT TO THIS
5 SECTION].

6 * **Sec. 11.** AS 06.05.205 is repealed and reenacted to read:

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

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

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

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

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

29 (3) loans or extensions of credit secured by bills of lading, warehouse
30 receipts, or similar documents transferring or securing title to readily marketable
31 staples are subject to a limitation of 35 percent of unimpaired capital and unimpaired

1 surplus in addition to the general limitations if the market value of the staples securing
2 each additional loan or extension of credit at all times equals or exceeds 115 percent of
3 the outstanding amount of the loan or extension of credit; in order to be considered
4 under this paragraph, the staples must be fully covered by insurance whenever it is
5 customary to insure those staples;

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

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

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

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

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

1 upon any full or partial recourse endorsement or guarantee by the transferor, the
2 limitations of (a) and (b) of this section as to the loans or extensions of credit of each
3 such maker are the sole applicable loan limitations;

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

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

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

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

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

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

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

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

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

6 * Sec. 12. AS 06.05.209(b) is amended to read:

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

18 * Sec. 13. AS 06.05.210(a) is amended to read:

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

29 * Sec. 14. AS 06.05.210 is amended by adding a new subsection to read:

30 (c) Notwithstanding (a) of this section, loans to directors, executive officers,
31 and other officers and employees of a state bank are subject to the lending limits

1 imposed by AS 06.05.205 and the regulations adopted under that section.

2 * **Sec. 15.** AS 06.05 is amended by adding a new section to read:

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

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

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

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

16 (4) the department does not issue a letter denying financial holding
17 company status within 30 days after the approval by the Federal Reserve System.

18 * **Sec. 16.** AS 06.05.245 is amended to read:

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

27 * **Sec. 17.** AS 06.05.272(b) is amended to read:

28 (b) Under this section, a state bank's total investment in its subsidiaries
29 may not exceed that which is permissible for a federally chartered bank's total
30 investment in all subsidiaries as set out in 12 U.S.C. 24a, as amended [BANK
31 MAY INVEST IN SUBSIDIARIES AN AMOUNT EQUAL TO THE LESSER OF

1 20 PERCENT OF ITS TOTAL ASSETS OR 50 PERCENT OF ITS TOTAL
2 CAPITAL ACCOUNTS]. Loans to subsidiaries are considered investments subject to
3 the limitations of this subsection.

4 * Sec. 18. AS 06.05.301(a) is amended to read:

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

9 * Sec. 19. AS 06.05.350(d) is amended to read:

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

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

13 (2) represent that the person is [, OR ACTS FOR,] a bank; or

14 (3) use any form of the word "bank" in the person's name unless
15 the person is a state bank formed under this title or a bank formed under the
16 authority of another state or an agency of the federal government, or unless it is
17 clear that the use does not represent that the person is a bank; the prohibition in
18 this paragraph does not apply to a food bank, blood bank, or similar
19 organization that cannot readily be confused with a bank [AN ARTIFICIAL OR
20 CORPORATE NAME THAT PURPORTS TO BE OR SUGGESTS THAT IT IS
21 THE NAME OF A BANK].

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

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

26 * Sec. 21. AS 06.05.426(b) is amended to read:

27 (b) A state bank may establish, maintain, and operate an automated teller
28 machine at a location other than bank premises by notifying the department 30 days
29 before the date of establishment [WITH THE PRIOR APPROVAL OF THE
30 DEPARTMENT]. An automated teller machine operated off bank premises shall be
31 made available on a nondiscriminatory basis for use by depositors of other

1 depository institutions [BANKS] authorized to do business in the state [AND THEIR
2 CUSTOMERS], upon the agreement of the other depository institutions [BANKS] to
3 pay a fair and equitable amount for the use of the machine.

4 * Sec. 22. AS 06.05.426(c) is repealed and reenacted to read:

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

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

9 (2) the manner of operation and the kinds of transactions that the
10 machine will perform;

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

13 (4) other information required by the department.

14 * Sec. 23. AS 06.05.426(d) is amended to read:

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

19 * Sec. 24. AS 06.05.426 is amended by adding a new subsection to read:

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

23 * Sec. 25. AS 06.05.435(c) is amended to read:

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

31 * Sec. 26. AS 06.05.435 is amended by adding new subsections to read:

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

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

7 * Sec. 27. AS 06.05.550 is amended to read:

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

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

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

27 * Sec. 28. AS 06.05.555(a) is amended to read:

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

- 1 (1) all information and fees required under AS 06.05.399;
- 2 (2) the name of the bank and the address of its principal office;
- 3 (3) if an international bank, the country under whose laws it is
- 4 organized;
- 5 (4) the amount of the bank's capital actually paid in cash and the
- 6 amount subscribed for and unpaid;
- 7 (5) a complete and detailed statement of the bank's financial condition;
- 8 (6) the names of all other states and countries in which the bank is
- 9 admitted or qualified to do business;
- 10 (7) a copy of the bank's charter, articles of incorporation, and bylaws,
- 11 as applicable;
- 12 (8) if an international bank, evidence satisfactory to the department
- 13 that the bank is authorized to conduct a banking business under the laws of the country
- 14 of its organization, and the nature of the bank's business;
- 15 (9) a properly executed designation of the department as the bank's
- 16 agent for service of process in an action or proceeding arising out of a transaction
- 17 involving the branch bank; the designation must include the name and address of the
- 18 officer, agent, or other person to whom the department is to forward the process; and
- 19 (10) other information necessary or appropriate for the department to
- 20 determine whether the bank is entitled to a certificate of authority from the
- 21 department.

22 * Sec. 29. AS 06.05.555(b) is amended to read:

23 (b) The department shall notify the interstate state bank or international bank

24 of its action on the application. If the application and the accompanying documents do

25 not comply with the requirements of (a) of this section, the department shall return

26 them with an explanation of the noncompliance. If the department does not respond

27 within 30 days of its receipt of the application, the application is considered to be

28 accepted.

29 * Sec. 30. AS 06.05.555(c) is amended to read:

30 (c) The interstate state bank or international bank shall publish notice of the

31 application in the manner provided in AS 06.05.344(d) - (e). The notice must state the

1 proposed location of the branch bank.

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

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

5 (1) if an interstate state bank,

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

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

13 (2) the proposal is consistent with a sound and competitive banking
14 system;

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

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

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

20 * **Sec. 32.** AS 06.05.555(e) is amended to read:

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

29 * **Sec. 33.** AS 06.05.555(f) is amended to read:

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

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

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

4 * **Sec. 34.** AS 06.05 is amended by adding a new section to read:

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

11 * **Sec. 35.** AS 06.05.565(a) is amended to read:

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

16 * **Sec. 36.** AS 06.05.565(c) is amended to read:

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

21 * **Sec. 37.** AS 06.05.565(d) is amended to read:

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

27 * **Sec. 38.** AS 06.05.565(e) is amended to read:

28 (e) The department may require periodic reports from an interstate state
29 bank or an interstate national bank [OUT-OF-STATE DEPOSITORY
30 INSTITUTION] that maintains a branch in this state and from a bank holding
31 company that controls the interstate state bank or interstate national bank [OUT-

1 OF-STATE DEPOSITORY INSTITUTION]. The reports shall be made under oath
2 and filed as frequently as required by the department. The reports must contain the
3 information and detail that the department determines to be appropriate to assure
4 continuing compliance of the interstate state bank or interstate national bank
5 [OUT-OF-STATE DEPOSITORY INSTITUTION] with the provisions
6 [PROVISION] of this title.

