

# Sectional Analysis

## HB 157

The language in the current Trust Company Act (the Act) dates back to 1949 and is virtually unchanged since. The current statute, is not a functional act.

In the past 12 years the Division has chartered only two trust companies, both of which were organized within the past 3 years. During this process it became apparent that the Act was lacking in many respects. For example, the Act includes no guidance as to who needs a charter, has minimal guidance with respect to permissible activities, and has no provisions for interstate or intrastate business expansion. In most instances the Division had to improvise by using the processes of the Alaska banking code (AS 06.05) for guidance in the formation and organization of the trust companies.

In recent years, many states have rewritten their existing trust company acts. The process leading to this bill included receiving acts from several states and a draft of a uniform trust company act provided by the Conference of State Bank Supervisors. In addition, the drafts of the bill were reviewed by, and comments were considered from, the Alaska trust industry, attorneys in the trust field, and several CPAs.

Alaska's laws, concerning trusts, have undergone many changes, enhancing the desirability of a trust charter in Alaska. This bill, if enacted, will be a tool that will enhance the process of formation, operation, supervision and regulation of the trust industry in Alaska. The bill will establish a new chapter (AS 06.26) and will repeal the current act (AS 06.25).

### **Section 1**

#### **Section 06.05.235(g)**

Technical amendment to change reference from the old trust act (AS 06.25) to the new trust act (proposed AS 06.26).

### **Section 2**

#### **Section 06.26.010**

Specifies who is authorized to act as a fiduciary.

Old law did not authorize who may act as a fiduciary.

#### **Section 06.26.020**

List specifies persons that are exempted from chartering requirements when acting as a fiduciary.

Old law did not provide for exemptions to acting as a fiduciary, nor did it define who was authorized to act as a fiduciary in the first place.

#### **Section 06.26.030**

Authorizes a trust company that has an office or branch established under this chapter to act as a fiduciary in this state, another state or another country, and to conduct any activities in offices outside of Alaska that are not prohibited by this chapter and are permitted by the host state.

Old law did not provide for in state or interstate branching unless the trust company also had banking powers.

#### **Section 06.26.040**

Prohibits any person from using the words "trust" or "trust company" unless authorized to act as a fiduciary under this chapter and grand fathers names in use prior to the enactment of this bill.

Old law did not prohibit using the words "trust" or "trust company" which could convey the impression that a person is acting as a fiduciary.

#### **Section 06.26.050**

Grants various powers to a trust company and defines a "national bank exclusively exercising trust powers" as a person issued a charter with trust powers only from the Office of the Comptroller of the Currency.

Old law was similar, but more restrictive.

#### **Section 06.26.060**

Permits one or more persons to organize a trust company.

Old law required 5 or more persons to form a trust company.

#### **Section 06.26.070**

Requires a trust company be incorporated under AS 10.06 with additional specific requirements and requires a minimum of 5 directors and a maximum of 25 directors.

Old law required incorporation under AS 06.05, the Alaska banking code, and limited the maximum number of directors to 15.

#### **Section 06.26.080**

Provides procedures to amendments to the trust company's articles of incorporation by a vote of shareholders representing a majority of the capital and that they become effective 61 days after filing unless the department specifies otherwise.

Old law was similar but did not contain time constraints for action by the department.

#### **Section 06.26.085**

Prohibits a person from acting as a trust company until they have received a certificate of authority from the department.

Old law was similar.

#### **Section 06.26.090**

Specifies the procedures, requirements, and restrictions to apply for, and to receive, a certificate of authority to act as a trust company in Alaska.

Old law was similar, but provided less guidance and was less restrictive.

#### **Section 06.26.100**

Requires department to notify organizers of proposed trust company when application is accepted for filing; requires organizers to publish notice of application filing in newspaper and to provide proof of publication.

Old law did not impose these requirements.

### **Section 06.26.110**

Prior to the department issuing a certificate of authority, the trust company must have received the full amount of capital required under AS 06.26.120 and requires the trust company to begin its operation within 6 months, or other such extended time, or the department must revoke the certificate of authority.

Old law similar, but did not provide for a 6-month expiration period if no business conducted.

### **Section 06.26.120**

Sets a minimum unimpaired capital requirement of \$400,000 and a minimum paid-in surplus requirement equal to 20% of paid-in capital, gives the department the authority to issue an order to require adjustments to the capital requirement to protect the safety and soundness of the trust company, provides authority for the department authorize increases and decreases to capital requested by the trust company, and restricts the payment of dividends if surplus is decreased do to operating losses.

Old law was similar, but required less capital and was less detailed and did not address payment of dividends.

