ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
April 27, 2001
1:10 p.m.

MEMBERS PRESENT

Representative Norman Rokeberg, Chair
Representative Scott Ogan, Vice Chair
Representative Jeannette James
Representative John Coghill
Representative Kevin Meyer
Representative Ethan Berkowitz
Representative Albert Kookesh

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

HOUSE BILL NO. 86
"An Act relating to civil liability for certain false or improper allegations in a civil pleading or for certain improper acts relating to a civil action."

- MOVED HB 86 OUT OF COMMITTEE

HOUSE BILL NO. 207
"An Act relating to the judicial districts of the state."

- MOVED HB 207 OUT OF COMMITTEE

HOUSE JOINT RESOLUTION NO. 17
Urging the President of the United States and the Congress to act to ensure that federal agencies do not retain records relating to lawful purchase or ownership of firearms gathered through the Brady Handgun Bill instant check system.

- MOVED HJR 17 OUT OF COMMITTEE

HOUSE BILL NO. 134
"An Act relating to the rights of crime victims, the crime of violating a protective injunction, mitigating factors in sentencing for an offense, and the return of certain seized property to victims; clarifying that a violation of certain protective orders is contempt of the authority of the court;

expanding the scope of the prohibition of compromise based on civil remedy of misdemeanor crimes involving domestic violence; providing for protective relief for victims of stalking that is not domestic violence and for the crime of violating an order for that relief; providing for continuing education regarding domestic violence for certain persons appointed by the court; making certain conforming amendments; amending Rules 65.1 and 100(a), Alaska Rules of Civil Procedure; amending Rules 10, 11, 13, 16, and 17, Alaska District Court Rules of Civil Procedure; and amending Rule 9, Alaska Rules of Administration."

- HEARD AND HELD

HOUSE BILL NO. 160
"An Act requiring the reporting of induced terminations of pregnancies."

- MOVED CSHB 160(JUD) OUT OF COMMITTEE

HOUSE BILL NO. 184
"An Act relating to the business of insurance, including changes to the insurance code to implement federal financial services reforms for the business of insurance and to authorize the director of insurance to review criminal backgrounds for individuals applying to engage in the business of insurance; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date."

- HEARD AND HELD

PREVIOUS ACTION

BILL: HB 86
SHORT TITLE:CIVIL LIABILITY FOR IMPROPER LITIGATION
SPONSOR(S): REPRESENTATIVE(S)MULDER

Jrn-Date	Jrn-Page		Action
01/22/01	0144	(H)	READ THE FIRST TIME - REFERRALS
01/22/01	0144	(H)	JUD, FIN
02/07/01	0269	(H)	COSPONSOR(S): ROKEBERG
04/11/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/11/01		(H)	Heard & Held MINUTE(JUD)
04/27/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 207

SHORT TITLE:REALIGNMENT OF JUDICIAL DISTRICTS
SPONSOR(S): REPRESENTATIVE(S)KAPSNER

Jrn-Date	Jrn-Page		Action
03/22/01	0691	(H)	READ THE FIRST TIME - REFERRALS
03/22/01	0691	(H)	JUD, FIN
04/27/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HJR 17
SHORT TITLE:DESTROY BRADY BILL RECORDS
SPONSOR(S): REPRESENTATIVE(S)HAYES

Jrn-Date	Jrn-Page		Action
02/23/01	0409	(H)	READ THE FIRST TIME - REFERRALS
02/23/01	0409	(H)	JUD
02/28/01	0473	(H)	COSPONSOR(S): DYSON
03/09/01	0528	(H)	COSPONSOR(S): GUESS
04/19/01	1075	(H)	COSPONSOR(S): CROFT
04/27/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 134
SHORT TITLE:CRIME VICTIMS RTS/CRIMES/PROTECTIVE INJ.
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
02/19/01	0367	(H)	READ THE FIRST TIME - REFERRALS
02/19/01	0367	(H)	JUD, FIN
02/19/01	0367	(H)	FN1: INDETERMINATE(ADM)
02/19/01	0367	(H)	FN2: INDETERMINATE(COR)
02/19/01	0367	(H)	FN3: ZERO(LAW)
02/19/01	0368	(H)	GOVERNOR'S TRANSMITTAL LETTER
02/19/01	0368	(H)	REFERRED TO JUDICIARY
04/09/01		(H)	JUD AT 1:00 PM CAPITOL 120
04/09/01		(H)	<Bill Postponed>
04/10/01		(H)	JUD AT 5:00 PM CAPITOL 120
04/10/01		(H)	Heard & Held
04/10/01		(H)	MINUTE(JUD)
04/10/01		(H)	MINUTE(JUD)
04/27/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 160
SHORT TITLE:REPORTING OF ABORTIONS
SPONSOR(S): REPRESENTATIVE(S)COGHILL

Jrn-Date	Jrn-Page		Action
03/09/01	0514	(H)	READ THE FIRST TIME - REFERRALS
03/09/01	0514	(H)	HES, JUD, FIN
03/22/01	0697	(H)	COSPONSOR(S): JAMES, KOTT
03/23/01	0711	(H)	COSPONSOR(S): WILSON, MEYER
03/29/01		(H)	HES AT 3:00 PM CAPITOL 106
03/29/01		(H)	Heard & Held
03/29/01		(H)	MINUTE(HES)
04/03/01		(H)	HES AT 3:00 PM CAPITOL 106
04/03/01		(H)	Moved CSHB 160(HES) Out of Committee
04/03/01		(H)	MINUTE(HES)
04/04/01	0838	(H)	HES RPT CS(HES) 5DP 1NR 1AM
04/04/01	0838	(H)	DP: COGHILL, KOHRING, WILSON, CISSNA,
04/04/01	0838	(H)	STEVENS; NR: JOULE; AM: DYSON
04/04/01	0839	(H)	FN1: ZERO(H.HES/HSS)
04/04/01	0847	(H)	COSPONSOR(S): STEVENS
04/05/01	0869	(H)	COSPONSOR(S): KOHRING
04/19/01	1076	(H)	COSPONSOR(S): GREEN
04/27/01		(H)	JUD AT 1:00 PM CAPITOL 120