7 * Sec. 39. AS 06.05.565 is amended by adding a new subsection to read:

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

11 * Sec. 40. AS 06.05.570(a) is amended to read:

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

30 * Sec. 41. AS 06.05.990(13) is amended to read:

31 (13) "financial institution" means an institution subject to the

1 regulation of the department under this title; in this paragraph, "institution"
2 includes a commercial bank, savings bank, credit union, premium finance
3 company, small loan company, bank holding company, financial holding
4 company, trust company, and savings and loan association;

5 * Sec. 42. AS 06.05.990(19) is repealed and reenacted to read:

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

8 * Sec. 43. AS 06.05.990(22) is amended to read:

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

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

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

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

29 * Sec. 44. AS 06.05.990(24) is amended to read:

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

1 under this title:

2 * **Sec. 45.** AS 06.05.990 is amended by adding new paragraphs to read:

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

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

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

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

17 * **Sec. 46.** AS 06.15.100 is repealed and reenacted to read:

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

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

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

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

28 * **Sec. 47.** AS 06.15 is amended by adding a new section to read:

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

1 * Sec. 48. AS 06.20.010 is amended by adding a new subsection to read:

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

6 * Sec. 49. AS 06.45.020(a) is amended to read:

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

10 (1) the name of the credit union;

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

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

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

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

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

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

22 * Sec. 50. AS 06.45.060(5) is amended to read:

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

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

30 (i) a residential real estate loan that [WHICH] is made
31 to finance the acquisition of a one- to four-family dwelling for the

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principal residence of a credit union member that [WHICH] is secured by a first lien on the dwelling may have a maturity not exceeding 30 years;

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

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

(iv) a loan or aggregate of loans to a director or member of the supervisory or credit committee of the credit union making the loan that [WHICH] exceeds \$20,000 [\$5,000] plus pledged shares shall be approved by the board of directors;

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

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

(vii) the taking, receiving, reserving, or charging of a rate of interest greater than is allowed by this paragraph, when knowingly done, is considered a forfeiture of the entire interest that the note, bill, or other evidence of debt carries with it, or that has been agreed to be paid on the note, bill, or other evidence of debt; if a greater rate of interest has been paid, the person by whom it has been paid or

1 the person's legal representatives may recover back from the credit
2 union taking or receiving it the entire amount of interest paid, but the
3 action must be commenced within two years from the time the usurious
4 collection was made;

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

7 (ix) loans shall be paid or amortized under regulations
8 adopted by the commissioner that consider the needs or conditions of
9 the borrowers, the amounts and duration of the loans, the interests of
10 the members and the credit union, and other factors established in
11 regulations adopted by the commissioner;

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

15 (xi) a credit union with assets of less than \$3,000,000
16 may make real estate loans with maturities in excess of 15 years only
17 with the approval of the commissioner;

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

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

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

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

1 * **Sec. 51.** AS 06.45.060(7) is amended by adding new subparagraphs to read:

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

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

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

14 * **Sec. 52.** AS 06.45.060 is amended by adding a new paragraph to read:

15 (16) issue solicited or unsolicited credit cards or other similar credit
16 granting devices to a member for obtaining money, goods, services or anything else of
17 value; notwithstanding (5)(A)(vi) of this section and AS 45.45.010, when credit is
18 extended under this section, the credit union may impose a service charge at a monthly
19 rate as agreed upon by contract between the credit union and the member receiving the
20 credit granting device, but the credit union may not hold the member liable for charges
21 made on a credit card or other credit granting device before its acceptance by the
22 member; before an unsolicited card is considered accepted by the member, the
23 member shall execute and furnish to the credit union a written statement of
24 acceptance; in addition, a credit union may charge fees for credit cards or other similar
25 credit granting devices.

26 * **Sec. 53.** AS 06.45 is amended by adding a new section to read:

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

30 (b) A state credit union may establish, maintain, and operate an automated
31 teller machine at a location other than credit union premises by notifying the

1 department 30 days before the date of establishment. An automated teller machine
2 operated off credit union premises shall be made available on a nondiscriminatory
3 basis for use by other depository institutions authorized to do business in the state and
4 their customers, upon the agreement of the other depository institutions to pay a fair
5 and equitable amount for the use of the machine.

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

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

10 (2) the manner of operation and the kinds of transactions that the
11 machine will perform;

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

14 (4) other information required by the department.

15 (d) A state credit union may invest in a corporation organized to operate
16 machines that perform automated teller services for two or more depository
17 institutions.

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

21 * **Sec. 54.** AS 06.05.005(b)(3), 06.05.175, 06.05.272(d), 06.05.990(18); and
22 AS 06.20.330(a) are repealed.

23 * **Sec. 55.** The uncoded law of the State of Alaska is amended by adding a new section to
24 read:

25 **INDIRECT COURT RULE AMENDMENTS.** AS 06.01.028(b), added by sec. 4 of
26 this Act, has the effect of changing Rule 45, Alaska Rules of Civil Procedure, Rules 17 and
27 37, Alaska Rules of Criminal Procedure, and Rule 24, Alaska Bar Rules, because
28 AS 06.01.028(b) requires court orders compelling disclosure to provide for reimbursement of
29 a financial institution's reasonable costs of complying with the order.

30 * **Sec. 56.** The uncoded law of the State of Alaska is amended by adding a new section to
31 read:

1 TRANSITION: REGULATIONS. Notwithstanding sec. 59 of this Act, the
2 Department of Community and Economic Development may immediately proceed to adopt
3 regulations necessary to implement the changes made by this Act. The regulations take effect
4 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
5 statutory changes.

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

8 INSTRUCTION TO REVISOR. The revisor of statutes is instructed to change the
9 heading of

10 (1) AS 06.05.555 from "Certificate of authority for interstate and international
11 branching" to "Certificate of authority for interstate state bank and international bank
12 branching"; and

13 (2) AS 06.05.565 from "Applicability of title to interstate or international
14 banks, to out-of-state depository institutions, and to bank holding companies" to
15 "Applicability of title to interstate state banks, interstate national banks, international banks,
16 and bank holding companies."

17 * Sec. 58. Section 56 of this Act takes effect immediately under AS 01.10.070(c).

18 * Sec. 59. Except as provided in sec. 58 of this Act, this Act takes effect July 1, 2001.