### **Section 06.26.130**

Details how a trust company can issue convertible or nonconvertible capital notes or debentures, if authorized by the department, sets limits on the amount of notes and debentures, disallows retirements of notes and debentures in the event of insolvency, and makes them subordinate to certain other liabilities of the trust company.

Old law did not address this.

### **Section 06.26.140**

Prohibits cumulative voting by shareholders unless allowed by the trust company's articles of incorporation.

Old law did not address this.

### **Section 06.26.150**

Requires a trust company to maintain a home office in this state and one executive office to maintain an office in the home office, designates each executive officer at the home office as agent for service of process, and permits a trust company to change its home office location to any of its existing offices in the state by filing a notice with the department.

Old law did not address this.

### **Section 06.26.160**

Provides procedures for applying to establish branch offices and provides for the department to act prior to the 61st day after filing an application unless otherwise specified by the department, and gives department authority to deny the application based on safety and soundness concerns.

Old law did not address the establishment of branches unless the trust company was FDIC insured. The procedures for establishing a branch would have been governed by the Alaska banking code (AS 06.05), which are similar to this proposed section.

**Section 06.26.170**

Provides procedures for applying to the department to establish or acquire representative trust offices anywhere in the state.

Old law did not address this.

**Section 06.26.180**

Provides for interstate branching and details procedures, guidelines and restrictions.

Old law did not address this.

**Section 06.26.190**

Permits a trust company to be closed on holidays described in AS 44.12.101-025 and make available a notice of holiday closings to its customers, provides for other closures and addresses the hours of operation.

Old law did not address this.

**Section 06.26.200**

Subjects a private fiduciary to compliance with this chapter unless expressly exempted in writing by the department and restrict them from transacting business with the general public.

Old law did not address this.

**Section 06.26.210**

Specifies what information must be contained in a request for exemption, prohibits department approval if application is incomplete, lists requirements to maintain exempt status of a private fiduciary, requires annual certification of exempt status and allows department to investigate a private fiduciary as necessary to verify annual certification, and requires a private fiduciary with an exemption under AS 06.26.200 to comply with home office provisions of AS 06.26.150 (f).

Old law did not address this.

**Section 06.26.220**

Exemption of a private fiduciary cannot be transferred. Any change in control requires an application.

Old law did not address this.

**Section 06.26.230**

Provides authority for the department to revoke an exemption with guidelines and restriction.

Old law did not address this.

**Section 06.26.240**

Permits a private fiduciary to offer services to the general public if it satisfies the requirements of this section, provides guidelines for approval, and the right to deny if the private fiduciary does not meet the requirements of this chapter.

Old law did not address this.

**Section 06.26.250**

Authorizes the department to adopt regulations regarding permissible investments and appropriate investment powers of trust companies.

Old law did not address this.

**Section 06.26.260**

Restrict pledging of company assets with some exceptions.

Old law did not address this.

**Section 06.26.370 (a) - (c)**

Permits a trust company to deposit trust assets with itself and provides requirements and guidelines for this practice.

Old law did not address this.

**Section 06.26.380**

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

Old law did not address this.

**Section 06.26.390**

Restricts fees between a client and the trust company to be arm's length (a) and reasonable (b).

Old law did not address this.

**Section 06.26.400**

Requires a trust company to disclose conflicts of interest.

Old law did not address this.

**Section 06.26.410**

Requires a trust company to observe prudent standards of care applicable to trustees under AS 13.36.225--13.36.290(Alaska Uniform Prudent Investor Act).

Old law did not address this.

**Section 06.26.450**

Requires department approval for a change in control of a trust company and provides for certain exceptions.

Old law did not address this.

**Section 06.26.460**

Provides a process for applying for a change in control, and lists guidelines and restriction.

Old law did not address this.

**Section 06.26.470**

Requires the department to approve or deny an application for acquisition or control no later than 60 days after the notice of application is published. Department may set conditions in approval.

Old law did not address this.

### **Section 06.26.480**

AS 06.26.450-480 may not be construed to prevent the department from investigating a transfer involving voting securities evidencing a direct or indirect interest in a trust company if the department considers the transfer against the public interest.

Old law did not address this.

### **Section 06.26.500**

Sets restrictions on voting the securities of a trust company which held by the trust company in a fiduciary capacity.

Old law did not address this.

### **Section 06.26.510**

Provides for a minimum of 5 and maximum of 25 directors of a trust company, requires a majority of directors to be residents of this state and set qualifications and requirements for directors.

Old law did not address this except that the number of directors was limited between 5 and 15.

