



**LAWS OF ALASKA**  
**1993**

**Source**  
HCS CSSB 149(JUD)

**Chapter No.**  
26

**AN ACT**

Revising the laws governing financial institutions and relating to trust companies, the Alaska Small Loans Act, and the Premium Financing Act; amending Alaska Rule of Criminal Procedure 17 and Alaska Rule of Civil Procedure 45(b); and providing for an effective date.

---

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

THE ACT FOLLOWS ON PAGE 1

**Approved by the Governor:** May 26, 1993  
**Actual Effective Date:** January 1, 1994

AN ACT

1 Revising the laws governing financial institutions and relating to trust companies, the Alaska  
2 Small Loans Act, and the Premium Financing Act; amending Alaska Rule of Criminal  
3 Procedure 17 and Alaska Rule of Civil Procedure 45(b); and providing for an effective date.

4

5

6 \* Section 1. AS 06.01.010(e) is amended to read:

7 (e) An exam fee or other charge assessed to a state [STATE-CHARTERED]  
8 financial institution under this section may not exceed a fee or other charge assessed  
9 for the same type of exam or service to a similarly situated federally-chartered  
10 financial institution.

11 \* Sec. 2. AS 06.01.010(f) is amended to read:

12 (f) In this section "deposit institution" means a state financial [AN] institution  
13 [CHARTERED UNDER THIS TITLE] that has obtained authority from the department  
14 to receive deposits of the type eligible to be insured by an agency of the federal

## Chapter 26

1 government.

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

3 Sec. 06.01.015. EXAMINATIONS. (a) Financial institutions regulated under  
4 this title are subject to at least one examination each year. The department may  
5 conduct additional examinations at its discretion.

6 (b) The department shall select one or more competent persons to make  
7 examinations of financial institutions. The examiner shall take and subscribe an oath  
8 that

9 (1) the examiner will honestly and impartially examine into and report  
10 the condition of the institution as to assets and liabilities and other information  
11 required by the department;

12 (2) the examiner will not disclose the information the examiner obtains  
13 through the examination to a person other than the department;

14 (3) at the time of employment, the examiner is not obligated to, or the  
15 owner of an interest in, the institution and is not an officer or shareholder of the  
16 institution;

17 (4) the examiner does not own more than five percent of the voting  
18 shares in another financial institution in the state; and

19 (5) the examiner is not an officer or employee of another financial  
20 institution in the state.

21 (c) The department shall promptly call to the attention of the directors of an  
22 institution irregularities in the conduct of the financial institution's business and any  
23 violations. The department shall send a copy of the report of examination to the  
24 institution examined.

25 \* Sec. 4. AS 06.01.020(a) is amended to read:

26 (a) Notwithstanding other provisions of this title, the department  
27 [COMMISSIONER] may by regulation authorize financial institutions, except licensees  
28 subject to AS 06.20 or AS 06.40, to exercise any of the powers conferred upon, or to  
29 be subject to any of the limitations imposed upon, a [FEDERALLY CHARTERED  
30 BANK, TRUST COMPANY, SAVINGS ASSOCIATION, FEDERALLY  
31 CHARTERED CREDIT UNION, OR OTHER] federally chartered financial institution

1 doing business in this state with deposits insured by an agency of the federal  
2 government [WHICH IS SUBJECT TO THE REGULATIONS OF THE UNITED  
3 STATES COMPTROLLER OF THE CURRENCY, THE FEDERAL RESERVE  
4 BOARD, THE FEDERAL HOME LOAN BANK BOARD, THE FEDERAL DEPOSIT  
5 INSURANCE CORPORATION, THE NATIONAL CREDIT UNION  
6 ADMINISTRATOR, OR THE SUCCESSOR OR SUCCESSORS OF THEM], if the  
7 department [COMMISSIONER] finds that the exercise of the power or imposition of  
8 the limitation both

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

10 (2) equalizes and maintains the quality of competition between state  
11 [STATE-CHARTERED] financial institutions and [CORRESPONDING] federally  
12 chartered financial institutions.

13 \* Sec. 5. AS 06.01 is amended by adding a new section to read:

14 Sec. 06.01.025. RECORDS OF DEPARTMENT. (a) Information in the  
15 records of the department obtained through the administration of this title is  
16 confidential, is not subject to subpoena, and may be revealed only with the consent of  
17 the department.

18 (b) The department shall retain reports of examinations for five years.

19 \* Sec. 6. AS 06.01.030 is repealed and reenacted to read:

20 Sec. 06.01.030. ORDERS AND INJUNCTIONS; NOTICE AND HEARINGS.

21 (a) Whenever it appears to the department that a person is engaging, has engaged, or  
22 is about to engage in an unsafe or unsound practice in conducting the business of a  
23 financial institution, or is violating, has violated, or is about to violate a provision of  
24 this title or a regulation adopted or order issued under this title, the department may

25 (1) issue and serve on the person a notice of intent to issue an order  
26 directing the person to cease and desist from continuing the act or practice, or  
27 imposing a penalty under AS 06.01.035(e) - (g); or

28 (2) bring an action in the superior court to enjoin the act or practice.

29 (b) A notice issued under (a)(1) of this section must contain a statement of the  
30 facts constituting the alleged violation or the unsafe or unsound practice, and must give  
31 reasonable notice of and an opportunity for a hearing to determine whether an order

## Chapter 26

1 to cease and desist the act or practice should be issued. If a hearing is not requested  
2 within 30 days, or if the person served or the person's representative fails to appear  
3 at the hearing, the person is considered to have consented to the issuance of the order,  
4 and the department may issue the order to cease and desist. If the department finds  
5 at the hearing that a violation or an unsafe or unsound practice has been established,  
6 the department may issue the order to cease and desist.

7 (c) A cease and desist order issued under (b) of this section may impose a  
8 penalty under AS 06.01.035(e) - (g) and may require the person to cease and desist  
9 from the act or practice and to take affirmative action to correct the conditions  
10 resulting from the act or practice.

11 (d) Notwithstanding the other provisions of this section, the department may  
12 issue a temporary cease and desist order at the same time that the department issues  
13 a notice under (a)(1) of this section. The department may not issue a temporary cease  
14 and desist order under this subsection without a prior hearing unless the order is issued  
15 for the sole purpose of preserving the status quo and preventing damage to a financial  
16 institution pending completion of any hearing. A temporary cease and desist order  
17 issued under this subsection remains in effect until a final order is issued under (b) of  
18 this section or until otherwise terminated by the department, except that the order may  
19 not remain in effect for more than 60 days.

20 (e) Except for notices issued under (a)(1) of this section, the department shall  
21 give public notice of each proposed action, but the department is not required to hold  
22 a hearing before taking the action unless it receives written opposition to the proposed  
23 action. Written opposition must be filed with the department within the time specified  
24 by the department. In cases involving extraordinary circumstances requiring immediate  
25 action, the department may take action without notice and public hearing, but upon  
26 application to rescind the action taken, the department shall promptly hold a hearing  
27 on the application.

28 (f) Hearings required or authorized under this title are not subject to  
29 AS 44.62.330 - 44.62.630, except as required by AS 44.62.560 and 44.62.570. The  
30 department shall adopt regulations, consistent with the provisions of this title,  
31 establishing procedures for hearings held under this section.

1 (g) For the purpose of hearings, investigations, or other proceedings under this  
2 title, and except as otherwise provided in this title, the department or an officer  
3 designated by the commissioner may administer oaths and affirmations, subpoena  
4 witnesses, compel the attendance of witnesses, take evidence, and require the  
5 production of books, papers, correspondence, memoranda, agreements, or other  
6 documents or records that the department considers relevant or material to the inquiry.

7 (h) In this section, "unsafe or unsound practice" means

8 (1) operating a bank while it is in an unsafe or unsound condition;

9 (2) doing an act that violates a law or order of the department, or the  
10 bank's articles or bylaws; or

11 (3) doing an act reasonably likely to result in a bank's condition  
12 becoming unsafe or unsound.

13 \* Sec. 7. AS 06.01 is amended by adding a new section to read:

14 Sec. 06.01.035. PENALTIES. (a) A person who knowingly violates, or  
15 causes another person to violate, a provision of this title, or a regulation or order of  
16 the department under this title, for which a specific remedy is not provided, is guilty  
17 of a class A misdemeanor.

18 (b) A person who, without first receiving a license or certificate of authority  
19 from the department, participates in an activity that requires a license or certificate of  
20 authority under this title, is guilty of a class A misdemeanor.

21 (c) A person is guilty of a class C felony if the person, with intent to deceive  
22 the department, the commissioner, or a person authorized to examine the affairs of a  
23 financial institution, knowingly

24 (1) makes or causes a false statement or report to be made;

25 (2) enters a false figure, statement, or entry in the books of a financial  
26 institution; or

27 (3) makes or circulates a false report or statement about the condition  
28 of a financial institution.

29 (d) A director, officer, or employee of a financial institution who receives a  
30 deposit, after having been notified by regulatory authorities that the institution is  
31 insolvent and without the department's prior approval, is guilty of a class C felony.

## Chapter 26

1 (e) In addition to other penalties applicable under this section, if a person other  
2 than a financial institution knowingly or intentionally violates, or causes another person  
3 to violate, a provision of this title, or a regulation or order of the department under this  
4 title, the department may issue an order against the person imposing a civil penalty of  
5 not more than \$2,500 a day for a single violation, and not more than \$25,000 for  
6 multiple violations that constitute a single proceeding or a series of related  
7 proceedings.

8 (f) In addition to other penalties applicable under this section, if a financial  
9 institution knowingly or intentionally violates a provision of this title, or a regulation  
10 or order of the department under this title, the department may issue an order against  
11 the institution imposing a civil penalty of not more than \$5,000 a day for a single  
12 violation, and not more than \$50,000 for multiple violations that constitute a single  
13 proceeding or a series of related proceedings.

14 (g) For violations not covered by (e) or (f) of this section, and in addition to  
15 other penalties applicable under this section, if a person, including a financial  
16 institution, violates, or causes another person to violate, a provision of this title, or a  
17 regulation or order of the department under this title, the department may issue an  
18 order against the person imposing a civil penalty of not more than \$500 a day for a  
19 single violation, and not more than \$5,000 for multiple violations that constitute a  
20 single proceeding or a series of related proceedings.

21 (h) A financial institution that fails to file a report or make payments required  
22 by the department within the time specified in this title is subject to a penalty of not  
23 more than \$100 a day for each day the report or payment is late. A financial  
24 institution is considered to have transmitted a report or payment when the institution  
25 mails the report or payment, properly addressed to the department and with the  
26 appropriate postage.

27 (i) In addition to other penalties applicable under this section, the department  
28 shall dismiss an employee of the department who violates AS 06.05.065(a). An  
29 employee dismissed under this subsection is forever disqualified from holding a  
30 position in the department relating to the regulation of financial institutions. An  
31 employee who is dismissed under this subsection may appeal the dismissal under

1 AS 39.25 (State Personnel Act), unless the employee is in the exempt or partially  
2 exempt service under AS 39.25.110 - 39.25.120.

3 \* Sec. 8. AS 06.01 is amended by adding a new section to read:

4 Sec. 06.01.048. REGULATIONS. Regulations required or authorized under  
5 this title shall be adopted under AS 44.62 (Administrative Procedure Act).

6 \* Sec. 9. AS 06.05.005 is repealed and reenacted to read:

7 Sec. 06.05.005. POWERS OF DEPARTMENT. (a) The department shall

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

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

12 (3) review and approve or disapprove applications for new state banks  
13 under AS 06.05.345, new bank branches under AS 06.05.399, and international or  
14 interstate branch banks under AS 06.05.555;

15 (4) issue permits authorizing bank holding companies to do business  
16 in this state under AS 06.05.235 and 06.05.570;

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

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

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

23 (b) The department may

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

27 (2) approve under AS 06.05.166(f) the operation of a branch bank on  
28 a schedule different than normal banking days;

29 (3) approve under AS 06.05.426 the operation by a state bank of an  
30 automated teller machine at a location other than the bank's premises;

31 (4) approve certain bank subsidiaries under AS 06.05.272;

## Chapter 26

1 (5) approve under AS 06.05.205(d) the acceptance by a bank of the  
2 bank's stock or of the stock of the bank's holding company as security for a loan in  
3 certain circumstances;

4 (6) restrict the withdrawal of deposits from a state bank where the  
5 department finds that extraordinary circumstances make restriction necessary for the  
6 proper protection of depositors;

7 (7) require a state bank to

8 (A) maintain its capital and reserve accounts in amounts  
9 determined appropriate by the department, considering the size of the bank;

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

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

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

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

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

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

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

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

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

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

31 (8) require the board of directors of a bank to hold a meeting under

1 AS 06.05.438(f);

2 (9) order the removal of a board member of a bank under  
3 AS 06.05.435(g);

4 (10) order a bank to suspend the payment of dividends under  
5 AS 06.05.441(b);

6 (11) require a bank to increase its capital accounts under  
7 AS 06.05.305(c);

8 (12) take possession of a bank in the manner provided in  
9 AS 06.05.468(c), and operate, reorganize, or liquidate the bank under AS 06.05.470 -  
10 06.05.474 after taking possession under this paragraph;

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

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

16 \* Sec. 10. AS 06.05.045(a) is amended to read:

17 (a) Each state bank shall make at least four reports of condition each year to  
18 the department on days designated by, and on forms prescribed by, the department.  
19 The report shall be **signed by a duly authorized officer of the bank, and shall be**  
20 **verified [BY AN OATH OF THE PRESIDENT, VICE PRESIDENT, OR CASHIER**  
21 **AND]** by at least three directors **who certify** [, CERTIFYING AND SUBSCRIBING]  
22 under oath that they and each of them have personal knowledge of the facts stated in  
23 the report and that the facts are true. The reports shall exhibit in detail and under  
24 appropriate heads the resources and liabilities of the bank, and must be received by the  
25 department within 30 calendar days after the end of the period covered by the report.