LEGAL SERVICES

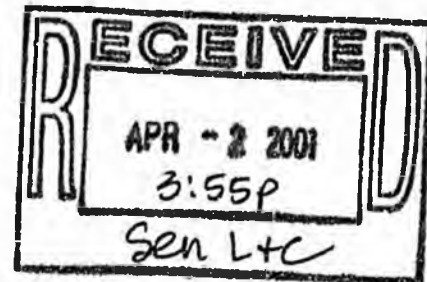
DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

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

MEMORANDUM

April 2, 2001



SUBJECT: CSSB 66() relating to financial institutions
(Work Order No. 22-GS1026L)

TO: Senator Randy Phillips

FROM: ^{JB} Theresa L. Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above. The changes were discussed with Terry Elder and Lisa Bell.

1. Title. To make the title more accurate, "financial" was deleted from the second line of the title before "records."
2. New sec. 06.01.028(c). A couple of adjustments were made to this subsection.
3. New sec. 06.01.028(e). This is the new requested (f). It was changed from (f) to (e) because definitions that apply to an entire section are usually placed at the end of a section and because former (e) defined a term for the section.

In addition, new sec. 06.01.028(e) was rewritten to some degree.

If I may be of further assistance, please advise.

TLB:med
01-045.med

Enclosure

Subject: SB66 and the "fake right" to Opt Out
Date: Tue, 10 Apr 2001 13:25:00 -0700
From: akpirg <akpirg@akpirg.org>
To: Senator_Randy_Phillips@legis.state.ak.us

Dear Senator Phillips:

This is important information for anyone voting on SB 66. Consumers must have the right to choose or "opt in" when financial institutions want to share personal information. "Opt out" is no right at all. Steve Conn, AkPIRG, 278-3661

Subject:
Lost in the Fine Print: Study Shows Financial Privacy Policies
Unreadable

FOR IMMEDIATE RELEASE
April 10, 2001

"LOST IN THE FINE PRINT:" STUDY SHOWS
FINANCIAL PRIVACY NOTICES ARE NOT READABLE

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

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

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

In conducting his study, Hochhauser used the Flesch Reading Ease Score, a standard readability measure. While readable documents average 15-20 words per sentence, these notices averaged 25 or more words per sentence .

To ensure understanding, privacy notices should be written at a junior high reading level. But the most readable of these notices was written at a second year college reading level; the least readable were at a graduate school level. Recent Census figures show that only 25% of the population has a college degree.

Other factors that can affect a document's readability are typeface, type size and line spacing. Hochhauser found that the 17 notices he analyzed fell short in these categories as well. A combination of these factors makes a document even more difficult to read. "This is especially true," said Hochhauser, "for the elderly and people who use English as a second language."

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

The full study is available on the PRC website, www.privacyrights.org/ar/GLB-Reading.htm

The Cloze reading test is available at www.privacyrights.org/fs/fs24b-ClozeFinancial.htm

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



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

May 1, 2001

Mr. Dennis G. Fenerty
GROH EGGERS, LLC
3201 C Street, Suite 400
Anchorage, AK 99503-3967

Dear Mr. Fenerty,

Thank you for your correspondence regarding SB66, Financial Institutions; Bank Disclosure of Customer Records in Response to Clerk-Issued Subpoenas.

I would like to bring your attention to the enclosed letter from the Alaska Department of Community & Economic Development, Division of Banking Securities, and Corporations dated April 11, 2001. This letter covers the State's response to your position that the Senate L&C version of the bill left unresolved the issue of whether financial institutions must disclose bank records as it relates to the issuance of subpoenas.

SE66 FINANCIAL INSTITUTIONS is currently awaiting a hearing in the Senate Judiciary committee. You'll find a complete bill history sheet also enclosed.

If you have any further concerns, please feel free to contact this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Randy Phillips".

Senator Randy Phillips

Enclosures



ALASKA STATE LEGISLATURE
SENATOR RANDY PHILLIPS
Senate District L

Session (Jan-May)
State Capitol, Rm 103
Juneau, AK 99801
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Senate Labor & Commerce Committee

MEMORANDUM

TO: Terry Bannister
FROM: Senator Randy Phillips *K. Ross for*
SUBJECT: Legal Opinion Request
SB66 Financial Institutions
DATE: 4-5-01

2029

4 pages

Please respond to attached Groh Eggers, LLC letter, dated 4-5-01, regarding unresolved issues of bank disclosure.

If you have questions, please call Kim Ross at 465-3844.

Thank you.

*Agrees - unclear.
Should be corrected. More like Ct.
Rule change.*

KENNETH P. EGGERS, P.C.
SALLY J. KUCKO
DENNIS G. FENERTY
DAVID A. DEVINE, P.C.
ROBERT H. SCHMIDT
JILL E. JENSEN

CLIFFORD J. GROH, SR.
1926-1998

LAW OFFICES OF
GROH EGGERS, LLC
3201 C STREET, SUITE 400
ANCHORAGE, ALASKA 99503-3967

Telephone
(907) 562-6474

Facsimile
(907) 562-6044

www.grohegggers.com

April 5, 2001

VIA FACSIMILE: 907-465-3922
Original Via Regular US Mail

The Honorable Senator Robin Taylor
Chair, Judiciary Committee
State Capitol, Room 30
Juneau, AK 99801-1182

VIA FACSIMILE: 907-465-4979
Original Via Regular US Mail

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

Re: SB 66, Financial Institutions; Bank Disclosure of Customer Records in Response to Clerk-Issued Subpoenas

Dear Senators Taylor and Phillips:

With SB 66, the legislature, at the request of the Governor, is advancing legislation to reinforce the confidentiality of bank records in Alaska. The latest version of the bill that I have seen, a draft of CSSB 66 prepared by Legal Services of the Legislative Affairs Agency, transmitted to Senator Phillips on March 29, 2001, has apparently been referred out of the Labor and Commerce Committee to the Judiciary Committee. I therefore write to both of you.

The latest version of the bill leaves unresolved the issue of whether financial institutions must disclose bank records if they receive a subpoena issued in civil litigation by the clerk of court, if the subpoena is not accompanied by a court order directing disclosure. While the latest version of the bill appears to make an attempt to resolve this issue, it does not accomplish the goal. As attorneys for banks, we are often asked to advise our clients on the proper course of action when the bank is served with clerk-issued subpoenas, and we believe the desired result must be clarified.

The bill should make it clear that financial institutions should only disclose bank records if a court has first considered the issue, and ordered the financial institution to disclose the records. Otherwise, banks will have to comply with clerk-issued subpoenas even when

The Honorable Senator Robin Taylor
and The Honorable Senator Randy Phillips
April 5, 2001
Page 2 of 3

they are not accompanied by court orders, unless they go to the trouble and expense of engaging counsel to seek a protective order in civil litigation in which the banks are not stakeholders.