### **Section 06.26.520**

Requires board meetings to be held at least once every three months, the department or a director may call a special meeting, a majority of the board constitutes a quorum, the board shall keep minutes and attendance and voting records, and at least once every three months the board is required to review various reports of trust accounts.

Old law did not address this.

### **Section 06.26.530**

Requires officers be appointed annually by the board, states the president is responsible for the operation of the trust company, requires an officer to be responsible for maintenance of trust company records and a different officer be responsible for attestation of signatures.

Old law required annual appointment of officers, but did not address maintenance of records.

### **Section 06.26.540**

Requires board approval for an officer or employee to create or dispose of an asset or liability.

Old law did not address this.

### **Section 06.26.550**

Authorizes a trust company to appoint a trust committee, which must meet monthly. Committee required to keep a record of its actions, and may elect officers to accept new accounts.

Old law did not address this.

### **Section 06.26.560**

Lists prohibited acts of directors, officers, employees and shareholders.

Old law did not address this.

### **Section 06.26.570**

Prohibits insider transactions, prohibits extension of credit to insiders unless terms are the same as would be offered to a non-insider, authorizes department to adopt regulations to implement this section, and excludes a subsidiary of a trust company from the meaning of "affiliate".

Old law did not address this.

### **Section 06.26.580**

Generally prohibits a trust company from investing trust assets in the stocks or obligations of the trust company or using trust assets to acquire property from the trust company and prohibits use of material inside information in connection with the purchasing or selling a trust asset.

Old law did not address this.

### **Section 06.26.585**

Requires the trust company to establish written policies and procedures for buying and selling trust assets that are securities and must include the prohibition in AS 06.26.580(b).

Old law did not address this.

### **Section 06.26.590**

Places the responsibility for proper exercise of fiduciary powers on the board.

Old law did not address this.

### **Section 06.26.600**

Requires segregation of trust asset records from the trust company records.

Old law did not address this.

### **Section 06.26.610**

Requirement for confidentiality of customer information.

Old law did not address this.

### **Section 06.26.620**

Requires the trust company to maintain various insurance policies, sets limits, requires an annual review of insurance coverages to determine adequacy, and requires filing evidence of all coverages with the department.

Old law did not address this.

### **Section 06.26.630**

Requires reporting of crimes.

Old law did not address this.

### **Section 06.26.650**

Provides authority for mergers.

Old law did not address this.

### **Section 06.26.660**

Provides the process and guidelines for mergers.

Old law did not address this.

**Section 06.26.670**

Gives dissenting shareholders of a proposed merger rights which are governed by AS 10.06.574-582 (Alaska corporations code).

Old law did not address this.

**Section 06.26.680**

Authorizes the department to approve applications for purchases of all, or substantially all of the assets of another trust company and provides for an investigation into the application.

Old law did not address this.

**Section 06.26.690**

Authorizes a purchasing trust company to hold the purchase price and other money or assets delivered to it by the selling trust company and act as the disbursing agent.

Old law did not address this.

**Section 06.26.700**

Requires a purchasing trust company, in the case of a selling trust company being liquidated by a state or federal agency, to deliver the remaining assets to the receiver.

Old law did not address this.

**Section 06.26.710**

Provides for the method of payment to creditors by the purchasing trust company.

Old law did not address this.

**Section 06.26.720**

Authorizes the board of a trust company, with the prior approval of the department, to sell all or substantially all assets without shareholder approval under certain conditions and considers the sale of all or substantially all assets with shareholder approval as a voluntary dissolution and is governed by AS 06.26.730-800.

Old law did not address this.

**Section 06.26.730**

Gives the requirement, procedures and guidelines for department approval, for a trust company to voluntarily surrender its certificate of authority.

Old law did not address this.

**Section 06.26.740**

Gives situations where the department is authorized to revoke or suspend a trust company's certificate of authority.

Old law did not address this.

**Section 06.26.750**

Authorizes the department to take possession of the trust company's fiduciary operations and appoint a receiver for liquidation if the department revokes the trust company's certificate of authority.

Old law did not address this.

### **Section 06.26.760**

Vests the department with the full and exclusive power of managing and controlling a trust company when the department has taken possession of a trust company and includes procedures and guidelines.

Old law did not address this.

### **Section 06.26.770**

Authorizes the department to reorganize a trust company by entering an order proposing a reorganization plan.

Old law did not address this.

### **Section 06.26.780**

Give the requirements and guidelines for the department when liquidating a trust company.

Old law did not address this.

### **Section 06.26.790**

Directs the department to liquidate a trust company by giving notice to various parties, the process for payment of claims, and notice requirements, and the procedures for wrapping up the business via the courts.