26 \* Sec. 11. AS 06.05.065(a) is amended to read:

27 (a) A bank examiner of the department who deals with the regulation of  
28 **financial** [LENDING] institutions, a special agent selected by the department to do  
29 work relating to **financial** [LENDING] institutions, the commissioner or deputy  
30 commissioner, or the director of banking may not be an officer, employee, director,  
31 trustee, attorney, **shareholder** [STOCKHOLDER], or partner of a **financial**

Chapter 26

1 [LENDING] institution, or receive, directly or indirectly, a payment or gratuity from  
2 a financial [LENDING] institution. A person subject to this section may not borrow  
3 money from a financial [STATE-CHARTERED LENDING] institution that has a  
4 certificate of authority under this title, except as provided in this section.

5 \* Sec. 12. AS 06.05.065(b) is amended to read:

6 (b) A person subject to this section may

7 (1) be a depositor in a financial [LENDING] institution;

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

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

11 (4) be indebted to a state financial [STATE-CHARTERED LENDING]  
12 institution upon an installment debt incurred by the employee in the purchase of  
13 goods for personal use only and transferred to the financial [LENDING] institution  
14 in the regular course of business [BY A SELLER OF GOODS], including debts for  
15 [BUT NOT LIMITED TO] household goods, mobile homes, motor vehicles, or boats;  
16 or

17 (5) be indebted to a state financial institution for a mortgage loan  
18 secured by the person's primary residence, if the loan closed before the person  
19 became an employee subject to this section [PURCHASED BY THE EMPLOYEE  
20 FOR PERSONAL USE ONLY].

21 \* Sec. 13. AS 06.05.075 is amended to read:

22 Sec. 06.05.075. STANDARDS [IN REGULATIONS]. The department, in the  
23 exercise of its authority [THE POWER TO ADOPT REGULATIONS] under this  
24 chapter, shall act in the interests of promoting and maintaining a sound and  
25 competitive banking system, the security of deposits and customers, the  
26 [PRESERVATION OF THE] liquid position of banks, and [IN] the prevention of  
27 [INTEREST OF PREVENTING] injurious credit expansions and contractions.

28 \* Sec. 14. AS 06.05.100 is amended to read:

29 Sec. 06.05.100. DEPOSIT OF MINOR OR PERSON UNDER DISABILITY.

30 Where a deposit is made in a bank by or on behalf of a minor or a person under  
31 disability in the [DEPOSITOR'S OWN] name of the minor or person under

1 disability, the bank may pay the money on check or order of that person as in other  
2 cases.

3 \* Sec. 15. AS 06.05.120 is amended to read:

4 Sec. 06.05.120. NOTICE OF CHARGES. A bank or other financial institution  
5 that levies a charge for the establishment or maintenance of personal nonbusiness  
6 demand deposit accounts shall clearly post a schedule of the charges in each of its  
7 places of business where these accounts are opened.

8 \* Sec. 16. AS 06.05.160 is amended to read:

9 Sec. 06.05.160. TRANSMITTING MONEY AND FOREIGN EXCHANGE.  
10 A bank may accept for transmission and transmit money, and may buy and sell foreign  
11 exchange to the extent necessary to meet the reasonably anticipated needs of  
12 customers.

13 \* Sec. 17. AS 06.05.166(a) is amended to read:

14 (a) A bank organized under or doing business under the laws of the state or  
15 a national bank may remain closed on the legal holidays described in AS 44.12.010 -  
16 44.12.025 [AS 44.12.010, 44.12.020 AND 44.12.025, EXCEPT THAT A BANK MAY  
17 NOT BE CLOSED FOR MORE THAN THREE CONSECUTIVE DAYS]. The bank  
18 shall post a notice of holiday closing in the place of business affected at least seven  
19 [15] days in advance. [A BANK MAY OPERATE A BRANCH BANK ON A  
20 DIFFERENT SCHEDULE APPROVED BY THE DEPARTMENT IF OPERATION  
21 ON A DIFFERENT SCHEDULE WILL PROVIDE BETTER SERVICE.]

22 \* Sec. 18. AS 06.05.166(c) is amended to read:

23 (c) In an emergency, [AS DEFINED BY THE DEPARTMENT,] a bank [, IN  
24 THE REASONABLE AND PROPER EXERCISE OF ITS DISCRETION,] may elect  
25 [DETERMINE] not to open any of its banking offices on a business or banking day  
26 [,] or, [IF] having opened, to close any banking office. The [DURING THE  
27 OCCURRENCE OF AN EMERGENCY. IF COMMUNICATION FACILITIES ARE  
28 OPERATIVE, THE] bank shall notify the department [, OR IN THE CASE OF A  
29 NATIONAL BANK THE COMPTROLLER OF THE CURRENCY,] of the  
30 nonopening or the closing before taking the action, if possible, and as soon as  
31 possible, in any event. Any act relating to the banking office that [HAS NOT BEEN

Chapter 26

1 OPENED OR THAT] has been closed for any period of time under this subsection  
2 may be performed on the next [SUCCEEDING] business day that the office is open  
3 [REOPENED] for business. No liability or loss of rights of any kind on the part of  
4 any person, firm, or corporation or of the bank results from the nonopening or closing,  
5 and the rights of all parties are suspended during the nonopening or closing.

6 \* Sec. 19. AS 06.05.166 is amended by adding new subsections to read:

7 (d) In addition to legal holidays, a bank's board of directors may declare a  
8 closing of the bank on any other normal business day, if the department authorizes the  
9 closure, the bank posts notice of the closing in the place of business affected at least  
10 15 days in advance, and the bank maintains all normal processing and clearing  
11 operations on the closed day.

12 (e) Under (a) or (d) of this section, a bank may not be closed for more than  
13 three consecutive days.

14 (f) A bank may operate a branch bank on a different schedule approved by the  
15 department if the department determines that operation on a different schedule will  
16 provide better service or otherwise benefit the public.

17 \* Sec. 20. AS 06.05.175(a) is amended to read:

18 (a) The bank records pertaining to depositors and customers are confidential  
19 and may not be made public except when

20 (1) [WHEN] the bank, customer, or depositor is compelled to disclose  
21 the contents of the records by a court order; [,]

22 (2) [WHEN] their disclosure is required by federal or state law or  
23 regulation; [,]

24 (3) [WHEN] disclosure is authorized in writing by the depositor or  
25 customer; [,]

26 (4) [WHEN] disclosure is made to the holder of a negotiable instrument  
27 drawn on the bank as to whether the drawer has sufficient funds in the bank to cover  
28 the instrument; [,] or

29 (5) [WHEN] an inquiry has been made by a bank, savings association,  
30 or savings and loan association regulated under this title, or by a credit-reporting  
31 agency regulated under 15 U.S.C. 1681-1681t (Fair Credit Reporting Act) solely for

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

7 \* Sec. 21. AS 06.05.175(b) is amended to read:

8 (b) When disclosure of bank records is required or allowed under (a)(1) or (2)  
9 of this section, the bank shall notify the depositor or customer of the disclosure. If  
10 notification before disclosure is not possible, the bank shall immediately notify the  
11 customer or depositor of the disclosure or inquiry. However, notification may not be  
12 made if disclosure is made under a search warrant or under a court order  
13 [SUBPOENA] issued [BY OR] at the behest of a grand jury.

14 \* Sec. 22. AS 06.05.175 is amended by adding a new subsection to read:

15 (d) When disclosure of bank records is compelled by a court order under (a)(1)  
16 of this section, the court shall provide in the order for the reimbursement of the bank  
17 for the reasonable costs incurred in complying with the order.

18 \* Sec. 23. AS 06.05.200(a) is amended to read:

19 (a) A [COMMERCIAL] bank [THAT IS NOT A MEMBER OF THE  
20 FEDERAL RESERVE SYSTEM] shall maintain a reserve fund sufficient to  
21 maintain liquidity and meet all reasonable demands of depositors, as provided in  
22 regulations adopted by the department [TOTAL RESERVES EQUAL TO THE  
23 FOLLOWING PERCENTAGES OF THE AGGREGATE AMOUNT OF ITS  
24 DEPOSITS, EXCLUSIVE OF DEPOSITS OF THE UNITED STATES, THE STATE  
25 OF ALASKA, BOROUGH AND MUNICIPAL GOVERNMENTS AND OTHER  
26 DEPOSITS OF PUBLIC MONEY THAT ARE SECURED AS REQUIRED BY LAW:

27 (1) 20 PERCENT OF ITS DEMAND DEPOSITS; AND

28 (2) EIGHT PERCENT OF ITS TIME AND SAVINGS DEPOSITS].

29 \* Sec. 24. AS 06.05.200(d) is amended to read:

30 (d) If the reserve fund [RESERVES] of a [COMMERCIAL] bank falls  
31 [FALL] below the amount required by the department to be maintained under [BY]

## Chapter 26

1           this section, the department may prohibit the bank from making [MAY NOT  
2           MAKE] any new loans or other investments or paying [PAY] any dividends until the  
3           bank's reserve fund has [ITS RESERVES HAVE] been restored to the amount  
4           required under this section.

5           \* Sec. 25. AS 06.05.205(b) is repealed and reenacted to read:

6                   (b) The total outstanding loans of a state bank to a person may not be more  
7           than 25 percent of the total capital accounts of the bank, and the total outstanding  
8           loans to a person that are not fully secured may not be more than 15 percent of the  
9           total capital accounts of the bank. Unearned income may not be included in  
10          determining the amount a bank may loan under this subsection. The following are not  
11          considered when determining compliance with this subsection:

12                   (1) the discount of bills of exchange drawn in good faith against actual  
13          existing values;

14                   (2) loans secured by gold, gold dust, or bullion;

15                   (3) loans secured by the assignment of specifically identified deposit  
16          accounts of the bank with a balance equal to or greater than the total balance of the  
17          loan;

18                   (4) loans secured by fully insured cannery products or other products  
19          in transit; in this paragraph, "products in transit" means the following products, unless  
20          the products contain substances added for a purpose other than processing or finishing:

21                           (A) hard mineral products, including coal, tin, iron, copper, and  
22                           silver, in the form of ores or smelted ingots;

23                           (B) raw or refined liquid material products, including gas, oil,  
24                           or petrochemicals;

25                           (C) agricultural products, including potatoes, grains, carrots,  
26                           hay, berries, and meat products;

27                           (D) timber products, including logs, chips, pulp, lumber, and  
28                           peat moss;

29                           (E) manufactured products using native materials, including  
30                           animal hides, vegetation, bone products, horn products, and raw or processed  
31                           animal furs; and

1 (F) raw or processed fish or fish products;

2 (5) loans with warehouse receipts as collateral security; and

3 (6) discounted commercial or business paper actually owned by the  
4 person negotiating the paper.

5 \* Sec. 26. AS 06.05.205(c) is amended to read:

6 (c) The restrictions contained in [(a) AND] (b) of this section do not apply to  
7 a loan guaranteed by, or to a commitment or agreement to take over or to purchase by,  
8 a department, bureau, board, commission, or establishment of the United States or the  
9 state, including a corporation wholly owned, directly or indirectly, by the United  
10 States or the state, provided that the guarantee, agreement or commitment is  
11 unconditional and to [SHALL] be performed by payment in cash or its equivalent  
12 within 60 days after demand.

13 \* Sec. 27. AS 06.05.205(d) is repealed and reenacted to read:

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

18 (1) accept as security for a loan the capital stock of

19 (A) the bank; or

20 (B) the bank's parent holding companies, unless the stock of the  
21 holding companies is publicly traded on a nationally recognized exchange; or

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

24 \* Sec. 28. AS 06.05.205 is amended by adding a new subsection to read:

25 (g) The department shall adopt regulations to determine when a loan made to  
26 one person may be attributed to other persons under (b) of this section, taking into  
27 consideration the purpose of the loan, the use of the loan proceeds, the anticipated  
28 sources of repayment of the loan, the borrower's ownership percentage, and other  
29 relevant factors.

30 \* Sec. 29. AS 06.05.207 is repealed and reenacted to read:

31 Sec. 06.05.207. REAL ESTATE LOANS. (a) A bank may, subject to the

Chapter 26

requirements of this chapter, make or acquire a loan secured primarily by a first lien on an interest in improved or unimproved real property, including leases, if

(1) the making of the loan is consistent with written lending policies of the bank and regulations adopted by the department;

(2) before the loan is made or acquired, the bank secures and maintains in its files, evidence of merchantable title and a determination of the value of the property by a person familiar with the real property values in the vicinity where the real property is located; and

(3) insurance against loss from fire on all buildings on the real property that are included in the value of the property is acquired by the borrower or the bank and is not allowed to lapse.

(b) A bank may, subject to the requirements of this chapter, make or acquire a loan secured by a junior lien on real property if

(1) payments on the loan secured by all senior liens are current and the bank retains in its records a written report of the status and balance of the senior liens as of the date the junior lien loan is made or acquired; and

(2) all requirements of (a) of this section are met.

\* Sec. 30. AS 06.05.210(a) is amended to read:

(a) Subject to the same terms and conditions applicable to other loans, a director, [AN] officer, or employee of a state bank may borrow up to \$100,000, or up to \$250,000 for the director's, officer's, or employee's primary residence [\$10,000] from the bank at the discretion of the chief executive or managing officer of the bank. A loan to a director, officer, or employee that makes the total amount owed to the bank by the director, officer, or employee [LOANS] in excess of the limits in this subsection [\$10,000], or loans of any amount to the chief executive or managing officer of the bank, shall have the prior approval of the board of directors, shall be reported to the department within 30 days and shall be secured by adequate collateral. [FOR THE PURPOSE OF THIS SECTION, AN OVERDRAFT IS CONSIDERED A LOAN.]