That banks will have to comply unless they seek a protective order results from language in the latest version of SB 66 and operation of Rule 26 (c) of the Alaska Rules of Civil Procedure. If the language of SB 66 is not clear, Civil Rule 26 places the burden of seeking protection from disclosure on the party upon whom the subpoena is served, in this case on the financial institution who receives the clerk-issued subpoena not accompanied by a court order. Even though the financial institution is not a stakeholder in the litigation, under Civil Rule 26 it must engage counsel to seek an order protecting the records from disclosure, and it must frequently do so on very short notice, since civil litigation subpoenas most often set the date for production within a week to ten days after service of the subpoena. This is unfair to the bank.

The section of CSSB 66 that leaves the issue unresolved is Sec 06.01.028 (a) (2). This subsection declares that a financial institution's customer records, and the information in the records, are confidential, and may not be disclosed "except when, and only to the extent that, the disclosure is ... required by federal or state statute or regulation or by an order directed to the financial institution and issued by a court or administrative agency having jurisdiction of the financial institution[.]"

Subpoenas are routinely issued by the clerk of court in civil litigation without judicial oversight (under Alaska Civil Rule 45). The language of subsection (a) (2) requiring a court order appears to be an attempt to accomplish the goal of requiring court supervision before disclosure is allowed. But the other language of subsection (a) (2), requiring disclosure when "required by federal or state statute", will force disclosure in response to clerk-issued subpoenas because compliance with clerk issued subpoenas is "required by state statute".

This issue was considered by the US District Court for the District of Alaska, in the context of a criminal grand jury subpoena, in the case, In Re Grand Jury Subpoena 41 F. Supp. 2d 1026 (D. Alaska 1999). The court in this case suggested that the legislature "overlooked the significance" of sub-section (2) of present Sec 06.01.028, which mandates disclosure if "disclosure is required by federal or state statute or regulation". The court held that, even though sub-section (1) of the statute did not require compliance with a clerk-issued subpoena not accompanied by a court order, sub-section (2) did, because compliance with a subpoena "is required by federal or state statute or regulation". Id., at page 1031.

CSSB 66 should make it clear that financial institutions should not disclose financial records in response to a clerk-issued civil subpoena, unless disclosure is mandated by an accompanying court order. To accomplish this result, CSSB 66 should definitively state that

The Honorable Senator Robin Taylor
and The Honorable Senator Randy Phillips
April 5, 2001
Page 3 of 3

financial institutions can ignore clerk-issued subpoenas that are not accompanied by a court order.

The remedy is simple. An additional subsection should be added to Sec. 06.01.028 that provides:

Notwithstanding other provisions of law, a financial institution, and its employees and agents, are not obligated to comply with a subpoena issued in civil litigation directing disclosure of financial records or information of a depositor or customer, unless the disclosure is authorized in writing by the depositor or customer, or the subpoena is accompanied by an order of the court directing the financial institution to disclose financial records or information of the depositor or customer.

By making it clear that financial institutions need not honor subpoenas unless they are accompanied by court order, the law will, appropriately, place the onus on the third party seeking another person's bank records to ask the court's permission to gain access to them, and the person whose records are sought will have the opportunity to argue to the court against disclosure if the records are not relevant to the litigation. The bank will not be put to the unfair burden of having to seek an order protecting the records from disclosure each time it receives a civil subpoena. The party seeking records will also understand what is required to get at another persons bank records, they will have to ask the court for an appropriate order and demonstrate the relevance of the documents sought to the pending litigation, before disclosure will be ordered.

Thanks for your consideration of this important issue. I urge you to clearly address this issue in SB 66. Please call if you have any questions.

Very Truly Yours,

GROH EGGERS, LLC



Dennis G. Fenerty

cc: Theresa L. Bannister – Via Fax: 907-465-2029
Legislative Counsel
Division of Legal and Research Services
Legislative Affairs Agency



Division of Banking, Securities, and Corporations

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

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April 11, 2001

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

Dear Chairman Phillips:

This is in response to the letter from Groh Eggers concerning banks and other financial institutions' claimed perplexity when confronted by subpoenas for depositor records. Subpoenas in civil matters generally fall into two categories: those issued by the courts and those issued by administrative agencies with regulatory authority.

The language complained of was changed in the committee substitute. Section 06.01.028 changed (a)(2) which in the former version of the bill read "the disclosure is required . . . issued by a court or administrative agency *having jurisdiction over the financial institution.*" The italicized portion now reads "court or administrative agency of competent jurisdiction." This was done to accommodate the objection that the language was not sufficiently clear and could be interpreted to compel obedience to subpoenas from foreign jurisdictions. In one hearing, a banker testified that they had received a subpoena from Arkansas and there was some question about whether it must be obeyed or not. The altered language makes it clear that the only subpoenas that must be obeyed are those of federal and Alaskan courts and administrative agencies.

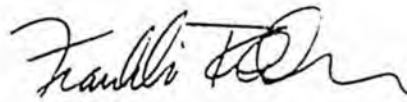
The complaint and the remedy that is sought to be imposed treats existing language from present AS 06.05.175 that has been on the books since at least 1959. That language is retained in the bill at 06.01.028(a)(2) and provides "the disclosure is required by federal or state statute or regulation . . ." If that provision has not presented a problem for over 40 years, there is no reason to change the language now without a compelling reason. There is no reason to subject every subpoena directed to a financial institution to judicial review and compel a court order to accompany a subpoena before it should be obeyed. In

fact, this will result in increased workloads for attorneys and judges and cause a fairly snarled system to replace the one we now enjoy.

Additionally, altering the language of the bill could cause inadvertent problems for state agencies other than the division of banking and securities. One that comes to mind is child support enforcement that makes use of financial institution records compelled under AS 06.05.900. That agency and child support agencies of other states are given plenary authority to compel records without the use of subpoenas. Altering the language as suggested by the letter might inject a question into law that r.eedn't have been there and could result not only in delays caused by having to seek judicial review but losses of federal funds which are contingent on the uniform and timely application of laws to collect child support obligations.

In short, this complaint is wholly unfounded being over 40 years too late in being raised. Moreover, the proposed solution offers little to recommend it and much to militate against it.

Very truly yours,

A handwritten signature in black ink, appearing to read "Franklin T. Elder", with a stylized flourish at the end.

Franklin T. Elder
Director

KENNETH P. EGGERS, P.C.
SALLY J. KUCKO
DENNIS G. FENERTY
DAVID A. DEVINE, P.C.
ROBERT H. SCHMIDT
JILL E. JENSEN

CLIFFORD J. GROH, SR.
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FACSIMILE COVER SHEET

Date: April 5, 2001

To: The Honorable Senator Robin Taylor
Chair, Judiciary Committee
Fax: (907) 465-3922

The Honorable Senator Randy Phillips
Chair, Labor & Commerce Committee
Fax: (907) 465-4979

From: Dennis G. Fenerty

Number of Pages: 4 (including cover)

Our File No.: 85-19

Re: SB 66, Financial Institutions: Bank Disclosure of
Customer Records in Response to Clerk-Issued
Subpoenas

M E S S A G E

Please see attached letter dated today.

cc: Theresa L. Bannister, Legislative Counsel
Division of Legal and Research Services
Legislative Affairs Agency
Fax: (907) 465-2029

An original hard copy of this transmission will/will not be sent separately.