BILL: HB 184
SHORT TITLE:INSURANCE CODE AMENDMENTS
SPONSOR(S): RLS BY REQUEST OF THE GOVERNOR

Jrn-Date	Jrn-Page		Action
03/14/01	0588	(H)	READ THE FIRST TIME - REFERRALS
03/14/01	0588	(H)	L&C, JUD
03/14/01	0589	(H)	FN1: ZERO(CED)
03/14/01	0589	(H)	GOVERNOR'S TRANSMITTAL LETTER
04/04/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/04/01		(H)	Heard & Held
04/04/01		(H)	MINUTE(L&C)
04/20/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/20/01		(H)	Heard & Held
04/20/01		(H)	MINUTE(L&C)
04/25/01		(H)	L&C AT 3:15 PM CAPITOL 17
04/25/01		(H)	Moved CSHB 184(L&C) Out of Committee
04/25/01		(H)	MINUTE(L&C)
04/25/01		(H)	MINUTE(L&C)
04/26/01	1232	(H)	L&C RPT FORTHCOMING CS(L&C) 2DP 4NR 1AM

04/26/01	1233	(H)	DP: HAYES, MURKOWSKI; NR: HALCRO,
04/26/01	1233	(H)	KOTT, MEYER, ROKEBERG; AM: CRAWFORD
04/26/01	1233	(H)	FN1: ZERO(CED)
04/27/01	1286	(H)	RECEIVED CS(L&C) NT
04/27/01		(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

SHELDON E. WINTERS, Attorney at Law
Lessmeier & Winters
Lobbyist for State Farm Insurance Company
431 North Franklin Street, Suite 400
Juneau, Alaska 99801
POSITION STATEMENT: Testified in support of HB 86. During discussion of HB 184, testified in support of proposed Amendment 1 provided a sunset clause is added.

STEVE CLEARY
Alaska Public Interest Research Group (AkPIRG)
PO Box 101093
Anchorage, Alaska 99503
POSITION STATEMENT: Testified in opposition to HB 86; during discussion of HB 184 expressed concerns regarding an "opt out" default for financial information.

REPRESENTATIVE MARY KAPSNER
Alaska State Legislature
Capitol Building, Room 424
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HB 207.

WILLIAM T. COTTON, Executive Director
Alaska Judicial Council (AJC)
1029 West 3rd Avenue, Suite 201
Anchorage, Alaska 99501
POSITION STATEMENT: Testified in support of HB 207.

REPRESENTATIVE JOE HAYES
Alaska State Legislature
Capitol Building, Room 422
Juneau, Alaska 99801
POSITION STATEMENT: Sponsor of HJR 17.

RALPH SEEKINS, President
Alaska Wildlife Conservation Association (AWCA)

4611 Maresh Avenue
Fairbanks, Alaska 99709
POSITION STATEMENT: Testified in support of HJR 17.

DEAN J. GUANELI, Chief Assistant Attorney General
Legal Services Section-Juneau
Criminal Division
Department of Law (DOL)
PO Box 110300
Juneau, Alaska 99811-0300
POSITION STATEMENT: On behalf of the administration, asked that HB 134 be held over through the interim.

DANIELLE SERINO, Staff
to Representative John Coghill
Alaska State Legislature
Capitol Building, Room 102
Juneau, Alaska 99801
POSITION STATEMENT: During discussion of HB 160, answered questions on behalf of the sponsor, Representative Coghill.

AL ZANGRI, Chief
Vital Statistics
Division of Public Health (DPH)
Department of Health & Social Services (DHSS)
PO Box 110675
Juneau, Alaska 99811-0675
POSITION STATEMENT: Answered questions during discussion of HB 160 and proposed Amendment 1.

BOB LOHR, Director
Division of Insurance
Department of Community & Economic Development (DCED)
3601 C Street, Suite 1324
Anchorage, Alaska 99503-5948
POSITION STATEMENT: Presented HB 184 on behalf of the administration.

LINDA BRUNETTE, Licensing Supervisor
Central Office
Division of Insurance
Department of Community & Economic Development (DCED)
PO Box 110805
Juneau, Alaska 99811-0805
POSITION STATEMENT: Assisted with the presentation of HB 184 by answering questions.

JOHN L. GEORGE, Lobbyist
for American Council of Life Insurance (ACLI),
National Association of Independent Insurers (NAII), and
American Family Life Assurance Company (AFLAC)
3328 Fritz Cove Road
Juneau, Alaska 99801
POSITION STATEMENT: During discussion of HB 184, testified in support of proposed Amendment 1.

REED STOOPS, Lobbyist
for Health Insurance Association of America (HIAA)
240 Main Street, Suite 600
Juneau, Alaska 99801
POSITION STATEMENT: During discussion of HB 184, testified in support of proposed Amendment 1.

CHARLIE MILLER, Lobbyist
for Alaska National Insurance Company (ANIC)
PO Box 102286
Anchorage, Alaska 99510
POSITION STATEMENT: During discussion of HB 184, assisted with the presentation of proposed Amendment 2.

ACTION NARRATIVE

TAPE 01-76, SIDE A
Number 0001

CHAIR NORMAN ROKEBERG called the House Judiciary Standing Committee meeting to order at 1:10 p.m. Representatives Rokeberg, Ogan, Coghill, Meyer, and Berkowitz were present at the call to order. Representatives James and Kookesh arrived as the meeting was in progress.

HB 86 - CIVIL LIABILITY FOR IMPROPER LITIGATION

Number 0100

CHAIR ROKEBERG announced that the first order of business would be HOUSE BILL NO. 86, "An Act relating to civil liability for certain false or improper allegations in a civil pleading or for certain improper acts relating to a civil action."

Number 0143

SHELDON E. WINTERS, Attorney at Law, Lessmeier & Winters, Lobbyist for State Farm Insurance Company ("State Farm"), noted

that over the years, his firm has litigated hundreds of "tort/ civil type cases." He said that State Farm supports HB 86 for the reasons articulated in the sponsor statement. He posited that HB 86 requires truthfulness and attorney responsibility, and enforces these requirements with meaningful consequences. In defense of the position that there is currently a problem with frivolous lawsuits, he referred to an article in The National Law Journal written by Michael Jones on 3/22/01. Mr. Winters opined that the article establishes two points: One, that the current system does not prevent lying, but instead encourages it in some instances because there are no meaningful consequences; and two, "lying in lawsuits is widespread."

MR. WINTERS offered that those who "are in this day to day" see examples of lying everyday. He mentioned that another article, which referred to Alaska Airlines flight 261, noted that fraudulent claims were brought on behalf of children supposedly fathered illegitimately by four of the passengers. Those fraudulent claims were filed by U.S. attorneys and were determined to be false, but only after Alaska Airlines had been subjected to a lot of litigation and legal expenses. Mr. Winters opined that the problem of lying during litigation does exist.

MR. WINTERS, referring to the hypothetical examples given at the last meeting on HB 86, said that virtually all of the examples that he heard ignored the safeguards in the bill. These safeguards will address a lot of the concerns expressed to date, he opined. He suggested that hypothetical examples should not be used as the basis for stopping legislation. He said it comes down to a policy call. Who will be protected? The people who make false statements, or the people who are the victims of the false statements?