\* Sec. 31. AS 06.05.211(a) is amended to read:

(a) A bank may, subject to the requirements of this chapter, make or acquire

1 a loan secured by a first lien on a forest tract if

2 (1) the making of the loan is consistent with written lending policies  
3 of the bank and regulations adopted by the department [AMOUNT OF THE  
4 LOAN DOES NOT EXCEED 60 PERCENT OF THE APPRAISED VALUE OF THE  
5 GROWING TIMBER, LAND AND IMPROVEMENTS ON IT OFFERED AS  
6 SECURITY];

7 (2) before the loan is made or acquired, the bank secures and  
8 maintains in its files evidence of a determination of the value of the property  
9 [TERMS AND CONDITIONS OF THE LOAN ARE ADEQUATE TO ENSURE  
10 THAT THE LOAN BALANCE WILL NOT AT ANY TIME EXCEED 60 PERCENT  
11 OF THE ORIGINAL APPRAISED VALUE OF THE PROPERTY REMAINING AS  
12 SECURITY]; and

13 (3) [THE TERM OF THE LOAN DOES NOT EXCEED 15 YEARS  
14 AND THE ANNUAL PRINCIPAL PAYMENTS EQUAL AT LEAST SIX AND  
15 TWO-THIRDS PER CENT OF THE AMOUNT LOANED; AND

16 (4)] the loan is secured by an amortized mortgage, deed of trust, or  
17 assignment of a federal or state timber sale contract.

18 \* Sec. 32. AS 06.05.212(a) is amended to read:

19 (a) A director, officer, or employee of a state bank may not [WHO]  
20 knowingly, wilfully, and persistently overdraw [OVERDRAWS] the director's,  
21 officer's, or employee's account or permit [WHO PERMITS] a customer to do so [,  
22 IS ENGAGED IN AN UNSOUND BANKING PRACTICE AND SUBJECT TO THE  
23 PROVISIONS OF AS 06.01.030].

24 \* Sec. 33. AS 06.05.215 is repealed and reenacted to read:

25 Sec. 06.05.215. LIABILITY OF DIRECTORS AND OFFICERS FOR  
26 CERTAIN LOANS. A director, executive officer, managing officer, or issuing officer  
27 of a state bank who knowingly or with gross negligence approves or permits the funds  
28 of the bank to be lent or overdrafts to be made in an unsafe or unsound manner, or in  
29 violation of an order of the department, the bank's lending policies, this title, or a  
30 regulation adopted under this title, is personally liable to the bank for all the loans and  
31 overdrafts. The bank may enforce the liability against the director or officer by an

Chapter 26

1 action in a court of competent jurisdiction.

2 \* Sec. 34. AS 06.05.225 is amended to read:

3 Sec. 06.05.225. APPLICATION OF OTHER LAWS TO LOANS INSURED  
4 UNDER NATIONAL HOUSING ACT [AS 06.05.220]. The laws [NO LAW] of the  
5 state prescribing or limiting interest rates upon loans do not apply [APPLIES] to loans  
6 insured [MADE] under 12 U.S.C. 1706c (National Housing Act) [AS 06.05.220].

7 \* Sec. 35. AS 06.05.230 is amended to read:

8 Sec. 06.05.230. INVESTMENT IN PROPERTY [REAL ESTATE] AND  
9 BANKING PREMISES. A bank may acquire, purchase, hold, and convey [AND  
10 HYPOTHECATE] real and personal property for the following purposes only:

11 (1) that which is [REAL PROPERTY] necessary for the convenient  
12 transaction of, or the promotion of, its business, including buildings containing  
13 banking offices, equipment, furniture and fixtures, art work, leasehold improvements,  
14 [AND] parking lots, and, with the prior approval of the department, real property  
15 reasonably anticipated to be necessary for future expansion of the bank, if the  
16 book asset value of the purchase or investment does not exceed 60 percent of the  
17 capital [ACCOUNT] and [THE] surplus [ACCOUNT] of the bank; [THE PURCHASE  
18 OR INVESTMENT MAY CONSIST OF STOCK IN A BANK BUILDING  
19 CORPORATION, IN WHICH CASE IT MUST INCLUDE ALL OBLIGATIONS OF  
20 THE BUILDING CORPORATION TO THE BANK;]

21 (2) the satisfaction of or on account of debts previously contracted in  
22 the course of its business;

23 (3) the purchase at sale under judgment, decree, lien, or mortgage  
24 foreclosure, against security held by it.

25 \* Sec. 36. AS 06.05.231(a) is amended to read:

26 (a) A bank may invest not more than 10 percent of its paid-in and unimpaired  
27 capital and surplus in a bank service corporation if

28 (1) the bank submits an application requesting permission to invest in  
29 a bank service corporation to the department, accompanied by complete information  
30 concerning feasibility, rates and competitive organizations, and the department consents  
31 in writing to the investment before it is made; and

1 (2) the total investment under this section and AS 06.05.230(1) [AND  
2 06.05.232] does not exceed the combined capital, surplus and undivided profits.

3 \* Sec. 37. AS 06.05.235(a) is amended to read:

4 (a) Except as provided in [(b) OR (e) OF] this section or in AS 06.05.570, it  
5 is unlawful for a person [COMPANY] to own, control or hold with power to vote 25  
6 percent or more of a class of voting securities or other capital stock of one or more  
7 state banks or domestic bank holding companies subject to regulation under this  
8 chapter. However, when it becomes a bona fide necessity to avoid loss for a creditor  
9 to accept shares of stock in one or more state banks or domestic bank holding  
10 companies constituting more than 25 percent of the ownership or control of a state  
11 bank or domestic bank holding company in payment of indebtedness owing to the  
12 creditor, shares of stock may be accepted, but the shares of the one or more state  
13 banks or domestic bank holding companies exceeding that 25 percent shall be promptly  
14 disposed of under the supervision of the department.

15 \* Sec. 38. AS 06.05.235(b) is amended to read:

16 (b) A domestic bank holding company that maintains its principal office and  
17 place of business in the state and conducts its principal operations in the state, may  
18 acquire and own all or a [ANY] portion of the voting securities or other capital stock  
19 of, or all or substantially all of the assets of, one or more banks or bank holding  
20 companies. The department may require a domestic bank holding company to post a  
21 bond with the department in an amount not more than [EQUAL TO] the paid-in  
22 capital and paid-in surplus represented by the proportion of state bank stock directly  
23 or indirectly owned, held, or controlled by it, under conditions the department may  
24 prescribe, to assure full protection of the public. Before a domestic bank holding  
25 company may acquire a bank or bank holding company doing business in the  
26 state, the domestic bank holding company shall apply for and obtain a permit  
27 from the department. In considering whether to issue a permit, the department  
28 shall consider the benefits to the public, the preservation of a competitive banking  
29 industry, and the maintenance of a safe and sound bank industry. The domestic  
30 bank holding company is subject to an examination by the department or a competent  
31 person designated by the department when the department considers it necessary, but

**Chapter 26**

1 not less than once each year. The domestic bank holding company shall pay an  
2 examination fee under AS 06.01.010.

3 \* Sec. 39. AS 06.05.235(g) is amended to read:

4 (g) For the purpose of this section and AS 06.05.570, a trust company  
5 organized under AS 06.25 that is engaged in the business of banking shall be  
6 considered a state bank.

7 \* Sec. 40. AS 06.05.235 is amended by adding a new subsection to read:

8 (i) The provisions of this section do not apply to a person that

9 (1) acquires or holds voting securities or other capital stock of a bank  
10 or bank holding company only for a reasonable period of time in connection with the  
11 underwriting of securities;

12 (2) is a state agency;

13 (3) is a trustee or agent of an independent federal financial regulatory  
14 agency; or

15 (4) under a plan of financial restructuring that is intended to prevent  
16 the failure of a state bank and that is approved by the department,

17 (A) acquires or receives 25 percent or more of a class of voting  
18 securities or other capital stock of the bank or bank holding company subject  
19 to the plan, and owns, controls, or holds, with the power to vote, the securities  
20 acquired or received in excess of 24.99 percent of that class for a period of  
21 time that permits the distribution or resale of the securities or other capital  
22 stock on a reasonable basis; or

23 (B) purchases or receives securities under the plan and, after the  
24 purchase or receipt, owns, controls, or holds, with a power to vote, less than  
25 25 percent of a class of voting securities or other capital stock of the bank or  
26 bank holding company subject to the plan but subsequently, solely through the  
27 action or inaction of others, including the bank or bank holding company,  
28 owns, controls, or holds, with a power to vote, 25 percent or more of a class  
29 of voting securities or other capital stock of the bank or bank holding company;  
30 the exemption in this subparagraph does not apply if the department  
31 determines, after notice and opportunity for hearing under AS 06.01.030, that

1 the ownership, control, or holding of the securities or stock exceeding 24.99  
2 percent of a class, other than under a plan to promptly dispose of the securities  
3 or stock under the supervision of the department, permits the organization in  
4 any manner to control the election of a majority of the board of directors or  
5 trustees, or to directly or indirectly exercise a controlling influence over the  
6 management or policies of the bank or bank holding company.

7 \* Sec. 41. AS 06.05.240 is amended to read:

8 Sec. 06.05.240. ACQUISITION OF PROPERTY TO SATISFY OR PROTECT  
9 PREVIOUS LOAN. A state bank may take property of any kind [, INCLUDING  
10 SHARES OF ITS OWN CAPITAL STOCK,] to satisfy or protect a loan previously  
11 made in good faith and in the ordinary course of business. A bank may not take the  
12 capital stock of the bank or of the bank's parent holding companies unless it  
13 complies with AS 06.05.205(d). The property shall be entered on the books at cost,  
14 or fair market value, whichever is less. Property acquired to satisfy or protect previous  
15 loans shall be disposed of over periods of time as the department may prescribe  
16 [PRESCRIBES] by regulation.

17 \* Sec. 42. AS 06.05.245 is amended to read:

18 Sec. 06.05.245. DISPOSITION OF PROPERTY NOT NEEDED IN THE  
19 CONDUCT OF A BANKING BUSINESS. All real [ESTATE] and personal property  
20 not necessary for the convenient transaction or promotion of a [CONSERVATIVE]  
21 banking business under AS 06.05.230 that comes into the possession of a state bank  
22 shall be disposed of as soon as possible [UNDER THE REGULATIONS OF THE  
23 DEPARTMENT]. If the real [ESTATE] or personal property is not sold within the  
24 time limit prescribed by the department in regulations, it shall be written off and may  
25 not be carried as an asset of the bank.

26 \* Sec. 43. AS 06.05.255(a) is amended to read:

27 (a) The aggregate amount of outstanding liabilities of a state bank for money  
28 borrowed exclusive of (1) capital notes and debentures issued under AS 06.05.307, (2)  
29 obligations incurred in connection with the purchase of bank premises under  
30 AS 06.05.230(1), and (3) agreements to repurchase securities, earlier sold by the  
31 bank, at the end of a stated period [BORROWING FOR EMERGENCY

Chapter 26

PURPOSES AS PERMITTED BY THE DEPARTMENT], may not at any time exceed 15 percent of the bank's total assets, [THE TOTAL AMOUNT OF ITS UNIMPAIRED CAPITAL AND ONE-HALF OF ITS UNIMPAIRED SURPLUS] or a larger amount if approved by the department.

\* Sec. 44. AS 06.05.260(a) is amended to read:

(a) A bank may not give preference to a depositor or creditor by pledging any of the assets of a bank as collateral security except

(1) to the state to secure state funds, or to a municipal corporation or other public corporation, municipal utility or municipal utility board, or political subdivision of the state to secure its funds, and to the United States as may be required to make the bank a depository for United States funds;

(2) to secure a mortgage or deed of trust in connection with the purchase of banking premises as provided in AS 06.05.230, if the only property pledged is property purchased in the transaction; or

(3) to a federal reserve bank or federal home loan bank in the manner required by the applicable laws, regulations, and rules of the federal reserve bank or federal home loan bank, as applicable.

\* Sec. 45. AS 06.05 is amended by adding a new section to read:

Sec. 06.05.262. UNAUTHORIZED ASSUMPTION OF LIABILITY. Except as expressly permitted in this chapter, a state bank may not assume liability as an insurer or as a guarantor or endorser of a security instrument or obligation unless the bank has a property interest in or with respect to the instrument or obligation. This section does not apply to warranty deeds issued by a bank.