The information contained in this facsimile message is confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you are not the named recipient of this communication, your receipt shall not be deemed a waiver of the attorney/client or workproduct privileges, and you are requested to immediately notify us, collect, by telephone and return the original message to us at the above address via U.S. Postal Service. Thank you.

Alaska Mortgage Bankers Association
P.O. Box 9-2691
Anchorage, AK 99509-2691



April 2, 2001

The Honorable Druce Pearce
Chairman of Rules Committee
VIA FACSIMILE : (907) 465-3872

The Honorable Randy Phillips
Chairman of Labor and Commerce
VIA FACSIMILE: (907) 465-4979

RE: Senate Bill 66

Dear Honorable Senators:

The Alaska Mortgage Bankers Association (AMBA) support SB 66 with the recommended changes presented by the Alaska Bankers Association (ABA) as indicated in the work draft of the of CSSB 66.

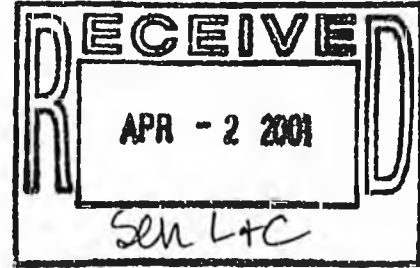
Sincerely,


Renee Devereaux
President

APR-02-01 09:55AM FROM-RESIDENTIAL MORTGAGE EXECUTIVE

T-681 P.02/02 F-002

Alaska Mortgage Bankers Association
P.O. Box 9-2691
Anchorage, AK 99509-2691



April 2, 2001

The Honorable Druce Pearce
Chairman of Rules Committee
VIA FACSIMILE : (907) 465-3872


The Honorable Randy Phillips
Chairman of Labor and Commerce
VIA FACSIMILE: (907) 465-4979

RE: Senate Bill 66

Dear Honorable Senators:

The Alaska Mortgage Bankers Association (AMBA) support SB 66 with the recommended changes presented by the Alaska Bankers Association (ABA) as indicated in the work draft of the of CSSB 66.

Sincerely,


Renee Devereaux
President

SB

132

STATE OF ALASKA

Tony Knowles, Governor

Department of Labor and Workforce Development

OFFICE OF THE COMMISSIONER

P.O. Box 21149
Juneau, AK 99802-1149
Phone: (907) 465-2700
Fax: (907) 465-2784

The Honorable Randy Phillips
Alaska State Senate
P.O. Box 142
Eagle River, AK 99577

October 30, 2001

FAXED 10/30/2001

Dear Senator Phillips:

I am writing to follow up on the questions raised at the October 20 Senate Labor and Commerce Committee minimum wage hearing. Specifically: 1) what percentage of the working population makes the minimum wage, and 2) is there any way to track or define those who are not covered by the minimum wage law.

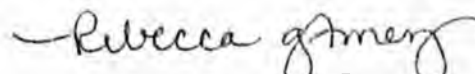
According to the Chief of Research and Analysis of the Department, there is no specific information available for Alaska on the number of workers actually employed at the minimum wage. The Department's Unemployment Insurance system does not collect the hours worked or the hourly pay rate for covered employees.

However, using information from the Occupational Employment Statistics (OES) survey done in cooperation with the US Bureau of Labor Statistics, a rough estimate can be developed. The OES survey does collect information on the number of workers whose rate of pay falls within specified pay ranges. The lowest wage range in the survey is \$5.65-\$6.74. This is the most detailed wage range for which employment estimates are available. There are approximately 14,400 jobs that paid wages within this range. This is approximately 5.5% of wage and salary employment. Of these workers, 32% were in the eating and drinking industry, 9% in amusement & recreation services, 6% in educational services and 4% in the seafood-processing sector. (See attached table.)

There is no information on persons not covered by unemployment insurance that may be earning the minimum wage (i.e. babysitters & some agricultural workers). These persons are generally in entrepreneurial relationships and are not thought of as wage earners under the definition we must use.

Please let me know if you have further questions or want additional information.

Sincerely,



Rebecca Nance Gamez
Deputy Commissioner

Attachment

Industry	Percent of Total Minimum Wage ^{1/} Employment	Total Minimum Wage ^{1/} Employment by Industry
Eating And Drinking Places	32.31	4,664
Amusement & Recreation Services	8.76	1,265
Educational Services	5.61	810
Government	4.39	634
Food And Kind'ed Products	4.27	617
Hotels And Other Lodging Places	4.09	590
General Merchandise Stores	4.05	584
Food Stores	3.75	542
Miscellaneous Retail	3.47	501
Social Services	3.29	475
Real Estate	3.00	433
Membership Organizations	2.30	332
Automotive Dealers & Service Stations	2.01	290
Health Services	1.61	233
Motion Pictures	1.49	215
Personal Services	1.39	200
Wholesale Trade-nondurable Goods	1.22	176
Transportation By Air	1.21	174
Local And Interurban Passenger Transit	1.11	160
Miscellaneous Repair Services	1.10	159
Auto Repair, Services, And Parking	1.08	156
Business Services	0.98	142
Communications	0.80	115
Holding And Other Investment Offices	0.79	114
Apparel And Accessory Stores	0.69	99
Building Materials & Garden Supplies	0.63	91
Engineering & Management Services	0.53	76
Printing And Publishing	0.42	60
Wholesale Trade-durable Goods	0.40	58
Transportation Services	0.36	52
Special Trade Contractors	0.35	50
Agricultural Services	0.33	48
Transportation Equipment	0.20	29
Museums, Botanical, Zoological Gardens	0.20	29
General Building Contractors	0.19	28
Insurance Agents, Brokers, & Service	0.19	27
Oil And Gas Extraction	0.15	21
Lumber And Wood Products, Except Furni	0.15	21
Security And Commodity Brokers	0.15	22
Trucking And Warehousing	0.13	19
Water Transportation	0.12	17
Depository Institutions	0.12	17
Heavy Construction, Ex. Building	0.11	16
Legal Services	0.10	15
Furniture And Homefurnishings Stores	0.08	11
Nonmetallic Minerals, Except Fuels	0.06	8
Electric, Gas, And Sanitary Services	0.06	9
Insurance Carriers	0.06	8
Miscellaneous Manufacturing Industries	0.05	7
Petroleum And Coal Products	0.03	4
Rubber And Misc. Plastics Products	0.03	4
Services, Nec	0.02	3
Apparel And Other Textile Products	0.01	2
Chemicals And Allied Products	0.01	1
Leather And Leather Products	0.01	1
Instruments And Related Products	0.01	1
Total	100.00	14,435

^{1/} For the purpose of this analysis, "minimum wage" comprises the \$5.65-\$6.74 wage range.