REPRESENTATIVE BERKOWITZ, referring to the example given by Mr. Cole at that last hearing on HB 86, asked whether Mr. Winters is asserting that all of the denial of claims that insurance attorneys make would be impermissible under HB 86.

MR. WINTERS said he is not asserting that at all. He noted that when he heard Mr. Cole's hypothetical example, he thought of eight or nine different remedies to the situation. First of all, when an answer to a complaint is due, it is common practice (and the law in Alaska) that if "you need more time, you call up the other side and you get more time to answer the complaint."

REPRESENTATIVE BERKOWITZ asked what incentive there is for the plaintiff to allow that additional time. He added that there would be every incentive to disregard that courtesy.

Number 0658

MR. WINTERS answered that professional courtesy would be the incentive. If, however, extra time is not granted, a person would simply go to the trial court and ask for more time, which he has never seen denied. On another point related to Mr. Cole's example, Mr. Winters explained, "you don't have to have blanket denials"; other responses include "denied" or "can not answer for lack of information [and] knowledge," which is commonly [given]. There does not have to be a commitment in the answer if there is not enough information to respond. "If you are committed to a response," he pointed out, it can always be amended; the rules allow for an amendment without even going to court. He noted that motions to amend are liberally granted. Therefore, Mr. Winters asserted, Mr. Cole's premise that within a matter of days, a person has to file a denial that commits him/her to a certain position is just not the case. Mr. Winters noted that if someone wanted to file a lawsuit based on a blanket denial, he/she is required to send notice of that [intention] and give the other party an opportunity to amend the denial.

REPRESENTATIVE OGAN, referring to an example given in the article provided by Mr. Winters, remarked that it is up to the attorneys to point out who is lying, and ultimately the judge or jury decides the case based on whom they believe the most. He noted that the standard of proof in civil litigation is "50 percent plus 1"; therefore, since there are always two sides to a story, one person merely has to be believed 1 percent more than the other person. Both parties could be lying, or both could be telling the truth to the best of their recollection; the truth could ultimately be determined on a 1 percent [margin].

MR. WINTERS argued that HB 86 is not trying to do away with the jury system; instead, it tries to discourage a "deliberate intentional false lie." Honest recollections that are under dispute will still go before a jury, he explained, but quite often there are "black and white" different stories in which one of the parties is lying. He added that the sanctions listed in HB 86 would not be imposed simply because someone doesn't prevail in a lawsuit.

REPRESENTATIVE OGAN said he understands that point but noted that there is already a system in place to decide who is lying. "Why do we need more," he asked.

MR. WINTERS opined that the purpose of HB 86 is to prevent the blatant lie to begin with, but if someone chooses to go through the jury system with a false allegation and he/she gets caught, then the sanctions would be imposed. He recounted that in many of his cases, although there may be a legitimate dispute about liability, these lawsuits often include preposterous damage claims as well, which drives up the cost of litigation. He opined that the meaningful sanctions imposed on a person should he/she be caught lying are incentive not to make false allegations to begin with.

Number 1036

REPRESENTATIVE BERKOWITZ posited that the code of professional ethics, Civil Rule 11, criminal statutes, and professional courtesy already adequately address concerns about false allegations and false witnesses. He said he is uncertain why the addition of HB 86 is supposed to make all the difference, if proponents of HB 86 consider the current safeguards inadequate.

MR. WINTERS argued that HB 86 is not directed towards witnesses, rather towards the parties and their attorneys. He opined that what is currently in effect is not working; Civil Rule 11 only applies to attorneys (not parties) and is rarely used. In Keen v. Ruddy, he noted, the trial court and the supreme court found that the underlying lawsuit was totally frivolous and brought in bad faith (and cost the defendant thousands and thousands of dollars), but the trial court issued a Civil Rule 11 sanction against the attorney of only $100, which was subsequently upheld by the supreme court as sufficient penalty against the attorney because it carried with it a stigma and a message of disapproval.

REPRESENTATIVE BERKOWITZ, after noting that the representative from the state chamber of commerce was unable to provide any specific examples of frivolous lawsuits during the last meeting on HB 86, said such an inability belies the assertion that there is strong evidence of a problem.

MR. WINTERS offered that the article he provided, Representative James' personal example, the letter from the City and Borough of Juneau Manager, and his own anecdotal cases are evidence that there is a problem.

REPRESENTATIVE BERKOWITZ countered that the aforementioned article is merely anecdotal, just "war stories" from a trial lawyer, not quantifiable evidence of a problem, and, as pointed out by Representative Ogan, the weaknesses of the claims in the examples given were exposed by the attorneys through the existing legal system. The assertion that anecdotal evidence constitutes strong evidence does not change his position on HB 86, he stated.

Number 1275

STEVE CLEARY, Alaska Public Interest Research Group (AkPIRG), testified via teleconference. He noted simply that the points raised by Representatives Berkowitz and Ogan constitute the main reasons why AkPIRG opposes HB 86. There are already safeguards in place, he said, and HB 86 would discourage people from having their day in court, even if their claims have merit, simply because they may be intimidated by the sanctions listed in HB 86.

CHAIR ROKEBERG closed the public hearing, and announced that the committee would set HB 86 aside and return to it later in the meeting.

HB 207 - REALIGNMENT OF JUDICIAL DISTRICTS

Number 1411

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 207, "An Act relating to the judicial districts of the state."

CHAIR ROKEBERG called an at-ease from 1:32 p.m. to 1:34 p.m.

Number 1420

REPRESENTATIVE MARY KAPSNER, Alaska State Legislature, sponsor, explained that HB 207 deals with a discrepancy between a judicial district and a court venue district. The Bethel court currently services the Lower Yukon region of Alaska; however, residents of that region are in the Third Judicial District, not the Fourth Judicial District. During the last election for the retention of judges, the people of the Lower Yukon area were not able to vote for (or against) the retention of the judge that services that area. The judicial district boundaries were established at statehood, she explained, and they were based on

boundaries of the established election districts and reflected commerce and communication systems at that time. These systems have substantially changed since then. She said that HB 207 simply places court venue for that area within the proper judicial district. She mentioned that the Alaska Civil Liberties Union (AkCLU) supports HB 207.