\* Sec. 46. AS 06.05.270(a) is amended to read:

(a) In addition to loans and acquisitions expressly authorized by this chapter, a state bank may deal in, underwrite, and invest in for its own account the obligations that the department by regulation authorizes the bank to deal in, underwrite, or invest in for its own account

[(1) DIRECT OR GUARANTEED OBLIGATIONS OF THE UNITED STATES, EITHER DIRECTLY OR IN THE FORM OF SECURITIES OF, OR OTHER INTERESTS IN, AN OPEN-END MANAGEMENT TYPE INVESTMENT

1 COMPANY OR INVESTMENT TRUST REGISTERED UNDER 15 U.S.C. 80a-1 -  
2 80a-64 (INVESTMENT COMPANY ACT OF 1940), IF

3 (A) THE PORTFOLIO OF THE INVESTMENT COMPANY  
4 OR INVESTMENT TRUST IS LIMITED TO OBLIGATIONS OF THE  
5 UNITED STATES GOVERNMENT AND REPURCHASE AGREEMENTS  
6 FULLY COLLATERALIZED BY THE OBLIGATIONS; AND

7 (B) THE INVESTMENT COMPANY OR INVESTMENT  
8 TRUST TAKES DELIVERY OF THE COLLATERAL DIRECTLY OR  
9 THROUGH AN AUTHORIZED CUSTODIAN;

10 (2) GENERAL OBLIGATIONS OF THE STATE OF ALASKA AND  
11 ITS POLITICAL SUBDIVISIONS;

12 (3) GENERAL OBLIGATIONS OF A STATE OF THE UNITED  
13 STATES OR ITS POLITICAL SUBDIVISIONS;

14 (4) REVENUE OBLIGATIONS OF THE STATE OF ALASKA OR  
15 ITS POLITICAL SUBDIVISIONS SUBJECT TO THE LIMITATION OF (b) OF  
16 THIS SECTION;

17 (5) REVENUE OBLIGATIONS OF A STATE OF THE UNITED  
18 STATES OR ITS POLITICAL SUBDIVISIONS SUBJECT TO THE LIMITATION  
19 OF (b) OF THIS SECTION;

20 (6) OBLIGATIONS OF INSTRUMENTALITIES OF THE UNITED  
21 STATES GOVERNMENT INCLUDING, BUT NOT LIMITED TO FEDERAL  
22 INTERMEDIATE CREDIT BANKS, FEDERAL LAND BANKS, THE FEDERAL  
23 NATIONAL MORTGAGE ASSOCIATION, AND BANKS FOR COOPERATIVES;

24 (7) COMMERCIAL PAPER OF PRIME OR EQUIVALENT  
25 QUALITY AS RATED BY A RECOGNIZED NATIONAL RATING SERVICE  
26 SUBJECT TO THE LIMITATION OF (b) OF THIS SECTION;

27 (8) SECURED CORPORATE OBLIGATIONS RATED WITHIN THE  
28 THREE HIGHEST GRADES OF A NATIONAL RATING SERVICE SUBJECT TO  
29 THE LIMITATION OF (b) OF THIS SECTION;

30 (9) OBLIGATIONS OF THE INTERNATIONAL BANK FOR  
31 RECONSTRUCTION AND DEVELOPMENT, THE INTER-AMERICAN

Chapter 26

1 DEVELOPMENT BANK, OR THE AFRICAN DEVELOPMENT BANK, SUBJECT  
2 TO THE LIMITATION OF (b) OF THIS SECTION;

3 (10) STOCK IN THE FEDERAL NATIONAL MORTGAGE  
4 ASSOCIATION, A FEDERAL RESERVE BANK, OR A FEDERAL HOME LOAN  
5 BANK;

6 (11) THE STOCKS, BONDS, AND OTHER SECURITIES OF

7 (A) A CORPORATION LICENSED UNDER AS 10.13; OR

8 (B) A CORPORATION ATTEMPTING TO BECOME  
9 LICENSED UNDER AS 10.13 IF THE CORPORATION INTENDS TO USE  
10 THE PROCEEDS TO FULFILL THE TASKS NECESSARY TO BECOME  
11 LICENSED UNDER AS 10.13].

12 \* Sec. 47. AS 06.05 is amended by adding a new section to read:

13 Sec. 06.05.272. BANK SUBSIDIARIES. (a) A state bank may purchase or  
14 establish, and operate, one or more subsidiaries engaged in any of the following  
15 activities, if the subsidiary has the necessary licenses and permits and the operation is  
16 not detrimental to the bank's business:

17 (1) real property ownership, development, and leasing;

18 (2) securities brokerage;

19 (3) other activities authorized in regulations adopted under this section;

20 or

21 (4) other activities approved by the department.

22 (b) Under this section, a bank may invest in subsidiaries an amount equal to  
23 the lesser of 20 percent of its total assets or 50 percent of its total capital accounts.  
24 Loans to subsidiaries are considered investments subject to the limitations of this  
25 subsection.

26 (c) A subsidiary of a state bank is subject to examination by the department  
27 as part of the examination of the bank under AS 06.01.015.

28 (d) Notwithstanding any other provision of law, a state bank may not purchase,  
29 establish, or operate a subsidiary that engages in the business of insurance or real  
30 estate brokerage. However, a subsidiary that is owned or operated by a state bank and  
31 that engaged in the business of title insurance on or before January 1, 1993, as a

1 subsidiary of that bank may continue to engage in that business as a subsidiary of that  
2 bank after January 1, 1993.

3 \* Sec. 48. AS 06.05.275(b) is amended to read:

4 (b) A bank may discount, invest in, negotiate, and issue trade acceptances and  
5 bank acceptances if

6 (1) the terms of the draft require presentation for payment within 180  
7 days of issuance, exclusive of days of grace, and it is drawn to finance the purchase  
8 of goods with maturity and payment in accordance with the terms of the purchase  
9 agreement;

10 (2) the terms of the draft require presentation for payment within 180  
11 days of issuance, exclusive of days of grace, and it is secured by shipping documents  
12 transferring or securing title to goods, or by receipt of a licensed or bonded warehouse  
13 securing title to readily marketable goods; or

14 (3) the draft is drawn by a bank outside the continental limits of the  
15 United States for the purpose of furnishing dollar exchange for trade and its terms  
16 require presentation for payment within 90 days of issuance.

17 \* Sec. 49. AS 06.05 is amended by adding a new section to read:

18 Sec. 06.05.301. APPLICABILITY OF CORPORATIONS CODE. (a) Except  
19 for national banks with a principal place of business in the state, and interstate and  
20 international banks with a certificate of authority under AS 06.05.555, a corporation  
21 may not engage in the banking business unless the corporation is organized under  
22 AS 10.06 (Alaska Corporations Code) and this title.

23 (b) The provisions of AS 10.06 (Alaska Corporations Code) apply to state  
24 banks, except those provisions inconsistent with this chapter. The provisions  
25 inconsistent with this chapter include AS 10.06.010(4) - (8), 10.06.105(a), 10.06.325,  
26 10.06.356, 10.06.358 - 10.06.360, 10.06.370, 10.06.385 - 10.06.388, 10.06.420(i),  
27 10.06.430, 10.06.453, 10.06.460(b), 10.06.485, 10.06.522 - 10.06.868, 10.06.915,  
28 10.06.960, and 10.06.990(30) and (36).

29 \* Sec. 50. AS 06.05.305 is amended to read:

30 Sec. 06.05.305. CAPITAL STRUCTURE. (a) A corporation may not  
31 commence and operate a banking business in the state in a community with a

## Chapter 26

1        population of 35,000 or more unless the corporation has paid-in capital in an amount  
2        acceptable to the department, but not less than \$2,000,000, [OF AT LEAST  
3        \$250,000] and paid-in surplus equal to 20 percent of paid-in capital. A corporation  
4        may not commence and operate as a bank in the state in a community with a  
5        population less than 35,000 unless the corporation has paid-in capital in an  
6        amount acceptable to the department, but not less than \$1,000,000, and paid-in  
7        surplus equal to 20 percent of paid-in capital. A bank may not operate any  
8        branches unless it has an aggregate paid-in capital and paid-in surplus in amounts  
9        acceptable to the department [OF AT LEAST \$800,000].

10        (b) The capital [STOCK] of a state bank may not be reduced to an amount less  
11        than is required by the department [IN THIS CHAPTER] for capital under (a) of  
12        this section. A reduction of capital [STOCK, CANCELLATION OF STOCK  
13        CERTIFICATES,] or [REDUCING OF] the liability of the shareholders  
14        [STOCKHOLDERS] is not valid until it is approved by the department.

15        (c) If a state bank fails to maintain its total [ADJUSTED] capital accounts and  
16        loan loss reserves in an amount equal to the [SUBSTANDARD] assets classified as  
17        substandard [AS REPORTED] by the Federal Deposit Insurance Corporation or by  
18        the state in the [A] bank's latest report of examination, the department shall consider  
19        the failure as endangering the safety of depositors [THE DEPOSITOR] and may direct  
20        the bank's directors to increase the capital accounts in an amount sufficient to cover  
21        substandard assets.

22        \* **Sec. 51.** AS 06.05.310 is repealed and reenacted to read:

23        Sec. 06.05.310. CORRECTION OF IMPAIRMENT OF CAPITAL. If the  
24        department determines that the order is necessary for the protection of depositors, the  
25        department may issue an order under AS 06.01.030 to require a state bank to increase  
26        its capital accounts or to reduce its deposits. In making a decision whether to issue  
27        an order under this section, the department shall consider the

- 28                (1) quality of management;
- 29                (2) quality and liquidity of assets;
- 30                (3) history of earnings and retention of earnings;
- 31                (4) quality and character of ownership;

- 1 (5) potential volatility of deposit structure;  
2 (6) quality and cost of bank operations; and  
3 (7) capacity to meet present and future needs of the area served,  
4 considering the bank's competition.

5 \* Sec. 52. AS 06.05.320 is amended to read:

6 Sec. 06.05.320. BANK PURCHASES OF OWN SHARES [PROHIBITED].

7 Except in accordance with written approval of the department, a [A] bank may not  
8 purchase its own capital stock.

9 \* Sec. 53. AS 06.05.327 is amended to read:

10 Sec. 06.05.327. CHANGE IN OUTSTANDING VOTING SHARES [STOCK].

11 Before [IF] a change may occur [OCCURS OR IS ABOUT TO OCCUR] in the  
12 outstanding voting shares [STOCK] of a state bank that will result in a change in the  
13 control of the bank, or before [IF] any sales or transfers by or to a person, corporation  
14 or other legal entity of the aggregate of 10 percent or more of the voting shares  
15 [STOCK] of a state bank may be made, the transaction must be approved by [ARE  
16 ABOUT TO BE CONSUMMATED, THE PRESIDENT OR OTHER CHIEF  
17 EXECUTIVE OFFICER OF THE BANK IMMEDIATELY UPON OBTAINING  
18 KNOWLEDGE OF THE CHANGE IN THE CONTROL OF THE BANK OR THE  
19 CONTEMPLATED OR CONSUMMATED SALE OR TRANSFER OF STOCK,  
20 SHALL REPORT THESE FACTS TO] the department.

21 \* Sec. 54. AS 06.05.342(a) is amended to read:

22 (a) Subscription agreements and accompanying prospectuses or offering  
23 circulars, whether for a proposed state bank or for an increase in capital of an existing  
24 state bank, shall be submitted to the department for approval before their use. The  
25 department shall determine whether the subscription agreements or offering circulars  
26 provide full and accurate disclosure of the material terms of the offering. The  
27 department may order the incorporators not to accept any stock subscriptions or to  
28 cease accepting subscriptions if the department [IT] determines that the incorporators  
29 are not acting lawfully or in good faith.

30 \* Sec. 55. AS 06.05 is amended by adding a new section to read:

31 Sec. 06.05.344. APPLICATION FOR APPROVAL OF STATE BANK. (a)

## Chapter 26

1 Before the department issues a certificate of incorporation under AS 10.06.910 for a  
2 state bank, the incorporators of a proposed state bank shall obtain the approval of the  
3 department. In applying for the approval, the incorporators shall file with the  
4 department

5 (1) an application in the form and containing the information the  
6 department requires, including

7 (A) for each incorporator and proposed director, and for each  
8 preincorporation subscriber of more than five percent of the capital stock, any  
9 past and present connection with a bank other than as a customer on terms  
10 generally available to the public;

11 (B) the name, residence, and occupation of each  
12 preincorporation subscriber and the number of shares subscribed for by the  
13 subscriber;

14 (C) the address of the proposed place of business of the bank  
15 or, if an address is not available, a legal description of the proposed place of  
16 business; and

17 (2) the proposed articles of incorporation; and

18 (3) all applicable fees, payable to the department, for the filing.

19 (b) Investigation expenses incurred by the department in processing an  
20 application for approval of a proposed bank shall be charged to and paid by the  
21 applicant under AS 06.01.010. When submitting the application to the department, the  
22 applicant shall pay to the department \$2,000 in partial payment of the investigation  
23 expenses incurred by the department. If the investigation expenses incurred by the  
24 department are less than \$2,000, the department shall promptly refund the excess to  
25 the applicant.

26 (c) The department shall notify the incorporators of its decision whether to  
27 accept an application for a proposed state bank. If the application and accompanying  
28 documents required by (a) of this section do not conform to the requirements of this  
29 chapter and the regulations adopted under this chapter, the department shall return the  
30 documents with an explanation of the defects. If the department does not act within  
31 30 days of receipt of the application, the application is considered to be accepted.

1 Acceptance of the application does not constitute approval.

2 (d) The incorporators shall publish notice of the department's acceptance of  
3 the application for a proposed state bank and acceptance of the articles of incorporation  
4 once each week for two successive weeks in a newspaper of general circulation  
5 published in the community proposed as the bank's principal place of business. If  
6 there is no newspaper of general circulation in the community, the notice shall be  
7 published in a newspaper of general circulation near the community. The first  
8 publication of the notice must appear within 15 days after the application and articles  
9 of incorporation have been accepted by the department. The notice must state

10 (1) the name of the proposed state bank;

11 (2) that the proposed bank is to be incorporated under this chapter and  
12 AS 10.06;

13 (3) the purpose of the proposed bank; and

14 (4) the names and addresses of the incorporators and the initial board  
15 of directors as the names and addresses appear in the articles of incorporation.

16 (e) To prove that the publication required by (d) of this section was made, the  
17 incorporators shall file with the department an affidavit of the publisher of the  
18 newspaper in which the notice was published.

19 (f) Upon acceptance of an application for approval of a proposed state bank,  
20 the department shall conduct an investigation to determine whether

21 (1) the convenience and needs of the public will be served by the bank;

22 (2) the population density and economic characteristics of the area  
23 primarily to be served by the bank afford reasonable promise of adequate support for  
24 the bank;

25 (3) the character and fitness of the incorporators and the members of  
26 the initial board of directors command the confidence of the community and warrant  
27 the belief that the business of the bank will be honestly and efficiently conducted;

28 (4) the proposed capital structure of the bank meets the requirements  
29 set by the department under AS 06.05.305;

30 (5) the bank will have personnel with adequate knowledge and  
31 experience to conduct its business and officers of good character and financial

Chapter 26

1 responsibility;

2 (6) the addition of the bank is not detrimental to a sound and  
3 competitive banking system; and

4 (7) other relevant facts and circumstances exist that bear on the bank  
5 and its relation to the community.

6 (g) The department shall approve or deny an application within six months  
7 after the application for approval has been accepted. The time may be extended by  
8 up to six additional months when the department determines that an extension is  
9 warranted by exceptional circumstances. Within 60 days after the second publication  
10 of the notice required by (d) of this section, a person opposing approval of the  
11 application may file written objections with the department. When it approves or  
12 denies the application, the department shall notify the incorporators and a person who  
13 requested in writing to be notified, and, if the application is denied, the department  
14 shall state the reasons for its decision and return all copies of the articles of  
15 incorporation.