Source: Department of Labor and Workforce Development, Research & Analysis Section



ALASKA HOSPITALITY ALLIANCE
Representing Alaska's Finest
Accommodations • Restaurants • Beverage Operations & Hospitality Suppliers



Testimony Provided by Karen Rogina of the Alaska Hospitality Alliance in Opposition to Minimum Wage Increases as proposed in SB 46 and SB 132 on Saturday, October 20th, 2001, with supplemental information gathered after a discussion with the Department of Labor.

Alaska's Hospitality Industry opposes minimum wage increases

We oppose minimum wage increases and ask that the issue go through the legislative process rather than the ballot initiative process because the general public is largely unaware of the negative impacts of minimum wage increases. Our opposition to minimum wage increases is based on the following reasons:

1. A Minimum wage increase hurts those employees that it is intended to help. Every time the minimum wage increases employers are faced with having to offset the significant increase to their costs. In the restaurant industry profit margins average 3 – 5 %, which doesn't leave room to absorb minimum wage increases. Since profits are slim, employers are forced to:
 - a. Reduce other employee benefits, such as vacation pay and health insurance. Does not help employees.
 - b. Reduce the number of employees or cut their hours. This doesn't do anything to raise the wage for tipped employees, it actually negates the increase.
2. According to Rebecca Nance Gamez, Deputy Commissioner and Chris Miller, Chief of Research and Analysis for the state of Alaska Dept of Labor, based on the information available to them, it is impossible to identify the number of minimum wage earners in Alaska. Additionally, they do not have access to information identifying the percent of minimum wage earners who are either 1) teenagers working part-time, 2) tipped employees or 3) actual minimum wage earners working full-time. Furthermore, of those actual non-tipped minimum wage earners working full-time, there is also no data available indicating if these individuals are the primary source of their household income.

In other words, it is possible, according to the Dept of Labor figures, that the minimum wage earner, working full-time as a sole provider of household income, does not exist in Alaska at all. At the very least, it is arguable that this type of wage earner represents a very small percent of total minimum wage earners. What the Department of Labor is able to provide is gross annual earnings by age. While these statistics reveal that some people over the age of 18 are earning \$11,000 per year (the annual wage for a full-time, non-tipped minimum wage earner) there is no way to tell what this person's hourly wage is, if this person is working full time, if they are the sole household wage earner, or if they are a tipped employee working part-time.

Relying on national statistics, compiled from states with an income tax that track this information, we see that the vast majority of minimum wage earners are teenagers or tipped employees. Tipped employees earn most of their income in tips, which are based on a percentage of the check. This provides for a natural Cost of Living indexing effect right now. For example, this year, menu prices are rising at a rate of 3.1 percent, while inflation is rising at a rate of 2.7%. As restaurateurs increase prices (which many do to keep up with rising costs) then tips go up as a percentage of the menu price.

UNITED IN A COMMON GOAL TO MAKE ALASKA THE MOST HOSPITABLE PLACE ON EARTH!

3. Increasing minimum wage reduces opportunity for teenagers to gain valuable work experience, as employers are more likely to hire those with experience as long as they have to pay a higher amount.
4. Survey's show that hourly tipped employees make between \$12 - 17 per hour including tips. There is no reason why minimum wage law should concern itself with employees who are earning significantly more than the minimum wage. Minimum wage law was enacted to guarantee certain individuals receive a set minimum wage, it was not intended to include those earning well above minimum wage.
5. Federal tax law recognizes tips as wages, subject to employee paid income tax and FICA tax. Additionally, employers pay unemployment tax and FICA payroll taxes on the tip income of employees. As is the case for at least 44 states, Alaska state tax law should also recognize tips as wages, and therefore allow employers of tipped employees to forgo minimum wage increases.
6. Comparisons of the minimum wage in California, Oregon and Washington with the minimum wage in Alaska is inappropriately like comparing apples and oranges because, the cost of living in the major city centers of all four states varies by up to 100%. Quite often, Alaska's COL index figure is less than that of the major city centers in Washington, Oregon and California.
7. We need to take a look at the big picture implications of what the impacts of all the various bills targeted at the hospitality industry this year, will have on hotels, restaurants and beverage operations if passed. The Hospitality Industry is the target for new legislation, which, if passed, will increase liquor excise taxes by 300%, increase minimum wage with a CPI indexing, reduce the amount of time bars and restaurants can be open and reduce the amount of consumption of beverages based on stricter penalties on DUI laws. Add to that the effects of the Sept 11 terrorist attacks and we are looking at impacts on the industry that have already meant the closing down or downsizing of operations, and hundreds of jobs lost. Further impacting our industry is the ongoing threat of a Statewide Bed tax on hotels, a port tax on cruise ships (80% of occupancy in hotels in the interior during the summer is cruise ship passengers) and the perpetual decline of tourism marketing dollars from the state.

If there must be a minimum wage increase, we ask that you consider the following:

1. A "conditional tip credit" where tipped employees, earning under 8 dollars per hour, including tips, would be eligible for min wage increases and those tipped employees earning over \$8 per hour with tips would not be eligible to receive the min wage increase. This would serve as a safety net to insure that those tipped employees who's tips are inconsistent or minimal, will still earn above minimum wage.
2. Institute a Training wage or training credits and a more broad work opportunity Tax Credit so that employers can have resources to supplement the cost of training entry level employees. We need to streamline the process whereby employers are able to obtain monetary support from the state for the training of employees. This will allow employers to pay employees more while covering their extra costs to train the employees.
3. Amend the current minimum wage law to exclude the 20 percent rule and the mandating of 2.5 times the minimum wage for administrative and executive employees.
4. Delay the effective date to 2003 so that employers have a chance to understand the effects of other legislation passed in 2002 as well as the sustained impacts from the terrorism attacks and the economy.

The Economic Impact on the Restaurant Industry of Increasing the Federal Minimum Wage from \$4.25 to \$5.15

Summary of Analysis

Background

In 1996 and 1997, Congress increased the minimum wage for all employees covered by the Fair Labor Standards Act (FLSA). This applied to all enterprises with annual sales of \$500,000 or more, as well as all employees who engage in interstate commerce – regardless of the size of their employer. The federal minimum wage was increased in two steps – from \$4.25 to \$4.75 on October 1, 1996, and from \$4.75 to \$5.15 on September 1, 1997.

The purpose of this analysis was to assess the impact of the increases in the federal minimum wage on the restaurant industry, and determine what actions were taken by restaurant operators as a result of the minimum wage increases.

Summary

- In general, restaurant operators took a number of actions as a result of the minimum wage increases in 1996 and 1997. Although the most common action was an increase in menu prices, the most dramatic impact was on restaurant industry employment. According to this analysis, more than 146,000 jobs were cut from restaurant payrolls, with operators postponing plans to hire an additional 106,000 new employees.
- For the most part, the increases in the minimum wage had a relatively greater impact on smaller, independent operations located in smaller communities.