Number 1596

WILLIAM T. COTTON, Executive Director, Alaska Judicial Council (AJC), testified via teleconference and said simply that the AJC voted unanimously to recommend the change encompassed by HB 207. The AJC has recognized the problem even before Representative Kapsner sponsored this legislation. The people who live in villages apart from Bethel, he explained, are serviced by the courts of Bethel; it is the only practical way to provide such service, and these people are treated in every way as if they are in the Fourth Judicial District except that they are currently unable to vote on the judge that services them. He said that as a general rule, judicial districts should not be changed very often; however, in this particular instance, it makes a lot of sense and is a very fair thing to do.

CHAIR ROKEBERG closed the public hearing on HB 207.

Number 1690

REPRESENTATIVE JAMES moved to report HB 207 out of committee with individual recommendations and the accompanying fiscal note. There being no objection, HB 207 was reported out of the House Judiciary Standing Committee.

CHAIR ROKEBERG called an at-ease from 1:40 p.m. to 1:41 p.m.

HJR 17 - DESTROY BRADY BILL RECORDS

Number 1707

CHAIR ROKEBERG announced that the next order of business would be HOUSE JOINT RESOLUTION NO. 17, Urging the President of the United States and the Congress to act to ensure that federal agencies do not retain records relating to lawful purchase or ownership of firearms gathered through the Brady Handgun Bill instant check system.

Number 1724

REPRESENTATIVE JOE HAYES, Alaska State Legislature, sponsor, explained that the purpose of HJR 17 is to ensure that the federal government destroy information pertaining to persons who may lawfully own firearms that is gathered per the Brady Handgun Bill. Currently the federal government retains such information although doing so is contrary to both the letter and the spirit of the Brady Handgun Bill. He urged members to pass HJR 17.

Number 1800

RALPH SEEKINS, President, Alaska Wildlife Conservation Association (AWCA), testified via teleconference. He stated that the AWCA is in favor of HJR 17, believing that it is an intrusion for the federal government to retain records longer than anything specifically laid out in the Brady Handgun Bill. He concluded by encouraging the legislature to support HJR 17 adding that it is a step in the right direction.

CHAIR ROKEBERG closed the public hearing on HJR 17.

Number 1880

REPRESENTATIVE OGAN made a motion to adopt Amendment 1: on page 2, line 5, insert "dangerous" after "**WHEREAS** the".

Number 1886

CHAIR ROKEBERG objected.

REPRESENTATIVE OGAN withdrew Amendment 1.

Number 1894

REPRESENTATIVE JAMES moved to report HJR 17 out of committee with individual recommendations.

REPRESENTATIVE BERKOWITZ noted that in the section of HJR 17 that specifies to whom a copy shall be sent to, all but Louis Freeh are referred to as "the Honorable".

CHAIR ROKEBERG said this is because Mr. Freeh is an employee rather than an elected official.

REPRESENTATIVE BERKOWITZ said he recalls that at one point in time Mr. Freeh was also a federal judge.

CHAIR ROKEBERG asked the sponsor to investigate this further because if Mr. Freeh has had the appellation at any time, he retains it.

Number 1952

CHAIR ROKEBERG asked whether there were any objections to reporting HJR 17 from committee. There being no objection, HJR 17 was reported from the House Judiciary Standing Committee.

HB 134 - CRIME VICTIMS RTS/CRIMES/PROTECTIVE INJ.

Number 1970

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 134, "An Act relating to the rights of crime victims, the crime of violating a protective injunction, mitigating factors in sentencing for an offense, and the return of certain seized property to victims; clarifying that a violation of certain protective orders is contempt of the authority of the court; expanding the scope of the prohibition of compromise based on civil remedy of misdemeanor crimes involving domestic violence; providing for protective relief for victims of stalking that is not domestic violence and for the crime of violating an order for that relief; providing for continuing education regarding domestic violence for certain persons appointed by the court; making certain conforming amendments; amending Rules 65.1 and 100(a), Alaska Rules of Civil Procedure; amending Rules 10, 11, 13, 16, and 17, Alaska District Court Rules of Civil Procedure; and amending Rule 9, Alaska Rules of Administration."

Number 1976

DEAN J. GUANELI, Chief Assistant Attorney General, Legal Services Section-Juneau, Criminal Division, Department of Law (DOL), explained that the DOL would prefer that HB 134 did not move out of committee at this point. After having discussions with Senator Halford and his staff, and Lauree Hugonin from the Alaska Network on Domestic Violence & Sexual Assault (ANDVSA), the DOL has agreed to work on HB 134 over the interim in an effort to address some of the concerns raised.

Number 2081

CHAIR ROKEBERG announced that HB 134 would be held over for the interim.

CHAIR ROKEBERG called an at-ease from 1:49 p.m. to 1:58 p.m.

HB 160 - REPORTING OF ABORTIONS

Number 2180

CHAIR ROKEBERG announced that the next order of business would be HOUSE BILL NO. 160, "An Act requiring the reporting of induced terminations of pregnancies." [Before the committee was CSHB 160(HES).]

Number 2193

REPRESENTATIVE COGHILL, as the sponsor of HB 160, explained that HB 160 would put in place a reporting system for the termination of pregnancies. The Vital Statistics section of the Division of Public Health (DPH) will be responsible for providing an annual report regarding how many abortions are performed. He noted that the reporting will be done according to national standards, and that the information will remain secure. He mentioned that he has no objections to a forthcoming amendment that would ensure that confidentiality be maintained. He added that the Alaska Civil Liberties Union (AkCLU) supports HB 160.

REPRESENTATIVE BERKOWITZ asked whether any other medical procedures are reported.

Number 2271

DANIELLE SERINO, Staff to Representative John Coghill, Alaska State Legislature, sponsor of HB 160, explained that births, deaths, fetal deaths, marriages, and divorces are reported. She added that sexually transmitted diseases (STDs), any forms of cancer, tuberculosis, and a number other diseases are also reported by doctors.

REPRESENTATIVE COGHILL noted that the concept of recording and reporting abortions is not "precedent setting."

CHAIR ROKEBERG closed the public hearing on HB 160.

Number 2349

CHAIR ROKEBERG made a motion to adopt Amendment 1, which read:

Page 2, line 11, following "section":

Insert ", except that the statistical report may not identify or give information that can be used to identify the name of any physician who performed an induced termination of pregnancy, the name of any facility in which an induced termination of pregnancy occurred, or the name of the municipality or community in which the induced termination of pregnancy occurred."

Page 2, following line 21:

Insert a new bill section to read:

"***Sec. 2.** AS 18.50.310(a) is amended to read:

(a) To protect the integrity of vital statistics records, to ensure their proper use, and to ensure the efficient and proper administration of the vital statistics system, it is unlawful for a person to permit inspection of [,] or to disclose information contained in vital statistics records, or to copy or issue a copy of all or part of a record, except as provided by this section or as authorized by regulations issued under this chapter. **Regulations issued under this chapter may not authorize inspection, disclosure, or copying of all or part of any report or record received under AS 18.50.245, except that the statistical report prepared under AS 18.50.245(d) may be copied and distributed.**"

Renumber the following bill sections accordingly.