16 (h) If the department approves the application, the department shall endorse  
17 the approval on the articles of incorporation, file the articles of incorporation, and issue  
18 a certificate of incorporation under AS 10.06.910.

19 \* Sec. 56. AS 06.05.345(a) is amended to read:

20 (a) In addition to those items required under AS 10.06.208, the [THE  
21 INCORPORATORS SHALL EXECUTE] articles of incorporation of a state bank [,  
22 WHICH] must specify

23 (1) [THE NAME ASSUMED BY THE BANK;

24 (2)] the judicial district in which the bank is to be located and the  
25 community where the bank is to conduct its principal place of business;

26 (2) [(3) THE NATURE OF ITS BUSINESS;

27 (4)] the amount of its capital stock, which shall be divided into shares  
28 having a par value of not less than \$1 each;

29 (3) that there will [(5) THE NUMBER OF DIRECTORS OF WHOM  
30 THERE MUST] be at least five but no more than 25 directors; and

31 (4) [(6)] the period for which the bank is organized, if limited.

1 \* Sec. 57. AS 06.05.345(l) is repealed and reenacted to read:

2 (l) A bank may amend its articles of incorporation in a manner consistent with  
3 its articles and bylaws, AS 10.06, and this chapter by a vote of its shareholders  
4 representing at least a majority of the capital at a regular meeting or at a special  
5 meeting called for the purpose.

6 \* Sec. 58. AS 06.05.350(a) is repealed and reenacted to read:

7 (a) At any time after receiving a certificate of incorporation, a bank may apply  
8 to the department for a certificate of authority to engage in the banking business.  
9 Before receiving a certificate of authority, a bank may not perform an act other than  
10 to perfect its organization, obtain and equip a place of business, obtain subscriptions  
11 and payment for its shares, and otherwise prepare to do business. If a bank violates  
12 this subsection by transacting business before it receives a certificate of authority, the  
13 directors and officers who wilfully authorized or participated in the action are  
14 personally, jointly, and severally liable for the debts and liabilities of the bank incurred  
15 before the certificate of authority is issued.

16 \* Sec. 59. AS 06.05.350(b) is amended to read:

17 (b) The department shall issue a certificate of authority to engage in the  
18 banking business to a proposed state bank if, upon review of the information required  
19 by this chapter, including the following, it approves the application:

20 (1) certification by an officer [TO THE DEPARTMENT] by affidavit  
21 that the capital and surplus [AND UNDIVIDED PROFITS] required by the department  
22 have been fully paid in cash;

23 (2) a list of all shareholders [STOCKHOLDERS], giving the name,  
24 address, and number of shares held by each [HAS BEEN FILED WITH THE  
25 DEPARTMENT];

26 (3) bylaws of the corporation [HAVE BEEN ADOPTED AND FILED  
27 WITH THE DEPARTMENT];

28 (4) evidence satisfactory to the department that the bank has  
29 [RECEIVED APPROVAL OF ITS APPLICATION FOR INSURANCE FROM THE  
30 FEDERAL DEPOSIT INSURANCE CORPORATION];

31 (5) THE BANK HAS] complied with all the requirements of this

## Chapter 26

chapter and any conditions imposed by the department and has advised the department in writing of any changes that have occurred in the facts reflected in the material it filed under AS 06.05.344 [AS 06.05.345].

\* Sec. 60. AS 06.05.350 is amended by adding a new subsection to read:

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

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

(2) represent that the person is, or acts for, a bank; or

(3) use an artificial or corporate name that purports to be or suggests that it is the name of a bank.

\* Sec. 61. AS 06.05.355(a) is repealed and reenacted to read:

(a) The department may require a state bank, either at the time the bank applies for a certificate of authority or during the bank's existence, to become a member of the Federal Deposit Insurance Corporation.

\* Sec. 62. AS 06.05.355(c) is amended to read:

(c) Relinquishment of membership without giving notice and obtaining the department's consent, involuntary loss of membership, or failure to become a member after the department directs the bank to become a member constitutes cause for the department to take possession of the bank in the manner provided by this chapter.

\* Sec. 63. AS 06.05.385 is amended to read:

Sec. 06.05.385. ORGANIZATIONAL MEETING [FIRST MEETING OF STOCKHOLDERS AND DIRECTORS]. (a) A state bank may not call an organizational meeting under AS 10.06.223 until all [AFTER THE] capital and surplus have been fully paid[, THE INCORPORATORS SHALL CALL A MEETING OF THE STOCKHOLDERS ON 10 DAYS' NOTICE TO ELECT DIRECTORS AND ADOPT BYLAWS, AND DIRECT THE CALL, ON FIVE DAYS' NOTICE, OF THE FIRST MEETING OF DIRECTORS FOR THE ELECTION OF OFFICERS].

(b) Bylaws shall be adopted and may be amended by a vote of the holders of a majority of the outstanding voting shares voted at a meeting of the shareholders [STOCKHOLDERS]. If not provided in the articles of incorporation, the bylaws must indicate the organizational structure of the bank and specifically designate

1 the offices that will be held by the executive or managing officers of the bank.  
2 The bank shall file with the department copies of the original bylaws of the bank  
3 and any amendments adopted for the bylaws [THE BYLAWS MAY PROVIDE  
4 FOR THEIR AMENDMENT BY THE BOARD OF DIRECTORS OF ANY  
5 PROVISIONS OTHER THAN THOSE RELATING TO THE DUTIES, TERM OF  
6 OFFICE, REMUNERATION, REIMBURSEMENT OR INDEMNIFICATION OF A  
7 DIRECTOR].

8 \* Sec. 64. AS 06.05.399 is amended to read:

9 Sec. 06.05.399. APPLICATION FOR CERTIFICATE OF AUTHORITY FOR  
10 BRANCH BANK OR CHANGE OF LOCATION. (a) Before operating a branch  
11 bank at [AS] a permanent location or a mobile facility branch bank, or changing the  
12 location of the principal office or [OF] a branch of the bank at a permanent location,  
13 a state bank must apply to the department [COMMISSIONER] for a certificate of  
14 authority to do so. The application must be in the form and contain the information  
15 the department [COMMISSIONER] requires to enable the department  
16 [COMMISSIONER] to determine whether a certificate of authority should be issued,  
17 including [BUT NOT LIMITED TO] the address at which the state bank or branch at  
18 a permanent location will operate. Investigation expenses incurred by the department  
19 in processing applications shall be charged to and paid by the applicant as provided  
20 in AS 06.01.010. At the time of submitting the application to the department  
21 [COMMISSIONER], the applicant shall pay to the department \$1,000 [\$500] in partial  
22 payment of those investigation expenses incurred by the department. If the  
23 investigation expenses incurred by the department do not exceed \$1,000 [\$500], the  
24 remainder shall be promptly refunded to the applicant. In this subsection, "mobile  
25 facility branch bank" means a branch bank that moves from one location to  
26 another to provide banking services and that is located in or serves remote areas  
27 of the state not being adequately served by permanently located banks or bank  
28 branches.

29 (b) The department shall notify the state bank of its action on the application  
30 for a branch bank or for a change of location. If the application and the accompanying  
31 documents do not conform to the requirements of (a) of this section, the department

## Chapter 26

1 shall return them with an explanation of the defects in them. If the department does  
2 not respond within 30 days of its receipt of the application, the application [IT] shall  
3 be considered to have been accepted.

4 (c) The state bank shall publish notice of [THE ACCEPTANCE BY THE  
5 DEPARTMENT OF] the application for a branch bank or for a [APPROVAL TO]  
6 change in location in the manner provided in AS 06.05.344(d) - (e) [AS 06.05.345(f)  
7 AND (g)]. The notice shall state the proposed location for the facility.

8 (d) Upon acceptance of an application for a certificate of authority to operate  
9 a branch bank or for approval to change location, the department shall conduct an  
10 investigation to ascertain whether

11 (1) the addition of the proposed facility in the community is consistent  
12 with [NOT DETRIMENTAL TO] a sound and competitive banking system;

13 (2) the population density and other economic characteristics of the area  
14 primarily to be served afford reasonable promise of adequate support for the proposed  
15 facility [A BRANCH AT A PERMANENT LOCATION OR MOBILE FACILITY  
16 BRANCH BANK OR A RELOCATED PRINCIPAL OFFICE OR BRANCH AT A  
17 PERMANENT LOCATION];

18 (3) the capital structure of the state bank is adequate in relation to the  
19 anticipated business and costs of operating at the proposed location;

20 (4) the name is not deceptively similar to that of another branch or  
21 bank and is not otherwise misleading.

22 (e) No later than 150 days after the application for a certificate of authority  
23 to operate a branch bank or to change location has been accepted, the department shall  
24 make a determination whether to approve the application. Within 30 days after the  
25 second publication of the notice referred to in (c) of this section, a [ANY] person  
26 opposing the pending application may file written objections with the department.  
27 When it approves or denies the application, the department shall notify the bank and  
28 any other person who requested in writing to [THAT THE PERSON] be notified; and  
29 if the application is denied, the department shall state the reasons for its decision.

30 (f) The department shall issue a certificate of authority to operate a branch  
31 bank or to change location if

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

(2) the requirements of this chapter are satisfied [;

(3) APPROVAL OF THE APPLICATION FOR INSURANCE HAS BEEN RECEIVED FROM THE FEDERAL DEPOSIT INSURANCE CORPORATION].

(g) If the rights conferred by a certificate of authority are not exercised within one year from the date of its issuance under this section, the certificate lapses.

\* Sec. 65. AS 06.05 is amended by adding a new section to article 4 to read:

Sec. 06.05.426. AUTOMATED TELLER MACHINES. (a) A state bank may establish, maintain, and operate an automated teller machine on the premises of the main office or a branch office of the bank.

(b) A state bank may establish, maintain, and operate an automated teller machine at a location other than bank premises with the prior approval of the department. An automated teller machine operated off bank premises shall be made available on a nondiscriminatory basis for use by other banks authorized to do business in the state and their customers, upon the agreement of the other banks to pay a fair and equitable amount for the use of the machine.

(c) For each automated teller machine that a state bank proposes to establish or operate under (b) of this section, the state bank shall submit an application to the department for the machine. The application must contain the following:

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

(2) the name of the manufacturer and owner of the machine;

(3) the manner of operation, including whether the machine is on-line and the kinds of transactions the machine will perform;

(4) the names of the other banks that will share the machine's services; and

(5) other information required by the department.

(d) A state bank may invest in a corporation organized to operate machines

Chapter 26

1 that perform automated teller services for two or more banks, if each bank owns part  
2 of the capital stock of the corporation.

3 \* Sec. 66. AS 06.05.435(a) is amended to read:

4 (a) The affairs of every bank incorporated under this chapter shall be managed  
5 by not less than five directors, nor more than 25 [ WHO SHALL BE ELECTED BY  
6 THE STOCKHOLDERS AND HOLD OFFICE FOR ONE YEAR AND UNTIL  
7 THEIR SUCCESSORS ARE ELECTED AND HAVE QUALIFIED]. A majority of  
8 the board of directors shall be bona fide residents of the state and a majority  
9 constitutes a quorum for the transaction of business.

10 \* Sec. 67. AS 06.05.435(c) is amended to read:

11 (c) Unless otherwise approved by the department, each [EACH] director  
12 of a bank shall own<sub>2</sub> in the director's own right or jointly with the director's spouse,  
13 free of any encumbrance<sub>2</sub> capital stock of the bank in an amount equal to at least  
14 \$1,000 in par value.

15 \* Sec. 68. AS 06.05.435 is amended by adding new subsections to read:

16 (f) A bank shall report within 30 days to the department a change in directors,  
17 including a statement of the business and professional affiliations of new directors.

18 (g) The department may issue an order under AS 06.01.030 removing a person  
19 from the board of directors or prohibiting a person from being on the board, if the  
20 department determines that

21 (1) due to the competence, experience, character, or integrity of the  
22 person, it is not in the best interests of the depositors or the public for the person to  
23 be or remain on the board;

24 (2) the person is dishonest or reckless in managing the affairs of the  
25 bank;

26 (3) the person has persistently violated this title, the regulations adopted  
27 under this title, or the orders of the department under this title or under the regulations  
28 adopted under this title;

29 (4) the person has been indicted for a felony or other crime involving  
30 moral turpitude or breach of trust; or

31 (5) the person has filed a petition in bankruptcy either in an individual

1 capacity or in the name of a corporation in which the person owns a majority of the  
2 shares.

3 \* Sec. 69. AS 06.05.437 is amended to read:

4 Sec. 06.05.437. OFFICERS. (a) The officers of a bank shall be chosen  
5 [ELECTED] by the board of directors. An officer may not be appointed to serve  
6 [ELECTED] for a period longer than one year. If a [AN OFFICER MAY BE  
7 REMOVED BY THE BOARD OF DIRECTORS AT ANY TIME BUT REMOVAL  
8 DOES NOT PREJUDICE ANY RIGHTS THAT THE OFFICER MAY HAVE TO  
9 DAMAGES FOR BREACH OF CONTRACT OF EMPLOYMENT. THE] president  
10 of a bank or other chief officer responsible for the management of the bank is not a  
11 director, the officer must be an ex officio [A] member of the board of directors  
12 without the power to vote.

13 (b) A bank shall report within 30 days to the department any changes among  
14 executive officers [AND DIRECTORS], including in its report a statement of the  
15 business and professional affiliations of new executive officers [AND DIRECTORS].

16 \* Sec. 70. AS 06.05.437 is amended by adding a new subsection to read:

17 (c) If the department determines that an officer or employee of the bank has  
18 been negligent, dishonest, reckless, or incompetent in the performance of official  
19 duties, the department may order the board to remove the officer or employee from  
20 office, after giving the board and the officer or employee an opportunity for a hearing  
21 under AS 06.01.030. If the board neglects or refuses to remove the officer or  
22 employee from office and if losses due to the negligence, dishonesty, recklessness, or  
23 incompetence of the officer or employee accrue to the bank after the neglect or refusal,  
24 the order of the department is conclusive evidence of the negligence of the board under  
25 this subsection in an action brought against the board, or a member of the board, for  
26 recovery of the losses.