⇒ Restaurant industry job losses exceeded 146,000

- The most dramatic impact of the minimum wage increases was a reduction in the number of employees at restaurants. Nearly 14 percent of establishments reported cutting jobs, with the median number of job losses equaling three. This translates into an overall reduction in restaurant industry employment of more than 146,000 jobs.
- Fifteen percent of tableservice operators cut jobs, which translates into an overall reduction of 79,000 jobs. Slightly more than 12 percent of limited-service operators reported cutting jobs, resulting in an overall employment loss of 67,000 jobs.
- These job losses were also reflected in the official government employment figures. Although the restaurant industry continued to post employment growth following the minimum wage increases, the annual net increase in jobs was significantly lower than

in the two years prior to the wage hikes. According to the Bureau of Labor Statistics, eating and drinking places added a net 256,400 jobs in 1994 and 276,400 jobs in 1995. Then, job growth in the industry slowed dramatically – a net increase of 162,400 in 1996, 129,100 in 1997, and 122,100 in 1998.

- Job losses were more likely to occur in smaller communities. Nearly 20 percent of restaurants in areas with populations of less than 15,000 cut jobs, compared to 13 percent of restaurants in areas with populations of 15,000 to 100,000, and 12 percent of restaurants in cities with populations of 100,000 or more.
 - Restaurants in the Western region of the country were more likely to reduce their number of employees as a result of the wage increases. Nearly 16 percent of restaurants in the West cut jobs, versus 15 percent in the North Central region, 14 percent in the Northeast, and 10 percent of restaurants in the South.
 - Job losses were more common among establishments with lower annual sales volumes. Nearly 17 percent of restaurants with annual sales of less than \$500,000 cut jobs, compared to 14 percent of restaurants with sales of \$500,000 to \$1 million, 13 percent of restaurants with sales of \$1 million to \$2 million, and 12 percent of restaurants with sales of \$2 million or more.
 - The type of ownership was also a determining factor in the likelihood of employment reductions. More than 18 percent of sole proprietorships cut jobs, compared to 10 percent of partnerships, 12 percent of public corporations, and 11 percent of private corporations.
 - Single-unit operators were also more likely to cut jobs as a result of the minimum wage increase. Nearly 16 percent of single-unit operators cut jobs, versus 10 percent multi-unit operators who did the same.
 - The median age of employees that lost their jobs was 22.
- ⇒ Several employee groups were affected by the job losses
- The employees most affected by job losses across all restaurant-types were cooks. Nearly 54 percent of the restaurants that cut jobs eliminated at least one cook position. This was equally prevalent among tableservice and limited-service restaurants.
 - Among tableservice restaurants, the most common job that was eliminated was a waiter or waitress position. More than 61 percent of tableservice restaurants that reduced employees cut at least one waiter or waitress position.
 - The employee group most affected by job losses at limited-service restaurants was counter workers. Of the limited-service restaurants that reduced employees, 73 percent of them cut at least one counter worker position.
 - Dishwashers and buspersons were cut from the payrolls of 51 percent of tableservice restaurants that reduced the number of employees.

- Salad prep workers were cut by 36 percent of limited-service restaurants that reduced employees, and 25 percent of tableservice restaurants that reduced employees.

⇒ Many operators also postponed plans for new hiring

- In addition to making reductions in their existing payrolls, many restaurant operators also postponed plans for new hiring as a result of the minimum wage increases. Nearly 15 percent of restaurant operators reported that they postponed plans for new hiring, with the median number of jobs postponed equaling 2. This translates into a total of 106,000 new jobs that were postponed as a result of the wage hikes.
- Tableservice restaurant operators were much more likely than limited-service operators to postpone plans for new hiring. More than 18 percent of tableservice operators postponed plans for new hiring (65,000 jobs), while 11 percent of limited-service operators did the same (41,000 jobs).

⇒ Restaurants also reduced the number of employee hours worked

- Another action taken by restaurant operators as a result of the minimum wage increase was a reduction in the number of employee hours worked. More than 28 percent of operators reported reducing employee hours – an action equally common among both tableservice and limited-service restaurants.
- The median reduction in the number of hours worked per week was 9 percent.
- The restaurant employees that saw the greatest reduction in hours worked were back-of-the-house workers. Of the operators that reduced work hours of their employees, nearly 56 percent of them cutback on hours of their cooks.
- More than 75 percent of limited-service operators that cutback on work hours reduced the hours of their counter workers.
- Sixty percent of tableservice operators that cutback on hours reduced the hours of their dishwashers, while 59 percent reduced the work hours of their waiters and waitresses.

⇒ Menu prices rose as a result of the wage hikes

- Many restaurant operators increased menu prices to help absorb the higher labor costs as a result of the minimum wage increases. In fact, increasing menu prices was the most common action taken by operators following the minimum wage increases.
- Forty-two percent of restaurant operators reported increasing menu prices, with a median increase of 5 percent.
- Forty percent of tableservice operators increased menu prices as a result of the minimum wage increases, with a median increase of 7 percent.
- More than 44 percent of limited-service operators reported increasing menu prices, with a median price increase of 5 percent.

- Growth in menu prices was also reflected in the consumer price inflation figures reported by the Bureau of Labor Statistics. For the first time since 1987, menu price inflation exceeded the overall inflation rate – growing 2.8 percent in 1997, compared to a 2.3 percent increase in overall consumer prices. This occurred despite a modest 0.2 percent increase in wholesale food prices during 1997.
- This trend continued into 1998, with menu prices increasing at a 2.6 percent rate – compared to a paltry 1.6 percent increase in overall consumer prices. Once again, this occurred despite the lack of upward pressure from wholesale food prices. In 1998, wholesale food prices actually *declined* 0.3 percent from their 1997 level.

⇒ Restaurant operators added labor-saving equipment

- Many restaurant operators also reported purchasing labor-saving equipment to help alleviate the pressures of rising labor costs. Thirteen percent of operators reported purchasing labor-saving equipment as a result of the minimum wage increases.
- Fourteen percent of limited-service operators purchased new equipment, while 12 percent of tableservice operators did the same.
- As would be expected, the addition of labor-saving equipment had the greatest effect on back-of-the-house employees – through the reduction of employee hours or the elimination of jobs.
- The employee group most affected by the addition of labor-saving equipment was cooks, followed by salad prep workers, counter workers, and dishwashers.

⇒ Other actions taken

- Nearly 12 percent of restaurant operators reported that they postponed plans for expansion and/or renovation as a result of the minimum wage increases.
- Some restaurant operators also cut their hours of operation as a result of the minimum wage increases. Nine percent of restaurant operators cut their hours of operation following the wage hikes – an action slightly more common among limited-service operators. The median number of hours per week that operators cut was 20.
- Eight percent of restaurant operators reported postponing plans to open new units as a result of the minimum wage increases.