CHAIR ROKEBERG explained that he is offering Amendment 1 because he has concerns about the potential for misuse of information related to doctors, health clinics, and hospitals; Amendment 1 is intended to strictly prohibit any information other than the final report from becoming a matter of public record.

Number 2382

AL ZANGRI, Chief, Vital Statistics, Division of Public Health (DPH), Department of Health & Social Services (DHSS), noted that he has not yet reviewed Amendment 1.

REPRESENTATIVE BERKOWITZ asked whether the reporting of medical procedures is done through Vital Statistics or some other entity.

MR. ZANGRI explained that Vital Statistics receives medical reports on births, deaths, marriages, divorces, and fetal

deaths. Other kinds of medical procedures or medical conditions such as HIV (human immunodeficiency virus) and tuberculosis are reported to the DPH's Epidemiology Section.

REPRESENTATIVE BERKOWITZ asked Representative Coghill why he opted not to go through the latter route of reporting with HB 160.

REPRESENTATIVE COGHILL said that because fetal deaths are reported through Vital Statistics, he and department representatives agreed that it would be appropriate to handle abortion reporting in the same manner.

REPRESENTATIVE BERKOWITZ noted that the [Epidemiology Section] is already accustomed to handling confidential medical information.

MR. ZANGRI countered that Vital Statistics also handles confidential medical information. He added that there are only four other states that do not have mandatory reporting of induced terminations of pregnancy, and in all of those states that do report them, with the exception of one or two, that information is reported through Vital Statistics.

TAPE 01-76, SIDE B
Number 2466

REPRESENTATIVE COGHILL asked Mr. Zangri to comment on whether Amendment 1 is actually needed.

MR. ZANGRI said that vital statistics records are prohibited from inspection for a specific period of time, by record. There is nothing in current statute that defines an induced termination of pregnancy as a vital statistic record; in the absence of such a definition, he said, Amendment 1 is needed and will be very helpful.

REPRESENTATIVE COGHILL reiterated that he has no objection to Amendment 1.

CHAIR ROKEBERG asked whether Amendment 1 would have any impact on other [confidential] information, or create any unintended consequences for Vital Statistics.

MR. ZANGRI said it might create some problems; other areas in AS 18.50 permit disclosure of birth records after 100 years, and death, marriage, and divorce records after 50 years. He noted

that Vital Statistics permits inspection of other vital records for various purposes as well.

REPRESENTATIVE COGHILL surmised that if any regulations have to be created in order to comply with the requirements of HB 160, the intent of Amendment 1 is to protect information pertaining to induced termination of pregnancies.

Number 2350

CHAIR ROKEBERG asked whether there were any objections to Amendment 1. There being no objection, Amendment 1 was adopted.

REPRESENTATIVE BERKOWITZ stated that he is incredibly concerned about privacy and the safety of people; it is absolutely imperative that this information receive the most stringent protection possible. He noted that he has received complaints that Vital Statistics has released information to agencies without authorization. Should information pertaining to induced termination of pregnancies be released in a similar fashion, he said he would view it as the most egregious type of abuse of personal privacy. If he ever hears of any instance of such an abuse, he warned, he would expect the legislature to revisit this issue. The more "sideboards" put around HB 160, the better, he added.

REPRESENTATIVE COGHILL said he did not want to elevate this type of information above other types of sensitive information. He noted that he has not heard of any breaks in confidentiality.

Number 2240

REPRESENTATIVE JAMES moved to report CSHB 160(HES), as amended, out of committee with individual recommendations and the accompanying fiscal note. There being no objection, CSHB 160(JUD) was reported from the House Judiciary Standing Committee.

HB 86 - CIVIL LIABILITY FOR IMPROPER LITIGATION

Number 2230

CHAIR ROKEBERG announced that the committee would again take up HOUSE BILL NO. 86, "An Act relating to civil liability for certain false or improper allegations in a civil pleading or for certain improper acts relating to a civil action."

Number 2206

REPRESENTATIVE COGHILL moved to report HB 86 out of committee with individual recommendations and the accompanying fiscal notes.

Number 2199

REPRESENTATIVE BERKOWITZ objected. He said this is a bad idea according to Attorney General Cole and Wev Shea; it's bad for plaintiffs, it's bad for the defendants, it's bad for business, and the only one it seems to be good for is an individual who didn't testify here today and one other individual who did testify. "We heard no quantitative evidence that there is a rampant problem out there ..., and in fact, ... to the contrary, ... this bill will impose burdens on business and would impede on civil justice," he concluded.

Number 2126

A roll call vote was taken. Representatives James, Ogan, Coghill, and Rokeberg voted to report HB 86 out of committee. Representatives Berkowitz and Kookesh voted against it. Therefore, HB 86 was reported from the House Judiciary Standing Committee by a vote of 4-2.

CHAIR ROKEBERG called an at-ease from 2:10 p.m. to 2:38 p.m.

HB 184 - INSURANCE CODE AMENDMENTS

Number 2128

CHAIR ROKEBERG announced that the last order of business would be HOUSE BILL NO. 184, "An Act relating to the business of insurance, including changes to the insurance code to implement federal financial services reforms for the business of insurance and to authorize the director of insurance to review criminal backgrounds for individuals applying to engage in the business of insurance; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date." [Before the committee was CSHB 184(L&C).]

Number 2103

BOB LOHR, Director, Division of Insurance, Department of Community & Economic Development (DCED), explained that HB 184 is the result of federal legislation that passed in 1999 - the

Financial Services Modernization Act, also referred to as the Gramm-Leach-Bliley Act (GLBA). This Act took down the barriers among insurance, banking, and securities that were erected right after the [Great Depression] by the Glass-Steagall Act. As a result of GLBA, regulation of these three sectors - insurance, banking, and securities - has had to adapt to "the new reality." He noted that the Federal Reserve was appointed to be the "umbrella regulator" over all sectors, but below that, functional [state] regulation was the key with respect to each of the other sectors, and, specifically for insurance, state authority to regulate insurance is preserved. The insurance sector is unique in the federal picture because there is essentially no federal regulation of insurance, unlike the banking and securities sectors in which there is both federal and state regulation.