Old law did not address this.

### **Section 06.26.800**

The department is authorized to appoint the FDIC as receiver of a trust company the department has taken possession of.

Old law did not address this.

### **Section 06.26.810**

Authorizes an out of state trust company (interstate state, interstate national, and international trust companies) to act as fiduciary in this state only if they maintain a trust office in this state.

Old law did not address this.

### **Section 06.26.820**

Authorizes out of state trust companies to establish a new trust office in the state or acquire one that already exists.

Old law did not address this.

### **Section 06.26.830**

Requires an out of state trust company to file a notice with the department to establish a new trust office or acquire an existing trust office.

Old law did not address this.

**Section 06.26.840**

Sets out minimum qualifications for an out of state or international trust company to establish or acquire a trust office in the state including filing various items with the department.

Old law did not address this.

**Section 06.26.850 (a) - (h)**

Authorizes and provides a process for an out of state trust company to establish or acquire a representative office as permitted by AS 06.26.810-895.

Old law did not address this.

**Section 06.26.860**

Permits an out of state trust company to establish or acquire additional trust offices or representative offices to the same extent a trust company can under AS 06.26.160.

Old law did not address this.

**Section 06.26.870**

Authorizes the department to examine interstate state and international trust companies and collect fees for the examination, require reports and assess fees.

Old law did not address this.

**Section 06.26.880**

Authorizes the department to take enforcement actions if an office of an out of state trust company is being operated in an unsafe and unsound manner, is in violation of state laws, or is engaged in an activity not permissible under this chapter.

Old law did not address this.

**Section 06.26.890**

Requires an out of state trust company to give 60 days notice for mergers, consolidations, change in control, transfer of all or substantially all assets, and for closing or disposition of any office in the state.

Old law did not address this.

**Section 06.26.895**

Defines international trust company, interstate national trust company, and interstate state trust company.

Old law did not address this.

**Section 06.26.900**

Gives a list of powers of the department.

Old law did not address this.

**Section 06.26.905**

Permits the department to enter into cooperative agreements and enforcement actions with other governmental regulators.

Old law did not address this.

### **Section 06.26.910**

List of instances when a person may appeal to the department, authorizes department to adopt regulations establishing procedures for appeals, and subjects appeals to AS 44.62 (Administrative Procedure Act).

Old law did not address this.

### **Section 06.26.920**

Authorizes department to bring a civil court action against a person who has or is about to commit a violation of this chapter.

Old law did not address this.

### **Section 06.26.930**

Requires a trust company to submit various reports.

Old law did not address this.

### **Section 06.26.940**

Gives persons who suffer damages as a result of violations by persons subject to this chapter, the right to bring an action in court.

Old law did not address this.

### **Section 06.26.950**

Stipulates that this chapter does not allow a trust company to engage in banking.

Old chapter did not have this provision.

### **Section 06.26.960**

Prohibits a trust company from taking an action with respect to its corporate status or capital structure without first receiving the department's approval and authorizes the department to adopt regulations under As 10.06 applicable to an act in this chapter.

### **Section 06.26.990**

Defines various terms.

Old law only defined "department."

### **Section 06.26.995**

Short title of the act is "Revised Alaska Trust Company Act."

### **Section 3**

AS 13.36.025 is amended so that the provisions of (a) are not intended to be overridden by AS 06.26, and AS 06.26 governs in the event of a conflict.

### **Section 4**

Technical change in AS 13.36.320(a) replacing the word "Alaska" with "the state" and replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

### **Section 5**

Technical change in AS 13.36.390 (2) replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

### **Section 6**

Technical change in AS 21.66.250 replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

### **Section 7**

Technical change in AS 34.77.100(a) replacing the old trust act reference of 06.25 with the new trust act reference of 06.26.

### **Section 8**

Lists sections that are repealed.

### **Section 9**

Several areas of law are amended as a result of AS 06.26.760(b)(2). Those areas are: Rules 6 and 12 of the Alaska Rules of Civil Procedure, Rule 40 of the Alaska Rules of Criminal Procedure, Rules 204, 403, 502, 602, and 611 of the Alaska Rules of Appellate Procedure.

### **Section 10**

Outlines requirements and time frames for trust companies existing prior to the effective date of this Act to comply with the new Act.

### **Section 11**

Authorizes the department to adopt regulations necessary to implement sections 1-8 of this act. no earlier than January 1, 2002.

### **Section 12**

Sections 10 and 11 are effective immediately.

### **Section 13**

Except as provided in section 12, this Act becomes effective January 1, 2002.