



# LAWS OF ALASKA

2014

**Source**  
CSHB 121(FIN)

**Chapter No.**  
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## AN ACT

Relating to the examinations, board, loans, and records of the Alaska Commercial Fishing and Agriculture Bank; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1



AN ACT

1 Relating to the examinations, board, loans, and records of the Alaska Commercial Fishing and  
2 Agriculture Bank; and providing for an effective date.

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4 \* **Section 1.** AS 44.81.020(a) is amended to read:

5 (a) The bank shall be governed by a board of directors consisting of seven to  
6 nine natural persons. The number is determined by the bank's bylaws. Two board  
7 members shall be appointed by the governor of the state. The other board members  
8 shall be elected by the members of the bank as provided in the bank's bylaws, except  
9 that at least one of the elected board members must be a resident farmer. **The board**  
10 **members appointed under this section must be residents of the state and meet the**  
11 **requirements of AS 39.05.100.**

12 \* **Sec. 2.** AS 44.81.215 is amended to read:

13 **Sec. 44.81.215. Lending powers of the bank.** The bank may  
14 (1) make loans to individuals, including married couples, who are

1 residents of the state and who are engaged in commercial agriculture or fishing,  
2 including harvesters, processors, suppliers, and marketers, if at least one of the  
3 primary obligors on the loan is a member of the bank;

4 (2) make loans to corporations, partnerships, or limited liability  
5 companies engaged in commercial agriculture or fishing if the majority interest of the  
6 corporation, partnership, or limited liability company is beneficially owned by  
7 residents of the state and a majority of the owners are residents of the state, and if at  
8 least one of the primary obligors on a loan is a member of the bank; however, the bank  
9 may not make a loan under this paragraph to a corporation, partnership, or limited  
10 liability company for the purchase of a new or existing fishing boat or for the repair or  
11 renovation of an existing fishing boat if the primary purpose of the fishing boat is to  
12 commercially harvest fishery resources, unless the corporation, partnership, or limited  
13 liability company is wholly owned and controlled by residents of the state, and unless  
14 at least one of the primary obligors on the loan is a member of the bank;

15 (3) make loans for limited entry permits to individuals who fish  
16 commercially if the individual is a state resident; loans made under this paragraph are  
17 subject to AS 44.81.231;

18 (4) make loans [NOT TO EXCEED \$500,000] to individuals,  
19 including married couples, who are residents of the state and who will use the loan  
20 proceeds to commercially engage in tourism within the state if at least one of the  
21 primary obligors on the loan is a member of the bank;

22 (5) make loans [NOT TO EXCEED \$1,000,000] to corporations,  
23 partnerships, or limited liability companies that will use the loan proceeds to  
24 commercially engage in tourism within the state if the majority interest of the  
25 corporation, partnership, or limited liability company is beneficially owned by  
26 residents of the state and a majority of the owners are residents of the state, and if at  
27 least one of the primary obligors on the loan is a member of the bank;

28 (6) make loans [NOT TO EXCEED \$500,000] to individuals,  
29 including married couples, who are residents of the state and who will use the loan  
30 proceeds to commercially engage in the development or exploitation of natural  
31 resources within the state if at least one of the primary obligors on the loan is a

1 member of the bank;

2 (7) make loans [NOT TO EXCEED \$1,000,000] to corporations,  
3 partnerships, or limited liability companies that will use the loan proceeds to  
4 commercially engage in the development or exploitation of natural resources within  
5 the state if the majority interest of the corporation, partnership, or limited liability  
6 company is beneficially owned by residents of the state and a majority of the owners  
7 are residents of the state, and if at least one of the primary obligors on the loan is a  
8 member of the bank;

9 (8) make a loan for capital investment or operating capital to a shore-  
10 based fish processor, a timber processor, or an agricultural processor or harvester who  
11 does not meet the residency or resident ownership requirements of (1) or (2) of this  
12 section **but meets the other requirements of (1) or (2) of this section,** if a facility of  
13 the processor or harvester is located in the state and the majority interest in the  
14 processor or harvester is beneficially owned by residents of the United States;

15 (9) make a loan to a person, regardless of residency, if the board  
16 determines that the loan is necessary to preserve the value of property held by the bank  
17 as security for a loan that was made under AS 44.81.210 or this section and that is in  
18 default;