MR. LOHR explained that under GLBA, the federal government is requiring states to adopt specific standards for insurance regulation without which national regulation will "kick in"; HB 184 is designed to maintain state government authority for regulation of insurance. He noted that there are three areas covered by HB 184. One area pertains to producer licensing - licensing of agents and brokers; if 29 states do not adopt licensing statutes that treat nonresidents on a reciprocal basis, then a national system of licensing will be imposed. Thus far 45 states have introduced legislation to accomplish reciprocity, which allows someone licensed in another state to be granted a nonresident license in Alaska and vice versa for an Alaskan licensee, as long as there is not a regulatory issue to prevent it such as a criminal background or other problems found by the regulating agency. Basically, by sending money to one location, a person could be licensed in all 50 states and the District of Columbia through a 24-hour process. The licensing fees would in turn be distributed to the appropriate states.

MR. LOHR said that a second area covered by HB 184 pertains to privacy. House Bill 184 addresses what information a person may share that is obtained from insurance applications, which could include financial information and/or health information, and what degree of restrictions are appropriate with respect to marketing and sharing information. A third area covered by HB 184 involves consumer protection for banks selling insurance. Currently there are consumer protection provisions for insurance companies, but now that banks are permitted to sell insurance, additional provisions are necessary in order to ensure consumer protection in those areas too.

Number 1816

MR. LOHR, in response to questions, said that there are currently some barriers to nonresident reciprocity. One provision in HB 184 says that there will be no "post-licensing" barriers, that is, no additional barriers to licensing. Some states, for example, do not have very much "surplus-lines" activity for a non-admitted insurer selling insurance in that state. Alaska does have a good deal of "that," he said, and as a result, requires a $200,000 bond from a surplus-lines licensee. Some states, he noted, require up to a $200,000 bond but other states do not require anything, so with regard to reciprocity, "if it's good enough in their state, it's good enough in ours," and while this bond can become an additional restriction on licensing, it also provides Alaskans with some important consumer protections. What is proposed by HB 184 is to maintain the ability of the director to have a surplus-lines requirement but not to have it in the licensing chapter; rather to move it from there to a separate section where it is not tied in as a licensing restriction.

MR. LOHR mentioned that trust accounts [are an example of a licensing requirement]; a trust account is used when an agent or broker is receiving funds that are going to be used to buy insurance from the company - those funds must be maintained and accounted for separately from any other funds. In HB 184 the term "trust account" has been replaced by "fiduciary responsibility"; the net effect is identical and the director maintains the authority to require trust accounts, but "we de-link it" from the notion of being an additional licensing requirement. He opined that this terminology change would satisfy the requirement of reciprocity without sacrificing consumer protection.

REPRESENTATIVE COGHILL asked what regulations Mr. Lohr anticipates developing.

MR. LOHR said, for example, that some of the provisions of HB 184 have delayed effective dates, and if the Division of Insurance determines that additional regulations are needed, the authority is there to develop them; essentially reenacting by regulation what is currently in statute until after the delayed effective dates. He noted, however, that some negotiations are occurring at the national level because "we" don't know quite what it takes to trigger reciprocity since that will be a "post state legislative decision"; once a bill is enacted in at least 29 states, that legislation will be submitted for review to

determine whether the states are reciprocal. In states that are not, regulations could be adopted to fix the problem without further statutory change. On the issue of fingerprinting, Mr. Lohr noted that the Division of Insurance is attempting to strengthen the fingerprinting requirements by simplifying the process through which fingerprints of licensee applicants can be used to obtain "FBI data" for criminal background checks.

Number 1561

LINDA BRUNETTE, Licensing Supervisor, Central Office, Division of Insurance, Department of Community & Economic Development (DCED), added that currently the Division of Insurance requires any individual - both residents and nonresidents - who transacts the business of insurance and who is applying for a license to submit a fingerprint card for a criminal background check.

MR. LOHR noted that a separate process for companies grants what is called a Certificate of Authority. In response to questions, he noted that the privacy provisions begin on page 43 with Section 59, that there is no specific reference in this section to GLBA, that subsection (b) grants authority to the director [to adopt regulations that provide protection for a person's financial and health information], and that paragraph (5) contains reference to the Health Insurance Portability and Accountability Act (HIPAA) as the default regulations for health insurance.

CHAIR ROKEBERG mentioned that the House Labor and Commerce Standing Committee favored a default "opt in" regarding health insurance information.

MR. LOHR noted that directions for "opt in", which prohibits sharing, start with subsection (a), and that the following paragraphs itemize exceptions.

CHAIR ROKEBERG pointed out that paragraph (4) contains a large list of different insurance activities that would be exempted; he added that he finds this method of listing exceptions cumbersome.

REPRESENTATIVE COGHILL noted that subsection (b) still gives authority to make regulations.

CHAIR ROKEBERG noted that while this is correct, the issue is what type of policy call the legislature is making, whether "opt in" or "opt out."

MR. LOHR explained that the term "opt out" means that personal information may be shared with others unless the person specifically says that it can not be shared; whereas "opt in" means that personal information may not be shared unless explicit permission to do so is given. He added that "opt in" is typically more protective of privacy than "opt out." If a person does not respond to an "opt out" questionnaire, information can be shared. If a person does not respond to an "opt in" questionnaire, the information will not be shared.

Number 1241

CHAIR ROKEBERG noted that what is happening "with this federal law is that we are in a position where we have to conform our statutes with national practice." He said that the question faced by the legislature is which default Alaskans will have: "opt in" or "opt out." He opined that one of the goals should be to provide a "level playing field" for local insurers and banks that compete against national entities. He remarked that he has come to the conclusion that national insurance companies are making national policy, so in order for Alaskan companies to compete, they should not be out of step. He suggested that the default for health insurance should be "opt in" and the default for other types of insurance should be "opt out." He added that Amendment 1 addresses this issue. Amendment 1 reads [original punctuation provided]:

> **Sec. 21.36.162 Nondisclosure of personal information.** The director shall adopt regulations regarding the release of financial and health information regarding an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes. The regulations must be no less restrictive than the model regulations adopted by the National Association of Insurance Commissioners (NCOIL) Financial Information Privacy Protection Model Act, adopted by the NCOIL Executive Committee on November 17, 2000 and amended on March 2, 2001.

MR. LOHR explained that Amendment 1 would replace most of Section 59, beginning on page 43, line 15, through page 45, line 27.

MS BRUNETTE pointed out that Amendment 1 contains a typo: "National Association of Insurance Commissioners" should instead read "National Conference of Insurance Legislators". As corrected, Amendment 1 reads [original punctuation provided]:

> **Sec. 21.36.162 Nondisclosure of personal information.** The director shall adopt regulations regarding the release of financial and health information regarding an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes. The regulations must be no less restrictive than the model regulations adopted by the National Conference of Insurance Legislators (NCOIL) Financial Information Privacy Protection Model Act, adopted by the NCOIL Executive Committee on November 17, 2000 and amended on March 2, 2001.