27 \* Sec. 71. AS 06.05.438(a) is amended to read:

28 (a) The board of directors of each bank shall hold a meeting at least once each  
29 month for at least 10 months in each calendar year [TO GENERALLY  
30 INVESTIGATE THE AFFAIRS OF THE BANK].

31 \* Sec. 72. AS 06.05.438 is amended by adding new subsections to read:

Chapter 26

1 (e) Unless prohibited by the articles or bylaws of the state bank, the board of  
2 directors or a committee of the board may validly conduct a meeting by  
3 communicating simultaneously with each other by means of conference telephones or  
4 similar communications equipment.

5 (f) The department may require a meeting of the board of directors of a state  
6 bank to be held in the manner and at the time and place the department directs when,  
7 in the judgment of the department, a violation of this title has occurred or is about to  
8 occur. A report of an examination required or allowed by this title, the conclusions  
9 drawn from the examination by the department, recommendations made by the  
10 department, and other matters concerning the operation and condition of the bank may  
11 be presented to the board of directors by the department. If the department presents  
12 a report of examination or other information is presented to the board, each member  
13 of the board of directors shall furnish to the department a statement, on forms to be  
14 supplied by the department, that the member has read and is familiar with the  
15 recommendations of the department.

16 \* Sec. 73. AS 06.05.440 is amended to read:

17 Sec. 06.05.440. AUTHORITY TO DECLARE DIVIDENDS. The directors of  
18 a bank transacting business in the state may declare a dividend out of the net profits,  
19 subject to any restrictions under AS 06.05.307(c) and after complying with  
20 AS 06.05.441 - 06.05.445.

21 \* Sec. 74. AS 06.05.441 is amended to read:

22 Sec. 06.05.441. CONDITIONS PRECEDENT TO DIVIDEND  
23 DECLARATION AND PAYMENT. (a) Before a bank dividend is declared [,] or the  
24 net profits for the period covered by the dividend disposed of, and after the  
25 restoration of any undivided profits or surplus under AS 06.05.442, not less than  
26 one-fifth of these net profits shall be carried to the bank surplus account until the  
27 surplus account equals [AMOUNTS TO] 100 percent of the paid-in capital of the  
28 bank.

29 (b) The department may require a bank to suspend the payment of any  
30 dividends until all orders or requirements of this section and AS 06.05.442 [MADE  
31 BY THE DEPARTMENT] have been complied with.

1 \* Sec. 75. AS 06.05.442 is amended to read:

2 Sec. 06.05.442. RESTORATION OF SURPLUS BEFORE PAYMENT OF  
3 DIVIDENDS. A loss sustained by a bank in excess of its undivided profits and any  
4 capital contingency reserves [RESERVE] shall be charged to its surplus account or,  
5 with the approval of the department, carried as negative undivided profits. The  
6 bank's undivided profits and [. ITS] surplus account shall thereafter be reimbursed  
7 from earnings<sub>2</sub> and no dividends may be declared or paid by the bank [IN EXCESS  
8 OF ONE-HALF OF ITS NET EARNINGS] until any negative undivided profits are  
9 eliminated and the surplus account is restored to at least the amount from which the  
10 surplus was originally reduced [OR AN AMOUNT EQUAL TO 100 PERCENT OF  
11 PAID-IN CAPITAL].

12 \* Sec. 76. AS 06.05.445 is repealed and reenacted to read:

13 Sec. 06.05.445. DETERMINING NET PROFITS. (a) A bank may not declare  
14 or pay a dividend in an amount greater than its net undivided profits then on hand.

15 (b) In determining net profits for the purpose of declaring a dividend, a bank  
16 may not include in its calculations

17 (1) loan loss reserves and losses in excess of reserves, including loans  
18 or other credits upon which interest for a period of six months is due and unpaid,  
19 unless the loan or credit is well secured and in the process of collection;

20 (2) interest accrued but not collected on loans or other credits upon  
21 which the interest due is more than 90 days delinquent;

22 (3) interest collected but not earned;

23 (4) assets or depreciation that the department has required to be charged  
24 off;

25 (5) the appreciation of any asset above its actual cost to the bank; and

26 (6) any accrued expenses, interest or taxes due from the bank.

27 \* Sec. 77. AS 06.05.450 is amended to read:

28 Sec. 06.05.450. SHAREHOLDERS [STOCKHOLDERS] LIST. Each bank  
29 shall keep a record of [BOOK IN WHICH IT SHALL ENTER] the name and  
30 residence of each shareholder [STOCKHOLDER] of the bank, the class and number  
31 of shares held by each, the time when each person became a shareholder

Chapter 26

1 [STOCKHOLDER], and all transfers of stock, stating the time when made, the number  
2 of shares, and by whom transferred. A list of current shareholders [THE  
3 STOCKHOLDERS] shall be available for inspection in the bank office by any  
4 shareholder on demand [SHOWING THE NUMBER OF SHARES HELD BY EACH  
5 STOCKHOLDER OF RECORD].

6 \* Sec. 78. AS 06.05.462(a) is amended to read:

7 (a) A national [CHARTER] bank located in the state may convert to a state  
8 [CHARTER] bank or merge or consolidate with a state [CHARTER] bank, and a state  
9 [CHARTER] bank may merge or consolidate with another state [CHARTER] bank, if  
10 the merger or consolidation is consistent with federal and state law and approved by  
11 the department.

12 \* Sec. 79. AS 06.05.462(c) is amended to read:

13 (c) The department, in the exercise of its power to approve or disapprove  
14 applications for merger or consolidation, shall act in the interests of promoting and  
15 maintaining a sound banking system, the security of deposits and customers, the  
16 preservation of the liquid position of banks, and in the interest of preventing injurious  
17 credit expansions and contractions. [THE DEPARTMENT MAY ADOPT  
18 REGULATIONS TO IMPLEMENT THIS SECTION.]

19 \* Sec. 80. AS 06.05.462(d) is amended to read:

20 (d) A state [CHARTER] bank converting to or merging or consolidating with  
21 a national [CHARTER] bank shall submit a copy of the application for national charter  
22 or application to convert, merge, or consolidate to the department at the time those  
23 documents are forwarded to the comptroller of the currency.

24 \* Sec. 81. AS 06.05.466 is repealed and reenacted to read:

25 Sec. 06.05.466. DISSOLUTION BEFORE COMMENCEMENT OF  
26 BUSINESS. If the department discovers, after it approves the articles of incorporation  
27 for a bank but before it issues a certificate of authority to the bank, a reason why a  
28 bank should not have been incorporated, or if a certificate of authority is not issued  
29 within the later of one year after the issuance of the certificate of incorporation or the  
30 time the department allows for satisfaction of conditions precedent to the issuance of  
31 a certificate of authority, the bank shall voluntarily dissolve under AS 10.06.605 -

1 10.06.625 or may be involuntarily dissolved by the department under AS 10.06.633.

2 \* Sec. 82. AS 06.05 is amended by adding a new section to read:

3 Sec. 06.05.468. CEASE AND DESIST; OPPORTUNITY FOR HEARING;  
4 DEPARTMENT TAKEOVER. (a) A state bank may be closed and the department  
5 may take possession of the bank if the bank voluntarily places its affairs and assets  
6 under the department's control, or if the department finds

7 (1) the bank has violated an order of the department;

8 (2) the bank has violated a provision of this chapter or a regulation of  
9 the department adopted under this chapter;

10 (3) the bank's capital is impaired or the bank is otherwise in an unsafe  
11 or unsound condition;

12 (4) the bank's business is being conducted in an unlawful, unsafe, or  
13 unsound manner;

14 (5) the bank is insolvent;

15 (6) the bank is unable to continue normal operations;

16 (7) a department examination of the bank is obstructed or impeded;

17 (8) the bank holding company that controls the bank refuses to permit  
18 an examination as provided in AS 06.05.235; or

19 (9) the bank has lost, or received notice of the termination or  
20 suspension of, its membership in the Federal Deposit Insurance Corporation or has  
21 relinquished its membership in the Federal Deposit Insurance Corporation without the  
22 consent of the department.

23 (b) Except as provided in (d) of this section, before the department may take  
24 possession of a bank the department shall issue a notice to the board of directors of  
25 the bank under AS 06.01.030(a) of the problems identified by the department and issue  
26 an order to the board under AS 06.01.030(b) to correct the problems. The notice must  
27 also specify that failure to comply with the order may result in the department taking  
28 possession of the bank.

29 (c) If a bank fails to comply with an order issued under (b) of this section, the  
30 department may take possession of the bank by posting upon the bank premises a  
31 notice stating that the department is assuming possession under this chapter.

Chapter 26

1 Department possession begins when the notice is posted. The notice shall also be filed  
2 in the superior court of the judicial district in which the bank is located. The  
3 department shall notify the local federal reserve bank if the bank is a member of the  
4 Federal Reserve System.

5 (d) Notwithstanding the provisions of this section and AS 06.01.030, if, in the  
6 opinion of the department, an emergency exists that will result in serious losses to the  
7 depositors, the department may take possession of a bank without prior hearing.  
8 Within two days after the department takes possession under this subsection, an  
9 interested party may file with the department an application for an order vacating the  
10 possession. The department shall grant the application if the department finds that the  
11 department's action was not authorized under this chapter.

12 \* Sec. 83. AS 06.05.470(b) is amended to read:

13 (b) [THE DEPARTMENT SHALL TAKE POSSESSION UNDER (A) OF  
14 THIS SECTION BY POSTING UPON THE BANK PREMISES A NOTICE  
15 STATING THAT IT IS ASSUMING POSSESSION UNDER THIS CHAPTER. ITS  
16 POSSESSION IS CONSIDERED TO COMMENCE AT THE TIME OF POSTING OF  
17 THE NOTICE. THE NOTICE SHALL ALSO BE FILED IN THE SUPERIOR  
18 COURT OF THE JUDICIAL DISTRICT IN WHICH THE BANK IS LOCATED.  
19 THE DEPARTMENT SHALL NOTIFY THE FEDERAL RESERVE BANK IF THE  
20 BANK IN THE POSSESSION OF THE DEPARTMENT IS A MEMBER OF THE  
21 FEDERAL RESERVE SYSTEM.] When the department has taken possession of a  
22 state bank, it is vested with the full and exclusive power of management and control,  
23 including the power [TO ASSESS OUTSTANDING CAPITAL STOCK UNDER  
24 AS 06.05.310,] to continue or discontinue the business, to stop or limit the payment  
25 of the bank's [ITS] obligations, to employ necessary assistants, to execute any  
26 instrument in the name of the bank, to commence, defend, and conduct in the bank's  
27 [ITS] name any action or proceeding in which the bank [IT] may be a party, to  
28 terminate the [ITS] possession by restoring the bank to its board of directors, and to  
29 reorganize or liquidate the bank under [IN ACCORDANCE WITH] this chapter. As  
30 soon as practicable after taking possession, the department shall make an inventory of  
31 the assets and file a copy of the inventory [IT] with the superior court.

1 \* Sec. 84. AS 06.05.470(g) is amended to read:

2 (g) A judgment, lien, or attachment may not be enforced against  
3 [EXECUTED UPON] any asset of the bank while it is in possession of the department.  
4 Upon the election of the department in connection with a liquidation or reorganization,

5 (1) any lien or attachment, other than an attorney's or mechanic's lien,  
6 obtained upon any asset of the bank during the department's possession or within four  
7 months before commencement of that possession, may [SHALL] be vacated, except  
8 liens created by the department while in possession; and

9 (2) any transfer of an asset of the bank made after or in contemplation  
10 of its insolvency or in anticipation of the department's takeover, with intent to  
11 effect a preference of one creditor over another creditor or to prevent the  
12 distribution of the bank's assets according to law, is void.

13 \* Sec. 85. AS 06.05 is amended by adding new sections to read:

14 Sec. 06.05.471. REORGANIZATION. (a) If the department decides to  
15 reorganize a state bank, the department, after according a hearing to all interested  
16 parties, shall enter an order proposing a reorganization plan. The department shall  
17 send a copy of the plan to each depositor and creditor who will not receive payment  
18 of a claim in full under the plan, and a notice that, unless within 30 days the plan is  
19 disapproved in writing by persons holding one-third or more of the aggregate amount  
20 of the claims, the department will reorganize the bank.

21 (b) A plan of reorganization may not be prescribed under this chapter unless,  
22 in the opinion of the department,

23 (1) the plan is fair to all classes of depositors, creditors, and  
24 shareholders;

25 (2) subject to a fair adjustment for new capital that a class will pay  
26 under the plan, the face amount of the interest accorded to a class of depositors,  
27 creditors, or shareholders under the plan does not exceed the value of the assets at  
28 liquidation less the full amount of the claims of all prior classes;

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

31 (4) any exchange of new common stock for obligations or stock of the

## Chapter 26

1 bank will be made

2 (A) in the inverse order of the priorities in liquidation of the  
3 classes that will retain an interest in the bank; and

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

6  
7 (5) the plan assures the removal of a director, officer, or employee  
8 responsible for a problem identified by the department under AS 06.05.468(a) - (b),  
9 including an unsafe, unsound, or unlawful action or the existence of an unsafe or  
10 unsound condition;

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

13 (c) When in the course of reorganization, supervening conditions render a plan  
14 of reorganization unfair or its execution impractical, the department may modify the  
15 plan or liquidate the bank.

16 Sec. 06.05.472. LIQUIDATION. (a) In liquidating a state bank, the  
17 department may exercise any power incidental to liquidating a bank, but it may not,  
18 without the approval of the superior court,

19 (1) sell an asset of the bank having an appraised value in excess of  
20 \$100,000;

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

23 (3) make full payment on a claim, other than a claim upon an  
24 obligation incurred by the department, before preparing and filing a schedule of the  
25 department's determinations under AS 06.05.473(d)(3).