Research Design

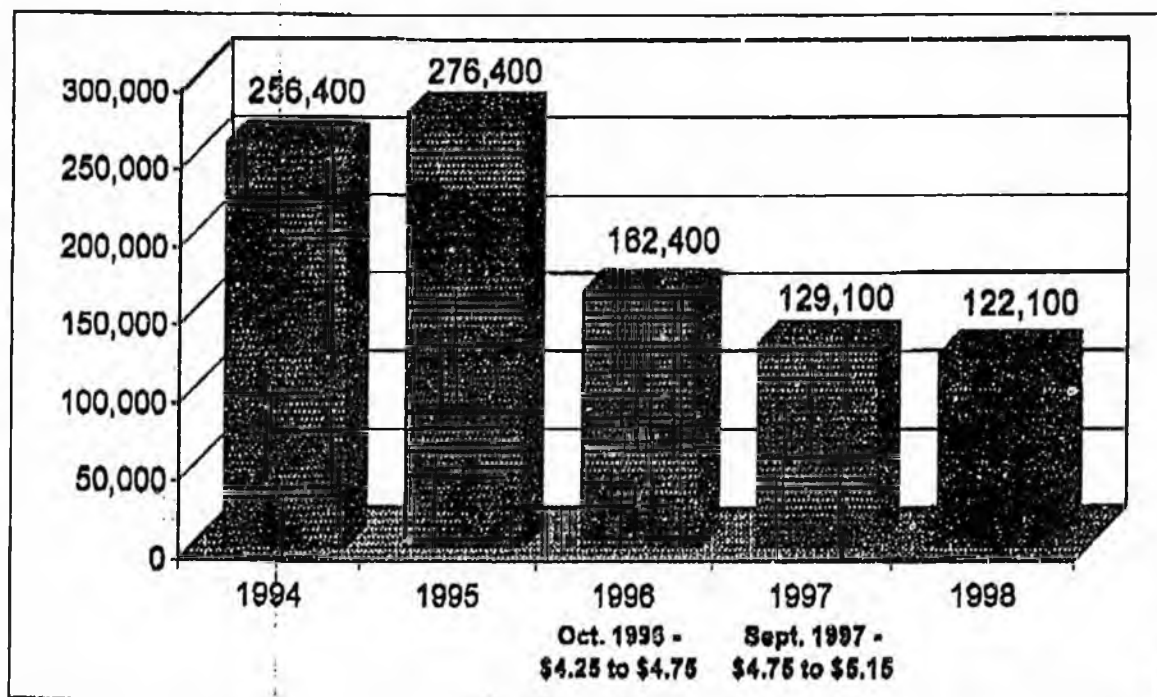
The survey was conducted by International Communications Research (ICR), a survey research firm located in Media, Pennsylvania.

The sample was drawn from a list of single-unit locations of eating places in the United States, as provided by American Business Lists. Owners and managers of eating places nationwide were surveyed to determine how the minimum wage increases in 1996 and 1997 may have affected their business. In total, 1001 interviews were completed.

Interviewing was conducted by ICR between February 26 and March 19, 1998.

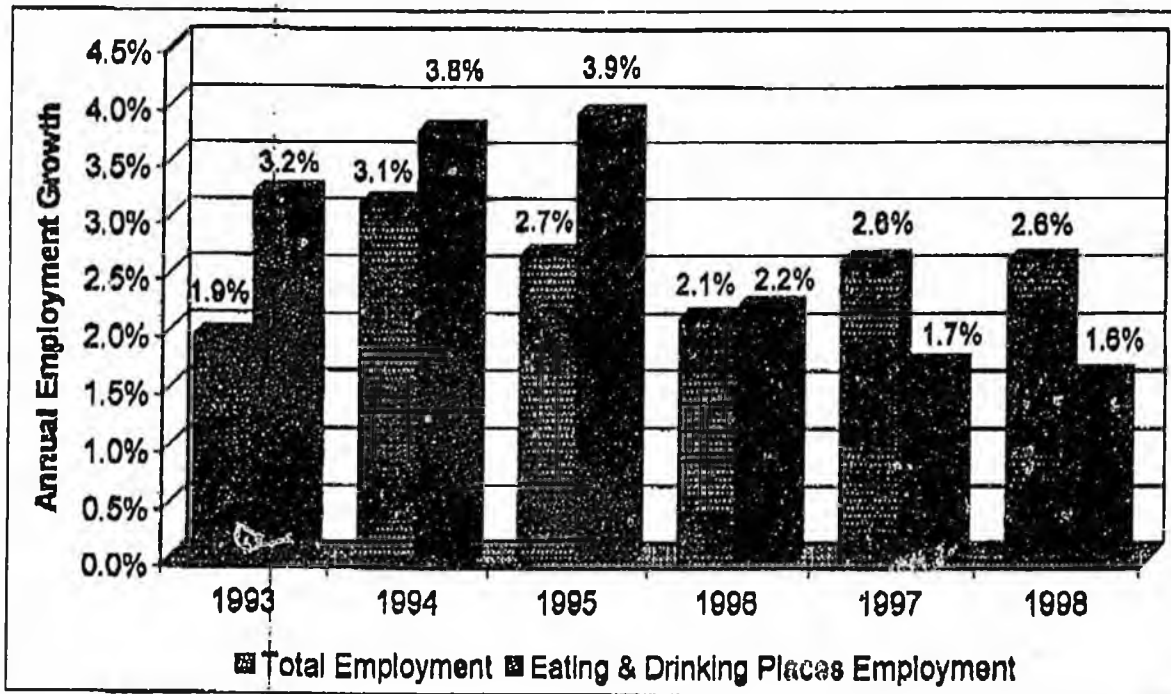
To estimate the overall economic impact for the entire restaurant industry, the National Restaurant Association Research Department made projections from the ICR results based on the total number of tableservice and limited-service restaurant unit counts. The unit counts for the restaurant industry are based on the 1992 Census of Retail Trade, with current estimates developed by the National Restaurant Association Research Department.

Eating and Drinking Place Employment Growth 1994 to 1998



Source: Bureau of Labor Statistics

After Outpacing Overall Employment Growth Each Year in the 1990s, Job Growth at Eating and Drinking Places Fell Sharply in 1996, 1997 and 1998



Source: Bureau of Labor Statistics



October 15, 2001

Honorable Randy Phillips
Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
PO Box 142
Eagle River, AK 99577
ATTN: Kim

Re: Minimum Wage S.B. 132

Dear Senator Phillips:

Enclosed is the statement of the Alaska Catholic Conference supporting an increase in the state minimum wage. I request that the statement be placed in the record of the Committee proceeding on October 20, 2001.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Robert B. Flint". The signature is fluid and cursive, with the first name being the most prominent.

Robert B. Flint
Executive Director

Enclosure

cc: Senator Alan Austerman
Senator Loren Leman
Senator John Torgerson
Senator Betty Davis