Number 0855

MR. LOHR said that this change would provide for an "opt in" default for health information, and an "opt out" default for financial information. He said these defaults would be set as "the minimum floor"; the Division of Insurance would be allowed to adopt regulations that would provide for no less than these standards.

CHAIR ROKEBERG called an at-ease from 3:06 p.m. to 3:13 p.m.

Number 0703

STEVE CLEARY, Alaska Public Interest Research Group (AkPIRG), testified via teleconference. He said that the AkPIRG has concerns about privacy rights. [The AkPIRG] is a strong proponent of an "opt in" default for health information, but does not support the use an "opt out" default for financial information. The latter is inappropriate and will hurt consumers, he opined. He pointed out that the mailings sent out informing consumers that their information will be shared unless they respond will contain very fine print, and therefore consumers may not be cognizant of the fact that their personal financial information is going to be shared rather than held private. Mr. Cleary said that the AkPIRG would also like to see included in HB 184 "a private right of action." Right now, he explained, individuals need to wait for the Division of Insurance to act on their behalf, but a private right of action

would allow individuals to proceed on their own. He concluded by saying he would like to give further testimony at the next meeting after taking more time to review HB 184 and its proposed amendments.

CHAIR ROKEBERG remarked that the director of the Division of Insurance and various people from the insurance industry all recommend using the NCOIL model as the baseline for regulations. He noted that he intends to put a sunset on that provision so that the legislature can review the issue.

Number 0366

JOHN L. GEORGE, Lobbyist for American Council of Life Insurance (ACLI), National Association of Independent Insurers (NAII), and American Family Life Assurance Company (AFLAC), said that the organizations he represents favor the adoption of Amendment 1; without it, the language is too complicated and far different from what is being applied in other states. Most companies, on the other hand, are already familiar with the NCOIL model. In response to questions, he said that the "opt out" default for "non health insurance" has to be in place for the sake of uniformity. To have an "opt in" standard for "non health insurance" purposes would be different from what "everyone else" has. The "opt out" standard allows insurance companies to continue with their everyday business while still providing consumers with the option of stating that they do not want their information shared.

Number 0163

SHELDON E. WINTERS, Attorney at Law, Lessmeier & Winters, Lobbyist for State Farm Insurance Company ("State Farm"), said simply that State Farm supports Amendment 1 with the understanding that a "sunset" provision will be added.

Number 0058

REED STOOPS, Lobbyist for Health Insurance Association of America (HIAA), said simply that the HIAA supports Amendment 1 even though health information is treated more stringently than financial information. Consistency around the country, he opined, is paramount to the industry in order to allow Alaskan companies to do business under the same basic rules as other states. He noted that the regulatory process for "this particular subject" is fairly extensive under the NCOIL model.

TAPE 01-77, SIDE A
Number 0030

CHAIR ROKEBERG opined that with the provisions of the GLBA and the provisions encompassed by HB 184 going into effect, the consumer will have substantially more protection than previously.

MR. LOHR concurred with that point. There is no protection for insurance information gathered from applications at this point in time; whatever level of privacy standard that is adopted by the legislature will be an increase over what there is currently, he said.

CHAIR ROKEBERG asked whether Mr. Lohr would be offended if the legislature were to attach a letter of intent regarding "opt in/opt out."

MR. LOHR opined that a letter of intent is not necessary; the mandate to the director is very clear, it is not permissive, and it does "set a floor." Therefore, he added, he could not imagine a scenario under HB 184 where it would not be "opt in" for health information [and "opt out" for financial information].

CHAIR ROKEBERG argued, however, that the language simply refers to the NCOIL model and does not specify what the legislature's policy is with regard to "opt in/opt out."

MR. LOHR said, "it's your call, but I don't believe it's necessary."

Number 0159

CHAIR ROKEBERG made a motion to adopt Amendment 1, as corrected. There being no objection, Amendment 1, as corrected, was adopted.

Number 0203

CHAIR ROKEBERG made a motion to adopt Amendment 2, which read [original punctuation provided]:

> *Sec. X AS 21.18. is amended by adding a new section to read:
>
> Sec.21.18.160. Valuation of investments. For the purposes of this chapter, the value or amount of

an investment acquired, held, or invested in or an investment practice engaged in under this title, unless otherwise specified in this title, must be the value at which assets of an insurer are required to be reported for accounting purposes under this title and as required under procedures prescribed in published accounting and valuation standards of the National Association of Insurance Commissioners, including the purposes and procedures manual of the securities valuation office, the valuation of securities manual, the accounting practices and procedures manual, and the annual statement instructions or valuation procedures officially adopted by the National Association of Insurance Commissioners.

*Sec. X AS 21.21.010 is repealed and reenacted to read:

Sec. 21.21.010. Scope. This chapter applies only to an investment and investment practice of a domestic insurer and a United States branch of an alien insurer entered through this state. Except as provided in AS 21.42.370(c), this chapter does not apply to separate accounts of a life insurer.

*Sec. X AS 21.21.020 (d) is amended to read:

(d) An investment limitation based upon the amount of the insurer's assets or particular funds shall relate to the assets or funds shown by the insurer's annual statement most recently required to be [AS OF THE PRECEDING DECEMBER 31, DATE OF ACQUISITION OF THE INVESTMENT BY THE INSURER, OR SHOWN BY A CURRENT FINANICAL (stet) STATEMENT] filed with the director.

*Sec. X AS 21.21.020 is amended by adding a new section to read:

(e) Determination of compliance with limitations under this chapter shall use admitted asset values.

*Sec. X AS 21.21.255 is amended to read:

As provided under 15 U.S.C. 77r-1(b) and (c)(Secondary Mortgage Market Enhancement Act of 1984), securities that are purchased, held or invested in by an insurer shall be regulated under AS 21.18.160 [AS 21.18.150], AS 21.21 [AS 21.21.050, 21.21.260, 21.21.270], and other applicable provisions of this title.

*Sec. X AS 21.21 is amended by adding a new section to read:

Sec. 21.21.420. Regulations. The director shall adopt regulations regarding insurance company investments that are consistent with the defined

limits standards for investments of the National Association of Insurance Commissioners, as amended from time to time."