26 (b) Within six months after beginning the liquidation of a bank, the department  
27 may terminate an executory contract for services or advertising to which the bank is  
28 a party or an obligation of the bank as a lessee. A lessor who receives 60 days' notice  
29 of the department's decision to terminate a lease does not have a claim for rent, other  
30 than rent accrued to the date of termination, or for damages due to the termination.

31 (c) As soon as practical after beginning the involuntary liquidation of a bank,

1 the department shall take the steps necessary to terminate all fiduciary positions held  
2 by the bank, to surrender all property held by the bank as a fiduciary, and to settle the  
3 fiduciary accounts of the bank.

4 Sec. 06.05.473. CLAIMS. (a) As soon as practical after beginning the  
5 liquidation of a state bank, the department shall

6 (1) mail notice of the liquidation proceedings to the last known post  
7 office address of each depositor, creditor, lessee of a safe deposit box, or bailor of  
8 property;

9 (2) post notice of the proceedings conspicuously on the premises of the  
10 bank; and

11 (3) publish notice that the department determines to be appropriate for  
12 the proceedings.

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

22 (c) A safe deposit box whose contents have not been removed within 30 days  
23 after demand shall be opened. The department shall retain the contents of the box and  
24 the other unclaimed property held by the bank as bailee until the conclusion of the  
25 liquidation proceedings. At the conclusion of the liquidation proceedings, the property  
26 held by the department under this subsection is considered abandoned, and the  
27 department shall turn the property over to the Department of Revenue for handling  
28 under AS 34.45.110 - 34.45.780.

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

## Chapter 26

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

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

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

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

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

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

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

23 (1) obligations incurred by the department in liquidating the bank;

24 (2) wages and salaries of officers and employees earned during the  
25 three-month period preceding the department's possession in an amount not exceeding  
26 \$3,000 for each person;

27 (3) fees and assessments owed by the bank to the department;

28 (4) deposits;

29 (5) claims secured by assets pledged under AS 06.05.260(a).

30 (h) After the payment of all other claims, including interest at the rate  
31 established under AS 09.30.070, the department shall pay claims that are otherwise

1 valid but that were not filed within the time prescribed.

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

4 (j) When the department has liquidated a bank, any assets remaining after all  
5 claims have been paid shall be distributed to the shareholders in accordance with their  
6 respective interests.

7 (k) Unclaimed funds remaining after the completion of the liquidation by the  
8 department shall be handled under AS 34.45.110 - 34.45.780.

9 (l) When the assets have been distributed in accordance with this chapter, the  
10 department shall file an accounting with the superior court. Upon approval of the  
11 account, the department is relieved of liability in connection with the liquidation, and  
12 the court shall cancel the certificate of authority of the bank and enter an order of  
13 dissolution. When the order is filed, the department shall issue a certificate of  
14 dissolution of the corporation.

15 Sec. 06.05.474. FEDERAL DEPOSIT INSURANCE CORPORATION AS  
16 RECEIVER OR LIQUIDATOR. The department may appoint the Federal Deposit  
17 Insurance Corporation as receiver for a state bank that the department has taken  
18 possession of, if the deposits of the bank are insured by that corporation. Upon filing  
19 with the court a certificate indicating the acceptance of the appointment by the Federal  
20 Deposit Insurance Corporation, the possession of and title to all the assets, business,  
21 and property of the bank are transferred to that corporation. The department is then  
22 relieved of all responsibility and liability with respect to the reorganization or  
23 liquidation of the bank. The Federal Deposit Insurance Corporation may liquidate,  
24 reorganize, merge, or consolidate the bank in the manner permitted by the laws of the  
25 United States or by this chapter, and possesses all the rights, powers, duties and  
26 obligations of the department in the liquidation, reorganization, merger, or  
27 consolidation of the bank under this chapter.

28 \* Sec. 86. AS 06.05.540 is repealed and reenacted to read:

29 Sec. 06.05.540. DEFINITIONS. In this chapter, unless the context otherwise  
30 requires,

31 (1) "automated teller machine," means a staffed or unstaffed electronic

## Chapter 26

1 device or terminal that permits a bank customer to accomplish various financial  
2 transactions, including depositing or withdrawing funds, making loans, and transferring  
3 funds between accounts, and includes a similar device or facility known or referred to  
4 by another name or designation, including customer-bank communication terminal,  
5 electronic fund transfer device, or 24-hour teller, but does not include a machine that  
6 is operated by more than one bank;

7 (2) "bank" means a person doing a banking business, including persons  
8 subject to the law of this or another jurisdiction;

9 (3) "banking" means performing activities that

10 (A) include, at a minimum, soliciting, receiving, or accepting  
11 money or its equivalent on deposit, whether the deposit is made subject to a  
12 check or is evidenced by a certificate of deposit, passbook, note, receipt, or  
13 other writing; in this subparagraph, "deposit" does not include a deposit made  
14 by an agent for a principal; and

15 (B) may also include the negotiation for and discounting of  
16 promissory notes or other evidences of indebtedness, selling and buying money  
17 or its equivalent, lending money on personal or real property or other security,  
18 or performing other similar financial operations;

19 (4) "branch bank" includes an office, agency, or other place of business  
20 located in the state and at which deposits are received, checks are paid, or money is  
21 lent, but does not include either the principal office of a bank or an automated teller  
22 machine;

23 (5) "capital" means the amount of outstanding common stock plus  
24 outstanding and perpetual preferred stock;

25 (6) "capital accounts" includes capital, surplus, undivided profits, and  
26 capital notes and debentures not maturing within one year from the date of the loan;

27 (7) "commissioner" means the commissioner of commerce and  
28 economic development or a designee of the commissioner;

29 (8) "community" means a city, town, unincorporated village, or, in the  
30 absence of one of the foregoing, a trade area;

31 (9) "department" means the Department of Commerce and Economic

1 Development;

2 (10) "domestic bank holding company" means a corporation that  
3 maintains its principal office and place of business in the state and that has control  
4 over a bank or another domestic bank holding company in one of the following ways:

5 (A) the corporation directly or indirectly or acting through one  
6 or more other persons owns, controls, or has power to vote 25 percent or more  
7 of a class of voting securities of the bank or holding company;

8 (B) the corporation controls in any manner the election of a  
9 majority of the directors or trustees of the bank or holding company; or

10 (C) the department determines, after notice and opportunity for  
11 hearing, that the corporation directly or indirectly exercises a controlling  
12 influence over the management of the policies of the bank or holding company;

13 (11) "fiduciary" means a trustee, agent, executor, administrator,  
14 committee, guardian or conservator for a minor or other incompetent person, a  
15 receiver, a trustee in bankruptcy, an assignee for creditors, or the holder of a similar  
16 position of trust;

17 (12) "financial institution" means an institution subject to the regulation  
18 of the department under this title;

19 (13) "good faith" means honesty in fact in the transaction and a  
20 reasonable ground for belief that the transaction is lawful, proper, or authorized;

21 (14) "impaired capital" or "impairment of capital" means that the value  
22 of the bank's assets is less than the bank's liabilities plus 120 percent of the amount  
23 of the bank's paid-in capital;

24 (15) "insolvent" means

25 (A) bank assets having a value less than the bank's liabilities,  
26 other than liability on account of capital stock, capital notes, and debentures;

27 (B) failure to increase total adjusted capital accounts or reserves  
28 after being ordered to do so under AS 06.05.305(c); or

29 (C) inability to meet obligations or demands as they become  
30 due in the ordinary course of business;

31 (16) "international bank" means a corporation, partnership, or

**Chapter 26**

1 association that is organized and operates under the laws of a country other than the  
2 United States and that is authorized by its license or charter to carry on a banking  
3 business;

4 (17) "interstate bank" means

5 (A) a corporation, partnership, or association organized under  
6 the laws of another state and holding a charter, license, or certificate of  
7 authority from another state to engage in a banking business; or

8 (B) a national bank, except a national bank whose principal  
9 office, as designated in its articles of incorporation, is located in the state;

10 (18) "loans" includes

11 (A) all direct or indirect advances of funds to a person made on  
12 the basis of an obligation of the person to repay the funds, or repayable from  
13 specific property pledged by or on behalf of the person, guarantees, overdrafts,  
14 letters of credit;

15 (B) a liability of a bank to advance funds to or on behalf of a  
16 person under a contractual commitment;

17 (19) "national bank" means a bank chartered by the United States;

18 (20) "out-of-state bank holding company" means a company that

19 (A) is a bank holding company as defined in 12 U.S.C. 1841  
20 (Bank Holding Company Act); is registered as a bank holding company with  
21 the Board of Governors of the Federal Reserve System, with the federal reserve  
22 bank of the Federal Reserve District in which the operations of the bank  
23 holding company are principally conducted, or with a Federal Reserve Bank  
24 that the Board of Governors may designate; maintains its principal office and  
25 place of business outside the state; and principally conducts its operations out  
26 of the state, as measured by total deposits held or controlled by it on the date  
27 on which it becomes an out-of-state bank holding company; or

28 (B) a corporation, partnership, or association organized and  
29 operating under the laws of a country other than the United States.

30 (21) "recently formed bank" means a state bank or national bank that  
31 conducts a banking business in the state and that commenced the banking business in

1 the state on or after July 1, 1982, and that has not been in existence and continuously  
2 operating in the state for a period of three years or more; "recently formed bank" does  
3 not include

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

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

18 (22) "state bank" means a bank organized under this chapter;

19 (23) "state financial institution" means a financial institution organized  
20 under this title;

21 (24) "subsidiary" means a corporation in which a bank owns more than  
22 50 percent of the voting power of the corporation either directly or indirectly through  
23 one or more other subsidiaries of the bank;

24 (25) "surplus" includes amounts paid in for stock in excess of the par  
25 value of the stock, which are generally called capital surplus or paid-in surplus, plus  
26 any amounts transferred to the account from undivided profits, which are generally  
27 called earned surplus;

28 (26) "undivided profits" means the accumulated, undistributed net profit  
29 of a bank, including any residue after

30 (A) provision for payment of taxes and expenses of operations;

31 (B) transfers to reserves allocated to a particular asset or class

Chapter 26

1 of assets;

2 (C) losses estimated or sustained on a particular asset or class  
3 of assets in excess of the amount of reserves allocated for the asset;

4 (D) transfers to surplus and capital; and

5 (E) amounts declared as dividends to shareholders;

6 (27) "unsafe or unsound condition," with respect to a bank, means  
7 insolvency; impairment of capital; operating in violation of law, order of the  
8 department, or its articles or bylaws; having less than the statutory or regulatory  
9 requirements for capital, surplus, or reserves; or another condition that the department  
10 determines threatens the safety of depositors or the soundness of the state banking  
11 system.

12 \* Sec. 87. AS 06.05 is amended by adding new sections to read:

13 ARTICLE 9. INTERNATIONAL AND INTERSTATE BANKS AND  
14 OUT-OF-STATE BANK HOLDING COMPANIES.

15 Sec. 06.05.550. AUTHORITY OF INTERNATIONAL OR INTERSTATE  
16 BANK TO BRANCH. (a) An international bank, or an interstate bank whose deposits  
17 are insured by the Federal Deposit Insurance Corporation, may acquire a branch bank  
18 as the result of a merger or consolidation of the international or interstate bank with,  
19 or the purchase of all or substantially all of the assets of, a state bank, a national bank  
20 with its principal office in this state, or a branch of the state bank or national bank,  
21 unless the state bank or national bank is a recently formed bank.

22 (b) An international bank may establish a new branch bank in this state or  
23 acquire a recently formed bank, if the department approves the establishment or  
24 acquisition before the establishment or acquisition occurs. An interstate bank may not  
25 establish a branch bank in this state unless the establishment occurs through an  
26 acquisition under (a) of this section of a bank located in the state. An interstate bank  
27 may not establish a new branch bank in this state.

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

31 Sec. 06.05.555. CERTIFICATE OF AUTHORITY FOR INTERSTATE AND

1 INTERNATIONAL BRANCHING. (a) Before acquiring a branch bank under  
2 AS 06.05.550(a) or establishing a branch bank under AS 06.05.550(b), an interstate or  
3 international bank shall file an application with the department for and receive a  
4 certificate of authority to operate a branch bank. The application must include

5 (1) all information and fees required under AS 06.05.399;  
6 (2) the name of the bank and the address of its principal office;  
7 (3) if an international bank, the country under whose laws it is  
8 organized;

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

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

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

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

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

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

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

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

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

## Chapter 26

1 location of the branch bank.

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

4 (1) if an interstate bank,

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

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

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

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

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

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

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

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

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

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

1 (g) If the rights conferred by a certificate of authority issued under this section  
2 are not exercised within one year from the date of the issuance of the certificate under  
3 this section, the certificate lapses.

4 Sec. 06.05.560. ASSET REQUIREMENTS FOR INTERNATIONAL BANKS.

5 (a) An international bank that operates one or more branch banks in the state shall  
6 maintain in the state assets in an amount acceptable to the department, except that the  
7 amount may not be less than the amount of deposits payable at or through the branch  
8 banks.

9 (b) The department shall determine the value of the assets maintained by the  
10 international bank for purposes of this section. In making its determination, the  
11 department may include as assets currency, bonds, notes, debentures, drafts, bills of  
12 exchange, and other evidences of indebtedness owed by persons in the United States  
13 and collectible in the United States in United States currency or, with the approval of  
14 the department, in currency freely convertible into United States currency, but the  
15 department may not include as assets prepaid expenses, customers' liability on prepaid  
16 expenses, or amounts due from other offices, branches, or wholly owned subsidiaries  
17 of the international bank.

18 (c) When the department takes possession of a branch bank of an international  
19 bank under AS 06.05.468 and 06.05.470, the assets of the international bank in the  
20 state shall be turned over to the department and disbursed as provided in  
21 AS 06.05.470 - 06.05.473.

22 Sec. 06.05.565. APPLICABILITY OF TITLE TO INTERSTATE OR  
23 INTERNATIONAL BRANCH. (a) An interstate or international bank operating a  
24 branch bank in the state is subject to the provisions of this title, and the regulations  
25 adopted and orders issued under this title, except for the residency requirements in  
26 AS 06.05.435(a).