19 (10) make loans, as provided in (1), (2), [OR] (4) - (8), **or (15) - (18)**  
20 of this section, that are secured by liens subordinate to valid first liens and security  
21 agreements granted to another creditor;

22 (11) accept the pledge of a limited entry permit as security for a loan  
23 made under this chapter subject to the conditions set out in AS 44.81.236 on pledges  
24 of limited entry permits;

25 (12) make loans in participation with other lenders as provided in (1),  
26 (2), [OR] (4) - (8), **or (15) - (18)** of this section, whether or not an obligor is a member  
27 of the bank;

28 (13) purchase or acquire participations in loans from other lenders if  
29 the participations conform to the provisions of (1), (2), [OR] (4) - (8), **or (15) - (18)** of  
30 this section, whether or not an obligor is a member of the bank;

31 (14) issue certificates of loan participation to members and to other

1 individuals, corporations, partnerships, and limited liability companies, but the bank  
2 may not issue a certificate of loan participation if the certificate would allow  
3 participation by the member, individual, corporation, partnership, or limited liability  
4 company in loans that individually or cumulatively involve more than 20 percent of  
5 the commercial fishery entry permits issued for one type of gear in a specific fishery  
6 resource administrative area;

7 **(15) make a loan for a tourism-related operation to individuals,**  
8 **including married couples, who are not residents of the state, if**

9 **(A) the individuals will use the loan proceeds to**  
10 **commercially engage in the operation in the state;**

11 **(B) a facility of the operation is located in the state; and**

12 **(C) at least one of the primary obligors on the loan is a**  
13 **member of the bank;**

14 **(16) make a loan to a corporation, partnership, or limited liability**  
15 **company for a tourism-related operation when a majority of the owners of the**  
16 **corporation, partnership, or limited liability company are not residents of the**  
17 **state, if**

18 **(A) the corporation, partnership, or limited liability**  
19 **company will use the loan proceeds to commercially engage in the**  
20 **operation in the state;**

21 **(B) a facility of the operation is located in the state;**

22 **(C) at least one of the primary obligors on the loan is a**  
23 **member of the bank; and**

24 **(D) the majority interest in the corporation, partnership, or**  
25 **limited liability company is beneficially owned by residents of the United**  
26 **States;**

27 **(17) make a loan to individuals, including married couples, who**  
28 **are not residents of the state for an operation that is dedicated to the**  
29 **development or exploitation of natural resources, if**

30 **(A) the individuals will use the loan proceeds to**  
31 **commercially engage in the operation in the state;**

1 (B) a facility of the operation is located in the state; and

2 (C) at least one of the primary obligors on the loan is a  
3 member of the bank;

4 (18) make a loan to a corporation, partnership, or limited liability  
5 company in which a majority of the owners of the corporation, partnership, or  
6 limited liability company are not residents of the state, if the loan is for an  
7 operation that is dedicated to the development or exploitation of natural  
8 resources, and

9 (A) the corporation, partnership, or limited liability  
10 company will use the loan proceeds to commercially engage in the  
11 operation in the state;

12 (B) a facility of the operation is located in the state;

13 (C) at least one of the primary obligors on the loan is a  
14 member of the bank; and

15 (D) the majority interest in the corporation, partnership, or  
16 limited liability company is beneficially owned by residents of the United  
17 States.

18 \* **Sec. 3.** AS 44.81.215 is amended by adding new subsections to read:

19 (b) When the bank is determining whether to make a loan, if a loan applicant  
20 intends to use the proposed loan collateral primarily in a salmon fishery, the bank shall  
21 consider, as part of its determination, whether the principles of conservation and  
22 sustained yield will limit the potential borrower's ability to repay the loan in a timely  
23 manner.

24 (c) Before making a loan under this section, the board must find that the loan  
25 will not result in the displacement of an existing Alaskan-owned business.

26 \* **Sec. 4.** AS 44.81.225(a) is amended to read:

27 (a) To facilitate the development of commercial fisheries and commercial  
28 agriculture in geographic areas in which factors such as geographic considerations,  
29 uncertainties of communication, or limited demands do not encourage normal lending  
30 activities, the bank may make small loans to qualified borrowers who are not members  
31 of the bank.

1 \* **Sec. 5.** AS 44.81.225(b) is amended to read:

2 (b) The provisions of this chapter apply to loans authorized by this section  
3 except that

4 (1) the borrower is not required to be a member of the bank at the time  
5 the loan is approved; and

6 (2) the principal amount of the portion of the loan made by the bank  
7 may not exceed **\$50,000** [\$25,000].