*Sec. XX. AS 21.24.030(a) is amended to read:

(a) All deposits required under AS 21.09.090 for authority to transact insurance in this state shall consist of certificates of deposit [,] or any combination of rated credit instruments of the United States, Canada, or state of the United States [SECURITIES OF THE KINDS DESCRIBED IN AS 21.21.060, 21.21.080, AND 21.21.090].

*Sec. XX AS 21.87.220(b) is amended to read:

(b) AS 21.21 shall [THE FOLLOWING SECTIONS] apply to the investments of service corporations, to the extent applicable, and, for the purposes of the application, a service corporation shall be considered to be an insurer.[: AS 21.21.020-21.21.050, 21.21.290, AND 21.21.300].

*Sec. XX AS 21.18.120, 21.18.130, 21.18.140, 21.18.150; 21.21.030, 21.21.040, 21.21.050, 21.21.060, 21.21.070, 21.21.080, 21.21.090, 21.21.100, 21.21.110, 21.21.120, 21.21.130, 21.21.140, 21.21.150, 21.21.160, 21.21.170, 21.21.180, 21.21.190, 21.21.200, 21.21.210, 21.21.220, 21.21.225, 21.21.230, 21.21.240, 21.21.245, 21.21.250, 21.21.260, 21.21.270, 21.21.280, 21.21.290, 21.21.300, 21.21.310, 21.21.321, 21.21.330, 21.21.350, 21.21.355, 21.21.360, 21.21.370, 21.21.380, 21.21.390, 21.21.400, 21.21.600; AS 21.87.340(7), and 21.87.340(8) are repealed.

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

TRANSITION: REGULATIONS. The director of insurance may immediately proceed to adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the statutory change.

*Sec. XX Sections XX-XX of this Act take effect January 1, 2002.

Number 0239

CHARLIE MILLER, Lobbyist for Alaska National Insurance Company (ANIC), explained that ANIC is one of three locally domiciled insurance companies in Alaska and as such is one of the three companies whose investments are regulated under the authority of Alaska's Division of Insurance. All the other insurance

companies that underwrite and practice in Alaska are domiciled elsewhere and so their investments are regulated by other states. The companies domiciled in Alaska have been operating under some pretty old statutes that haven't been updated in quite some time. To update those statute would be cumbersome; they are lengthy and difficult to deal with. At the suggestion of the director of the Division of Insurance, he spoke with his client about supporting an amendment authorizing the director to promulgate regulations that would address the regulation of investments. He said his client doesn't feel that there is any conflict between what is good for the industry and what is good for the regulators. Primarily, the consumers' investments need to be protected; if there is a claim, the money has to be available to pay the claim. Companies should not be investing the money in risky instruments that would put claims at risk, which, unfortunately, takes a lot of [statutory and/or regulatory] verbiage to ensure.

MR. MILLER said that Amendment 2 is drafted so as to put a constraint on the director: he/she can promulgate regulations but they have to be consistent with the current National Association of Insurance Commissioners' (NAIC) Model Acts. He added that the ANIC feels that this authority is appropriate and that there are several steps in the process during which the industry can provide input. The industry also has recourse in court if it feels that the standards of consistency within the NAIC model are not met, as well as the recourse of returning to the legislature for statutory assistance. He said that the ANIC does not feel that the director will be given any unfettered authority via Amendment 2, rather, that it is to the benefit of both the industry and the director to have the flexibility to change current statute via regulation in order to ensure that the investment possibilities are current, safe, and appropriate.

REPRESENTATIVE OGAN said he does not share Mr. Millers' comfort level with the bureaucracy. He added that he views [Amendment 2] as a major delegation of legislative authority to the administration. He noted that he would feel better if there were an independent administrative hearing process.

Number 0550

MR. MILLER said that he and his client have given a great deal of thought about this particular process, and they do not feel that they are putting themselves at the mercy of a bureaucratic body that won't respond to their needs. This will merely be a promulgation of regulations that have very clear guidelines;

since the regulations have to be consistent with the NAIC model, the director and his staff won't have much flexibility. He added that he feels [Amendment 2] constitutes an appropriate use of the regulatory process.

MR. LOHR added that if Amendment 2 is adopted and HB 184 becomes law, he intends to promulgate as a proposed regulation the defined limits version of the NAIC's model law on investment regulation. This is an established law, which, if the Division of Insurance were to propose updating Alaska statute, is exactly what would be proposed. This would be the starting point for public comment on a proposed regulation; it would then go through the full Administrative Procedure Act's public hearing process in which the division would receive public comments, and then based on that input, a regulation would be adopted. He opined that the final product of this process would look very similar to the NAIC's "investment regulation bill."

MR. LOHR added that there is broad public interest in making sure that insurance companies meet their obligations to pay claims well into the future, and if the money that is now in reserve is not invested wisely, it may not be available to pay future claims. He added that the regulation that would result from the aforementioned process would allow for updated investment vehicles. Investment products that have been invented in the last 25 years may currently be classified as suspect investments simply because they were not available at the time the original statute was developed, but the regulatory process would allow them to be treated as legitimate investments. He said that the Division of Insurance supports Amendment 2. He also remarked that he has not heard of any opposition to the concept of Amendment 2, and that at the national level there have been extensive public hearings on the model during its development.

CHAIR ROKEBERG called an at-ease from 3:35 p.m. to 3:37 p.m.

Number 0825

CHAIR ROKEBERG asked whether there were any objections to Amendment 2. There being no objection, Amendment 2 was adopted.

Number 0842

CHAIR ROKEBERG made a motion to adopt Conceptual Amendment 3, "which would be a three-year basic sunset of the privacy rights. The conceptual amendment would read something to the effect that

'Those provisions under AS 21.36.162 would sunset on the 90th day of the next regular session, two years after the promulgation or adoption of the regulations authorized for that [section].'"

Number 0874

REPRESENTATIVE MEYER objected. He asked why the sunset should be three years instead of two years.

CHAIR ROKEBERG explained that it would be two years after the regulations were promulgated, and it will take about a year to establish the regulations.

MR. LOHR added that a three-year sunset would be preferable to a two-year sunset because the division would experience a couple of years of operating under the regulations that are promulgated.

REPRESENTATIVE MEYER withdrew his objection.

Number 0967

CHAIR ROKEBERG asked whether there were any further objections to Conceptual Amendment 3. There being no objection, Conceptual Amendment 3 was adopted.

[HB 184 was held over; the hearing on HB 184 was recessed to a call of the chair, tentatively scheduled for the afternoon of 4/28/01.]

ADJOURNMENT

Number 0974

CHAIR ROKEBERG recessed the House Judiciary Standing Committee meeting at 3:39 p.m., to a call of the chair, tentatively scheduled for the afternoon of 4/28/01.