27 (b) In meeting the reserve requirements of AS 06.05.200(a) and applicable  
28 regulations, the bank shall maintain the required reserve fund in the state, except that  
29 assets held to meet the requirements of AS 06.05.560(a) may be applied to meet the  
30 requirements of AS 06.05.200.

31 (c) A branch bank of an interstate or international bank operating in the state

## Chapter 26

1 is subject to examination under AS 06.01.015 and assessments under AS 06.01.010.  
2 Assessments under AS 06.01.010(d) are based on the branch bank's total deposits in  
3 the state.

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

8 Sec. 06.05.570. OUT-OF-STATE BANK HOLDING COMPANIES. (a) An  
9 out-of-state bank holding company may acquire and own all or a portion of the voting  
10 securities or other capital stock of, or all or substantially all of the assets of, one or  
11 more state banks, domestic bank holding companies, or national banks conducting a  
12 banking business in the state, unless the state bank or national bank is a recently  
13 formed bank. Before an out-of-state bank holding company may acquire a bank or  
14 bank holding company doing business in this state, the out-of-state bank holding  
15 company shall apply for and obtain a permit from the department. In considering  
16 whether to issue a permit, the department shall consider the benefits to the public, the  
17 preservation of a competitive banking industry, and the maintenance of a safe and  
18 sound bank industry. To assure full protection of the public, the department may  
19 require an out-of-state bank holding company that directly or indirectly owns, holds,  
20 or controls stock in a state bank or domestic bank holding company to post a bond  
21 with the department under conditions established by the department. The amount of  
22 the bond may not be more than the product obtained by multiplying the amount of  
23 paid-in capital and paid-in surplus of the state bank or domestic bank holding company  
24 by the percentage of state bank or domestic bank holding company stock directly or  
25 indirectly owned, held, or controlled by the out-of-state bank holding company.

26 (b) When the department considers it necessary, the department or a competent  
27 person designated by the department may examine an out-of-state bank holding  
28 company directly or indirectly owning, holding, or controlling state bank stock or  
29 domestic bank holding company stock. The out-of-state bank holding company shall  
30 pay an examination fee established under AS 06.01.010.

31 (c) The provisions of this section do not apply to a company that

1 (1) acquires or holds voting securities or other capital stock of a bank  
2 or bank holding company for only a reasonable period of time in connection with the  
3 underwriting of securities;

4 (2) is an agency of the United States or of a state, or if the majority of  
5 the company is owned by the United States or a state;

6 (3) is an independent federal financial regulatory agency or a trustee  
7 or agent of an independent federal financial regulatory agency; or

8 (4) under a plan of financial restructuring that is intended to prevent  
9 the failure of a state bank and that is approved by the department,

10 (A) acquires or receives 25 percent or more of a class of voting  
11 securities or other capital stock of the bank or bank holding company subject  
12 to the plan, and owns, controls, or holds, with the power to vote, the securities  
13 acquired or received in excess of 24.99 percent of that class for a period of  
14 time that permits the distribution or resale of the securities or other capital  
15 stock on a reasonable basis; or

16 (B) purchases or receives securities under the plan and, after the  
17 purchase or receipt, owns, controls, or holds, with a power to vote, less than  
18 25 percent of a class of voting securities or other capital stock of the bank or  
19 bank holding company subject to the plan, if subsequently, solely through the  
20 action or inaction of others, including the bank or bank holding company,  
21 owns, controls, or holds, with a power to vote, 25 percent or more of a class  
22 of voting securities or other capital stock of the bank or bank holding company;  
23 the exemption in this subparagraph does not apply if the department  
24 determines, after notice and opportunity for hearing under AS 06.01.030, that  
25 the ownership, control, or holding of the securities or stock exceeding 24.99  
26 percent of a class, other than under a plan to promptly dispose of the securities  
27 or stock under the supervision of the department, would permit the organization  
28 in any manner to control the election of a majority of the board of directors or  
29 trustees, or to directly or indirectly exercise a controlling influence over the  
30 management or policies of the bank or bank holding company.

31 \* Sec. 88. AS 06.20.330(b) is amended to read:

Chapter 26

(b) This chapter does not apply to individual loans by pawnbrokers or loan shops where separate and individual loans do not exceed \$500 [\$200].

\* Sec. 89. AS 06.25.085 is amended to read:

Sec. 06.25.085. APPLICATION OF GENERAL BANKING LAWS. The provisions of AS 06.05 that are consistent with this chapter [AS 06.05.005 - 06.05.085, 06.05.090, 06.05.270, 06.05.307, 06.05.320 - 06.05.327, 06.05.440 - 06.05.445, 06.05.462, 06.05.465 - 06.05.510, AND 06.05.525 - 06.05.545] apply to all trust companies engaged in any phase of the business of banking as that term is defined by AS 06.05.540 or AS 06.25.100.

\* Sec. 90. AS 06.45.010(b) is amended to read:

(b) The commissioner may by regulation define the powers of [STATE-CHARTERED] credit unions formed under this chapter and adopt regulations to carry out the purposes of credit unions consistent with this chapter and AS 06.01.020.

\* Sec. 91. AS 06.45.020(c) is amended to read:

(c) At the time of presenting the articles of incorporation to the commissioner the incorporators shall also submit proposed bylaws to the commissioner for approval. Except to the extent the articles of incorporation provide the structure and designate the offices, the bylaws shall provide the organizational structure of the credit union and specifically designate those offices that will be held by the executive or managing officers of the credit union. Copies of the original bylaws of the credit union and any amendments of the bylaws shall be filed with the commissioner.

\* Sec. 92. AS 06.45.090(a) is amended to read:

(a) The business affairs of a credit union are managed by (1) a board of not less than five directors; (2) a credit committee of not less than three members; and (3) a supervisory committee of not less than three members or more than five members. The members of the board of directors [AND THE MEMBERS OF THE CREDIT COMMITTEE] shall be elected at the annual members meeting by and from the members. The supervisory committee shall be appointed by the board of directors, and a vacancy in the supervisory committee shall be filled by the board of directors. One

1 of the members of the supervisory committee may be a member of the board of  
2 directors, other than the treasurer. The credit committee consists of an uneven  
3 number of three or more members appointed by the board of directors for the  
4 terms established by the bylaws. Members of the board of directors and of the credit  
5 and supervisory committees hold office for terms as the bylaws may provide.

6 \* Sec. 93. AS 06.45.110(a) is amended to read:

7 (a) At its first meeting after the annual meeting of the members, the board of  
8 directors shall elect from its membership [A PRESIDENT, ONE OR MORE  
9 VICE-PRESIDENTS, A SECRETARY, AND A TREASURER, WHO ARE] the  
10 executive officers of the credit union.

11 \* Sec. 94. AS 06.45.110 is amended by adding a new subsection to read:

12 (f) The board of directors shall appoint a president to act as chief executive  
13 officer of the credit union and to be actively in charge of the operations of the credit  
14 union.

15 \* Sec. 95. AS 06.45.120(b) is amended to read:

16 (b) The board of directors shall

17 (1) act upon applications for membership;

18 (2) require an officer or employee having custody of or handling funds  
19 to give bond with good and sufficient surety in an amount and character to be  
20 determined by the board of directors in compliance with regulations adopted by the  
21 commissioner and authorize the payment of the premium by the credit union;

22 (3) fill vacancies in the board of directors [AND IN THE CREDIT  
23 COMMITTEE] until successors elected at the next annual meeting have qualified;

24 (4) have charge of investments other than loans to members; the board  
25 of directors may designate a committee of not less than two to act as an investment  
26 committee that [WHICH] has charge of making investments under rules and  
27 procedures established by the board of directors;

28 (5) determine the maximum number of shares and share certificates and  
29 the classes of shares and share certificates that may be held;

30 (6) subject to the limitations of this chapter, determine the interest rates  
31 on loans, the security, and the maximum amount that may be loaned or provided in

**Chapter 26**

1 lines of credit;

2 (7) subject to regulations adopted by the commissioner, authorize an  
3 interest refund to members of record at the close of business on the last day of any  
4 dividend period in proportion to the interest paid by the members during the dividend  
5 period; and

6 (8) provide for compensation of officers and employees.

7 \* **Sec. 96.** AS 06.45.140(c) is amended to read:

8 (c) The credit committee may delegate to a loan officer the power to approve  
9 loans and lines of credit. [ONLY ONE MEMBER OF THE CREDIT COMMITTEE  
10 MAY BE APPOINTED AS LOAN OFFICER.] A loan officer shall furnish to the  
11 credit committee a record of each approved or unapproved application within seven  
12 days of the filing of the application.

13 \* **Sec. 97.** AS 10.06.005 is amended to read:

14 Sec. 10.06.005. PURPOSES. A corporation may be organized under this  
15 chapter for any lawful purpose except for the purpose [PURPOSES] of [BANKING  
16 AND] insurance.

17 \* **Sec. 98.** AS 10.06.990(13) is amended to read:

18 (13) "corporation" or "domestic corporation" means a corporation for  
19 profit subject to the provisions of this chapter, but does not include a foreign  
20 corporation or a [STATE OR] national bank;

21 \* **Sec. 99.** AS 34.45.210 is amended to read:

22 Sec. 34.45.210. PROPERTY OF BUSINESS ASSOCIATIONS HELD IN  
23 COURSE OF DISSOLUTION. Intangible [EXCEPT FOR INTANGIBLE  
24 PROPERTY DISTRIBUTABLE UNDER AS 06.05.465, INTANGIBLE] property  
25 distributable in the course of a dissolution of a business association that remains  
26 unclaimed by the owner for more than one year after the date specified for final  
27 distribution is presumed abandoned.

28 \* **Sec. 100.** AS 45.50.481 is amended by adding a new subsection to read:

29 (b) The exemption in (a)(3) of this section does not apply to an act or  
30 transaction between a bank and its borrowers, depositors, or other customers or  
31 potential customers.

1 \* **Sec. 101.** AS 45.50.572(b) is amended to read:

2 (b) AS 45.50.562 - 45.50.596 do not forbid actions or arrangements authorized  
3 or regulated under the laws of the United States that [WHICH] exempt these actions  
4 or arrangements from application of the antitrust laws of the United States or under  
5 the following statutes of this state:

- 6 (1) AS 06.05.235 and 06.05.570;  
7 (2) AS 10.15; and  
8 (3) AS 31.05.110.

9 \* **Sec. 102.** AS 06.01.010(c); AS 06.05.015, 06.05.020, 06.05.025, 06.05.030, 06.05.035,  
10 06.05.040, 06.05.055, 06.05.060, 06.05.065(d), 06.05.065(e), 06.05.065(f), 06.05.070,  
11 06.05.080, 06.05.085, 06.05.090(c), 06.05.130, 06.05.175(c), 06.05.185, 06.05.190, 06.05.195,  
12 06.05.200(b), 06.05.200(c), 06.05.205(a), 06.05.205(e), 06.05.205(f), 06.05.206, 06.05.208,  
13 06.05.210(b), 06.05.220, 06.05.232, 06.05.235(c), 06.05.235(d), 06.05.235(e), 06.05.235(f),  
14 06.05.235(h), 06.05.238, 06.05.255(c), 06.05.260(b), 06.05.270(b), 06.05.275(a), 06.05.275(c),  
15 06.05.280(a), 06.05.280(b), 06.05.300, 06.05.307(d), 06.05.307(e), 06.05.325, 06.05.330,  
16 06.05.345(b), 06.05.345(c), 06.05.345(d), 06.05.345(e), 06.05.345(f), 06.05.345(g),  
17 06.05.345(h), 06.05.345(i), 06.05.345(j), 06.05.345(k), 06.05.360, 06.05.367, 06.05.380,  
18 06.05.390, 06.05.395, 06.05.430, 06.05.435(b), 06.05.435(e), 06.05.443, 06.05.465,  
19 06.05.470(a), 06.05.470(d), 06.05.470(f), 06.05.470(j), 06.05.470(k), 06.05.470(l),  
20 06.05.470(m), 06.05.470(n), 06.05.470(o), 06.05.470(p), 06.05.470(q), 06.05.470(r),  
21 06.05.470(s), 06.05.470(t), 06.05.470(u), 06.05.470(v), 06.05.470(w), 06.05.470(x),  
22 06.05.470(y), 06.05.470(z), 06.05.480, 06.05.485, 06.05.490, 06.05.495, 06.05.500, 06.05.505,  
23 06.05.510, 06.05.520, 06.05.525, 06.05.530; AS 06.20.320(b); AS 06.25.060, 06.25.070,  
24 06.25.320; AS 06.30; AS 06.40.160(b); AS 06.45.320, and 06.45.330 are repealed.

25 \* **Sec. 103.** TRANSITIONAL PROVISIONS. (a) On and after the effective date of this  
26 Act, a bank incorporated in the state before the effective date of this Act is subject to the  
27 provisions of AS 10.06 (Alaska Corporations Code), as amended by secs. 97 and 98 of this  
28 Act, as if the bank were incorporated under AS 10.06 on the effective date of this Act.

29 (b) A bank that was formed under AS 06.05 before the effective date of this Act and  
30 that is in existence on the effective date of this Act shall amend its articles of incorporation  
31 to comply with this Act within 60 days after the date of its next annual shareholders' meeting

**Chapter 26**

1 and shall file the amended articles with the Department of Commerce and Economic  
2 Development. A bank that fails to comply with this subsection is guilty of violating  
3 AS 06.05, as amended by secs. 9 - 87 of this Act, and is subject to the enforcement and  
4 penalty provisions of AS 06.05, as amended in this Act.

5 \* **Sec. 104.** CHANGES IN COURT RULES. AS 06.01.025, enacted by sec. 5 of this Act,  
6 changes Alaska Rule of Criminal Procedure 17(c) and Alaska Rule of Civil Procedure 45(b)  
7 by making the records of the Department of Commerce and Economic Development not  
8 subject to a subpoena.

9 \* **Sec. 105.** This Act takes effect January 1, 1994.