8 \* **Sec. 6.** AS 44.81.225(c) is amended to read:

9 (c) The total amount of money that may be loaned under this section may not  
10 exceed **25** [EIGHT] percent of the total capital of the bank.

11 \* **Sec. 7.** AS 44.81.260(a) is amended to read:

12 (a) The records of the bank that are identified with, or identifiable as being  
13 derived from the records of, a specific borrower, member of the bank, or applicant for  
14 a loan are confidential and may not be disclosed by the bank or by its directors,  
15 officers, employees, or agents to a person other than the directors, officers, employees,  
16 or agents of the bank, except

17 (1) when required by a federal or state statute;

18 (2) under AS 44.81.270 **and 44.81.275**;

19 (3) under a search warrant issued under federal law or the law of this  
20 state;

21 (4) under a subpoena or court order issued in a civil action under  
22 federal law or the law of this state;

23 (5) under a subpoena or court order issued in connection with a  
24 proceeding before a federal grand jury or grand jury of this state;

25 (6) under a summons or subpoena issued by an agency or a department  
26 of the United States or this state, or an officer, employee, or agent of the agency or  
27 department;

28 (7) under a request by a financial institution, if the request is solely for  
29 the stated written purpose of determining the **creditworthiness** [CREDIT  
30 WORTHINESS] of a member or borrower as an applicant for credit, and if the  
31 information disclosed by the bank pertains only to the payment history of the member

1 or borrower;

2 (8) under a request by a lender that has extended or is considering  
3 extending credit to the bank if the credit is or may be secured by the pledge of a loan  
4 by the bank;

5 (9) when disclosed to the attorney general of the United States or to a  
6 law enforcement agency of this state if the records may be relevant to a report or  
7 investigation of a possible violation of federal law or a law of this state.

8 \* **Sec. 8.** AS 44.81.260 is amended by adding a new subsection to read:

9 (e) Notwithstanding (a) and (b) of this section, the bank may provide a list of  
10 the members of the bank who are eligible to serve as a director of the bank to members  
11 of the bank who are eligible to vote for directors of the bank.

12 \* **Sec. 9.** AS 44.81 is amended by adding a new section to read:

13 **Sec. 44.81.275. Examinations.** (a) At intervals that are not greater than 36  
14 months, an examiner from the department shall perform an examination of the bank.  
15 Each interval shall be determined by the commissioner. During the examination, the  
16 examiner shall evaluate the quality of the bank's loan portfolio on a statistical basis  
17 and on the appropriateness and effectiveness of the bank's policies, practices, and  
18 management to carry out the bank's statutory purposes.

19 (b) The examiner shall prepare a summary report of the examiner's findings  
20 and conclusions. The department shall distribute a copy of the report to the bank and  
21 to the legislative auditor, but the records, information, and findings of the department  
22 related to the examination are otherwise confidential under AS 06.01.025.

23 (c) The commissioner shall assess the bank a fee for the actual expenses  
24 necessarily incurred by the department in connection with an examination performed  
25 under this section. The fee must include the proportionate part of the salaries and cost  
26 of employee benefits of the examiners while conducting the examination and while  
27 preparing the summary report required by (b) of this section and the transportation  
28 costs and per diem of each examiner while away from the examiner's duty station. The  
29 fee may not exceed the actual cost to the department for the examination. The  
30 commissioner shall assess the fee as soon as feasible after the examination has been  
31 completed. The bank shall pay the assessment within 30 days after receiving the

1 commissioner's notice of the assessment.

2 (d) In this section,

3 (1) "commissioner" means the commissioner of commerce,  
4 community, and economic development;

5 (2) "department" means the Department of Commerce, Community,  
6 and Economic Development.

7 \* **Sec. 10.** AS 44.81.020(f) is repealed.

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

10 EXAMINATIONS. Notwithstanding AS 44.81.275, added by sec. 9 of this Act, the  
11 Department of Commerce, Community, and Economic Development may not conduct an  
12 examination under AS 44.81.275, added by sec. 9 of this Act, until on or after the date that is  
13 one year after the effective date of this Act.

14 \* **Sec. 12.** This Act takes effect immediately under AS 01.10.070(c).